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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 409

(By Senator Jones, et al)

PASSED March 9, 1991

In Effect 90 days from Passage

ENROLLED

Senate Bill No. 409

(By SENATORS JONES, WIEDEBUSCH, HECK, CHAFIN, HELMICK,
PRITT, HUMPHREYS, FELTON, WAGNER AND LUCHT)

[Passed March 9, 1991; in effect ninety days from passage.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven, relating to the licensing of contractors; providing definitions; creating contractor licensing board; setting forth the administrative duties of the board; providing for the promulgation of legislative rules; providing exemptions from licensing requirements; providing for the application and issuance of license; providing for fees for licenses, expiration of licenses and renewal of licenses; prohibiting assignment or transfer of license; providing prerequisites to obtain a building permit; requiring notice of license in bid submissions; providing for reinstatement of license; providing criminal penalties for violations of article; providing disciplinary powers to the board; providing administrative duties for the division of labor; creating a special revenue account and the procedure for expenditure therefrom and deposits thereto; providing for recordkeeping; and providing for reciprocity.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new article, designated article eleven, to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Contractor Licensing Act".

§21-11-2. Policy declared.

- 1 It is hereby declared to be the policy of the state of
- 2 West Virginia that all persons desiring to perform
- 3 contracting work in this state be duly licensed to
- 4 ensure capable and skilled craftsmanship utilized in
- 5 construction projects in this state, both public and
- 6 private, fair bidding practices between competing
- 7 contractors through uniform compliance with the laws
- 8 of this state, and protection of the public from unfair,
- 9 unsafe and unscrupulous bidding and construction
- 10 practices.

§21-11-3. Definitions.

- 1 (a) "Commissioner" means the commissioner of the
- 2 division of labor.
- 3 (b) "Board" means the West Virginia contractor
- 4 licensing board.
- 5 (c) "Contractor" means a person who in any capac-
- 6 ity for compensation, other than as an employee of
- 7 another, undertakes, offers to undertake, purports to
- 8 have the capacity to undertake, or submits a bid to
- 9 construct, alter, repair, add to, subtract from, improve,
- 10 move, wreck or demolish any building, highway, road,
- 11 railroad, structure or excavation associated with a
- 12 project, development or improvement, or to do any
- 13 part thereof, including the erection of scaffolding or
- 14 other structures or works in connection therewith,
- 15 where the cost of the undertaking is one thousand
- 16 dollars or more.
- 17 Contractor includes a construction manager who
- 18 performs management and counseling services for a
- 19 construction project for a professional fee.

20 Contractor does not include:

21 (1) One who merely furnishes materials or supplies
22 without fabricating or consuming them in the con-
23 struction project;

24 (2) A person who personally performs construction
25 work on the site of real property which the person
26 owns or leases whether for commercial or residential
27 purposes;

28 (3) A person who is licensed or registered as a
29 professional and who functions under the control of
30 any other licensing or regulatory board, whose pri-
31 mary business is real estate sales, appraisal, develop-
32 ment, management and maintenance, who acting in
33 his or her respective professional capacity and any
34 employee of such professional, acting in the course of
35 his or her employment, performs any work which
36 may be considered to be performing contracting work;
37 or

38 (4) A corporation, partnership or sole proprietorship
39 whose primary purpose is to prepare construction
40 plans and specifications used by the contractors
41 defined in subsection (c) of this section and who
42 employs full time a registered architect licensed to
43 practice in this state or a registered professional
44 engineer licensed to practice in this state. Employees
45 of such corporation, partnership or sole proprietorship
46 shall also be exempt from the requirements of this
47 article.

48 (d) "Electrical contractor" means a person who
49 engages in the business of contracting to install, erect,
50 repair or alter electrical equipment for the generation,
51 transmission or utilization of electrical energy.

52 (e) "General building contractor" means a person
53 whose principal business is in connection with any
54 structures built, being built or to be built for the
55 support, shelter and enclosure of persons, animals,
56 chattels or movable property of any kind, requiring in
57 the construction the use of more than two contractor
58 classifications, or a person who supervises the whole of

59 any part of such construction.

60 (f) "General engineering contractor" means a per-
61 son whose principal business is in connection with
62 public or private works projects, including, but not
63 limited to, one or more of the following: Irrigation,
64 drainage and water supply projects; electrical genera-
65 tion projects; swimming pools; flood control; harbors;
66 railroad; highways; tunnels; airports and airways;
67 sewers and sewage disposal systems; bridges; inland
68 waterways; pipelines for transmission of petroleum
69 and other liquid or gaseous substances; refineries;
70 chemical plants and other industrial plants requiring a
71 specialized engineering knowledge and skill; piers and
72 foundation; and structures or work incidental thereto.

73 (g) "Heating, ventilating and cooling contractor"
74 means a person who engages in the business of
75 contracting to install, erect, repair, service or alter
76 heating, ventilating and air conditioning equipment or
77 systems to heat, cool or ventilate residential and
78 commercial structures.

79 (h) "License" means a license to engage in business
80 in this state as a contractor in one of the classifications
81 set out in this article.

82 (i) "Multifamily contractor" means a person who is
83 engaged in construction, repair or improvement of a
84 multifamily residential structure.

85 (j) "Person" includes an individual, firm, sole
86 proprietorship, partnership, corporation, association or
87 other entity engaged in the undertaking of construc-
88 tion projects, or any combination thereof.

89 (k) "Piping contractor" means a person whose
90 principal business is the installation of process, power
91 plant, air, oil, gasoline, chemical or other kinds of
92 piping; and boilers and pressure vessels using joining
93 methods of thread, weld, solvent weld or mechanical
94 methods.

95 (l) "Plumbing contractor" means a person whose
96 principal business is the installation, maintenance,
97 extension and alteration of piping, plumbing fixtures,

98 plumbing appliances and plumbing appurtenances,
99 venting systems and public or private water supply
100 systems within or adjacent to any building or struc-
101 ture; included in this definition is installation of gas
102 piping, chilled water piping in connection with refrig-
103 eration processes and comfort cooling, hot water
104 piping in connection with building heating, and piping
105 for stand pipes.

106 (m) "Residential contractor" means a person whose
107 principal business is in connection with construction,
108 repair or improvement of real property used as, or
109 intended to be used for, residential occupancy.

110 (n) "Specialty contractor" means a person who
111 engages in specialty contracting services which do not
112 substantially fall within the scope of any contractor
113 classification as set out herein.

114 (o) "Residential occupancy" means occupancy of a
115 structure for residential purposes for periods greater
116 than thirty consecutive calendar days.

117 (p) "Residential structure" means a building or
118 structure used or intended to be used for residential
119 occupancy, together with related facilities appurtenant
120 to the premises as an adjunct of residential occupancy,
121 which contains not more than three distinct floors
122 which are above grade in any structural unit regard-
123 less of whether the building or structure is designed
124 and constructed for one or more living units. Dormi-
125 tories, hotels, motels or other transient lodging units
126 are not residential structures.

127 (q) "Subcontractor" means a person who performs a
128 portion of a project undertaken by a principal or
129 general contractor or another subcontractor.

130 (r) "Division" means the division of labor.

131 (s) "Cease and desist order" means an order issued
132 by the commissioner pursuant to the provisions of this
133 article.

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

1 (a) There is hereby created the West Virginia
2 contractor licensing board. The board shall consist of
3 ten members, appointed by the governor by and with
4 the advice and consent of the Senate for terms of four
5 years. Such members shall serve until their successors
6 are appointed and have qualified. Eight of the
7 appointed members shall be owners of businesses
8 engaged in the various contracting industries, with at
9 least one member appointed from each of the follow-
10 ing contractor classes: One electrical contractor, one
11 general building contractor, one general engineering
12 contractor, one heating, ventilating and cooling con-
13 tractor, one multifamily contractor, one piping con-
14 tractor, one plumbing contractor and one residential
15 contractor, as defined in section three hereof. Two of
16 the appointed members shall be building code officials
17 who are not members of any contracting industry. At
18 least two members of the board shall reside at the
19 time of their appointment in each congressional
20 district as existing on the first day of January, one
21 thousand nine hundred ninety-one. The commissioner
22 of labor, the secretary of the department of tax and
23 revenue or his designee, and the commissioner of the
24 bureau of employment programs or his designee, shall
25 be ex officio, nonvoting members of the board.

26 (b) Terms of the members first appointed shall be
27 two members for one year, two members for two
28 years, three members for three years, and three
29 members for four years, as designated by the governor
30 at the time of appointment. Thereafter, terms shall be
31 for four years. A member who has served all or part
32 of two consecutive terms shall not be subject to
33 reappointment unless four years have elapsed since
34 the member last served. Vacancies shall be filled by
35 appointment by the governor for the unexpired term
36 of any member whose office is vacant and shall be
37 made within sixty days of the occurrence of the
38 vacancy. A vacancy on the board shall not impair the

39 right of the remaining members to exercise all the
40 powers of the board.

41 (c) The board shall elect a chair from one of the
42 voting members of the board. The board shall meet at
43 least once annually and at such other times as called
44 by the chair or a majority of the board. Board
45 members shall receive no remuneration for their
46 service, but shall be reimbursed for their actual
47 expenses incurred in the performance of their duties
48 as such. A majority of the membership of the board
49 shall constitute a quorum of the board.

§21-11-5. Administrative duties of the board; regulations.

1 (a) Pursuant to the provisions of chapter twenty-
2 nine-a of this code, the board shall adopt rules and
3 regulations relating to the following:

4 (1) The minimum qualifications for applicants for
5 examination and license in each of the following
6 specified classes of contractor:

7 (A) Electrical contractor;

8 (B) General building contractor;

9 (C) General engineering contractor;

10 (D) Heating, ventilating and cooling contractor;

11 (E) Multifamily contractor;

12 (F) Piping contractor;

13 (G) Plumbing contractor;

14 (H) Residential contractor; or

15 (I) Specialty contractor;

16 (2) The content of examinations for applicants in
17 each class;

18 (3) Procedures for application, examination and
19 license renewal, and the manner in which the exam-
20 ination will be conducted;

21 (4) The continued competency of licensees for
22 purposes of renewal and reinstatement of licenses; and

23 (5) Procedures for disciplinary action before the
24 board.

25 (b) The board shall:

26 (1) Hold at least one examination in each calendar
27 quarter for each specific classification of contractor,
28 designate the time and place of such examinations,
29 and notify applicants thereof;

30 (2) Request, through the division, investigation of
31 any alleged violation of this article or of the regulations;

32 (3) Forward results of examinations to the division
33 within twenty days following the examination;

34 (4) Notify the commissioner and board members of
35 meeting dates and agenda items at least five days prior
36 to such meetings; and

37 (5) Take minutes and records of all meetings and
38 proceedings.

§21-11-6. Necessity for license; exemptions.

1 (a) On or after the first day of October, one thousand
2 nine hundred ninety-one, no person shall engage in
3 this state in any act as a contractor, as defined in this
4 article, unless such person holds a license issued under
5 the provisions of this article. No firm, partnership,
6 corporation, association or other entity shall engage in
7 contracting in this state unless an officer thereof holds
8 a license issued pursuant to this article.

9 (b) Any person to whom a license has been issued
10 under this article shall keep the license or a copy
11 thereof posted in a conspicuous position at every
12 construction site where work is being done by the
13 contractor. The contractor's license number shall be
14 included in all contracting advertisements and all fully
15 executed and binding contracts. Any person violating
16 the provisions of this subsection shall be subject, after
17 hearing, to, a warning, a reprimand, or a fine of not
18 more than two hundred dollars.

19 (c) Except as otherwise provided in this code, the
20 following are exempt from licensure:

- 21 (1) Work done exclusively by employees of the
22 United States government, the state of West Virginia,
23 a county, municipality or municipal corporation, and
24 any governmental subdivision or agency thereof;
- 25 (2) The sale or installation of a finished product,
26 material or article or merchandise which is not
27 actually fabricated into and does not become a perma-
28 nent fixed part of the structure;
- 29 (3) Work performed personally by an owner or
30 lessee of real property on property the primary use of
31 which is for agricultural or farming enterprise;
- 32 (4) A material supplier who renders advice concern-
33 ing use of products sold and who does not provide
34 construction or installation services;
- 35 (5) Work performed by a public utility company
36 regulated by the West Virginia public service commis-
37 sion, and its employees;
- 38 (6) Repair work contracted for by the owner of the
39 equipment on an emergency basis in order to maintain
40 or restore the operation of such equipment;
- 41 (7) Work performed by an employer's regular
42 employees, for which the employees are paid regular
43 wages and not a contract price, on business property
44 owned or leased by the employer;
- 45 (8) Work personally performed on a structure by the
46 owner or occupant thereof; and
- 47 (9) Work performed when the specifications for such
48 work have been developed or approved by engineering
49 personnel employed by the owner of a facility by
50 registered professional engineers licensed pursuant to
51 the laws of this state when the work to be performed
52 because of its specialized nature or process cannot be
53 reasonably or timely contracted for within the general
54 area of the facility.

§21-11-7. Application for and issuance of license.

- 1 (a) A person desiring to be licensed as a contractor
2 under this article shall submit to the board a written

3 application requesting licensure, providing such infor-
4 mation as the board may require, on forms supplied
5 by the board, and shall pay such license fee not to
6 exceed one hundred fifty dollars: *Provided*, That
7 electrical contractors already licensed under section
8 four, article three-b, chapter twenty-nine of this code,
9 shall pay no more than twenty dollars.

10 (b) A person holding a business registration certifi-
11 cate to conduct business in this state as a contractor on
12 the thirtieth day of September, one thousand nine
13 hundred ninety-one, may register with the board,
14 certify by affidavit the requirements of subsection (c),
15 section fifteen hereof, and pay such license fee not to
16 exceed one hundred fifty dollars and shall be issued a
17 contractor's license without further examination.

§21-11-8. Licenses; expiration date; fees; renewal.

1 A license issued under the provisions of this article
2 expires one year from the date on which it is issued.
3 The board shall establish application and annual
4 license fees not to exceed one hundred fifty dollars.
5 The board shall promulgate rules and regulations
6 pursuant to the provisions of chapter twenty-nine-a of
7 this code concerning license renewal: *Provided*, That
8 the rules may not be more restrictive than those
9 prescribed for initial licensure.

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

1 No license may be used for any purpose by any
2 person other than the person to whom the license is
3 issued. No license may be assigned, transferred or
4 otherwise disposed of so as to permit the unauthorized
5 use thereof. Any person who violates this section is
6 subject to the penalties imposed in section fourteen of
7 this article.

§21-11-10. Prerequisites to obtaining building permit.

1 Any person making application to the building
2 inspector or other authority of any incorporated
3 municipality or other political subdivision in this state
4 charged with the duty of issuing building or other

5 permits for the construction of any building, highway,
6 sewer or structure or for any removal of materials or
7 earth, grading or improvement, shall, before issuance
8 of the permit, either furnish satisfactory proof to the
9 inspector or authority that such person is duly licensed
10 under the provisions of this article to carry out or
11 superintend the same, or file a written affidavit that
12 such person is not subject to licensure as a contractor
13 or subcontractor as defined in this article. The inspec-
14 tor or authority shall not issue a building permit to
15 any person who does not possess a valid contractor's
16 license when required by this article.

§21-11-11. Notice included with invitations to bid and specifications.

1 Any architect or engineer preparing any plan and
2 specification for contracting work to be performed in
3 this state shall include in such plan, specification and
4 invitation to bid, a reference to this article informing
5 any prospective bidder that such person's contractor's
6 license number must be included on any bid submis-
7 sion. A subcontractor shall furnish such person's
8 contractor's license number to the contractor prior to
9 the award of the contract.

§21-11-12. License renewal, lapse and reinstatement.

1 (a) A license which is not renewed on or before the
2 renewal date shall lapse. The board may establish by
3 regulation a delayed renewal fee to be paid for
4 issuance of any license which has lapsed: *Provided*,
5 That no license which has lapsed for a period of two
6 years or more may be renewed.

7 (b) In the event that continuing education or other
8 requirements are made a condition of license rein-
9 statement after lapse, suspension or revocation, such
10 requirements must be satisfied before the license is
11 reissued.

§21-11-13. Violation of article; injunction; criminal penalties.

1 (a) Upon a determination that a person is engaged in
2 contracting business in the state without a valid
3 license, the board or commissioner shall issue a cease

4 and desist order requiring such person to immediately
5 cease all operations in the state. The order shall be
6 withdrawn upon issuance of a license to such person.
7 After a hearing, the board may impose a penalty of
8 not less than two hundred dollars nor more than one
9 thousand dollars upon any person engaging in con-
10 tracting business in the state without a valid license.

11 (b) Any person continuing to engage in contracting
12 business in the state without a valid license after
13 service of a cease and desist order is guilty of a
14 misdemeanor, and, upon conviction thereof, shall be
15 fined not less than two hundred dollars nor more than
16 five thousand dollars, or imprisoned in the county jail
17 not more than one month, or both fined and
18 imprisoned.

19 (c) The board may institute proceedings in the
20 circuit court of the county in which the alleged
21 violations of the provisions of this article occurred or
22 are now occurring to enjoin any violation of any
23 provision of this article.

24 (d) Any person who undertakes any construction
25 work without a valid license when such license is
26 required by this article, when the total cost of the
27 contractor's construction contract on any project upon
28 which the work is undertaken is twenty-five thousand
29 dollars or more, shall, in addition to any other penalty
30 herein provided, be assessed by the board an admin-
31 istrative penalty not to exceed two hundred dollars per
32 day for each day the person is in violation.

33 (e) The board shall, by regulation, provide for an
34 administrative hearing before a penalty is levied, and
35 for review of any final ruling issued pursuant to such
36 hearing.

§21-11-14. Disciplinary powers of the board.

1 (a) The board has the power and authority to impose
2 the following disciplinary actions:

3 (1) Permanently revoke a license;

4 (2) Suspend a license for a specified period;

5 (3) Censure or reprimand a licensee;

6 (4) Impose limitations or conditions on the profes-
7 sional practice of a licensee;

8 (5) Impose requirements for remedial professional
9 education to correct deficiencies in the education,
10 training and skill of a licensee; and

11 (6) Impose a probationary period requiring a licen-
12 see to report regularly to the board on matters related
13 to the grounds for probation; the board may withdraw
14 probationary status if the deficiencies that require the
15 sanction are remedied.

16 (b) The board may summarily suspend a licensee
17 pending a hearing or pending an appeal after hearing
18 upon a determination that the licensee poses a clear,
19 significant and immediate danger to the public health
20 and safety.

21 (c) The board may reinstate the suspended or
22 revoked license of a person, if, upon a hearing, the
23 board finds and determines that such person is able to
24 practice with skill and safety.

25 (d) The board may accept the voluntary surrender of
26 a license: *Provided*, That such license may not be
27 reissued unless the board determines that the licensee
28 is competent to resume practice and the licensee pays
29 the appropriate renewal fee.

30 (e) A person or contractor adversely affected by
31 disciplinary action may appeal to the board within
32 sixty days of the date such disciplinary action is taken.
33 The board shall hear the appeal within fifteen days
34 from receipt of notice of appeal in accordance with the
35 provisions of chapter twenty-nine-a of this code.
36 Hearings shall be held in Charleston. The board may
37 retain a hearing examiner to conduct the hearings and
38 present proposed findings of fact and conclusions of
39 law to the board for its action.

40 (f) Any party adversely affected by any action of the
41 board may appeal such action pursuant to the provi-
42 sions of chapter twenty-nine-a of this code.

43 (g) The following are causes for disciplinary action:

44 (1) Abandonment, without legal excuse, of any
45 construction project or operation engaged in or under-
46 taken by the licensee;

47 (2) Willful failure or refusal to complete a construc-
48 tion project or operation with reasonable diligence,
49 thereby causing material injury to another;

50 (3) Willful departure from or disregard of plans or
51 specifications in any material respect without the
52 consent of the parties to the contract;

53 (4) Willful or deliberate violation of the building
54 laws or regulations of the state or of any political
55 subdivision thereof;

56 (5) Willful or deliberate failure to pay any moneys
57 when due for any materials free from defect, or
58 services rendered in connection with such person's
59 operations as a contractor when such person has the
60 capacity to pay or when such person has received
61 sufficient funds under the contract as payment for the
62 particular construction work for which the services or
63 materials were rendered or purchased, or the fraudu-
64 lent denial of any amount with intent to injure, delay
65 or defraud the person to whom the debt is owed;

66 (6) Willful or deliberate misrepresentation of a
67 material fact by an applicant or licensee in obtaining
68 a license, or in connection with official licensing
69 matters;

70 (7) Willful or deliberate failure to comply in any
71 material respect with the provisions of this article or
72 the rules of the board;

73 (8) Willfully or deliberately acting in the capacity of
74 a contractor when not licensed, or as a contractor by
75 a person other than the person to whom the license is
76 issued except as an employee of the licensee;

77 (9) Willfully or deliberately acting with the intent to
78 evade the provisions of this article by: (i) Aiding or
79 abetting an unlicensed person to evade the provisions
80 of this article; (ii) combining or conspiring with an

81 unlicensed person to perform an unauthorized act; (iii)
82 allowing a license to be used by an unlicensed person;
83 or (iv) attempting to assign, transfer or otherwise
84 dispose of a license or permitting the unauthorized use
85 thereof;

86 (10) Engaging in any willful, fraudulent or deceitful
87 act in the capacity as a contractor whereby substantial
88 injury is sustained by another; or

89 (11) Performing work which is not commensurate
90 with a general standard of the specific classification of
91 contractor or which is below a building or construction
92 code adopted by the municipality or county in which
93 the work is performed.

94 (h) In all disciplinary hearings the board has the
95 burden of proof as to all matters in contention. No
96 disciplinary action shall be taken by the board except
97 on the affirmative vote of at least six members
98 thereof. Except for violations of section thirteen of this
99 article, no disciplinary action shall be taken by the
100 board for any such cause as is set out herein unless the
101 licensee has been finally adjudicated as having perpe-
102 trated such act in a court of record. Other than as
103 specifically set out herein, the board shall have no
104 power or authority to impose or assess damages.

§21-11-15. Administrative duties of division.

1 (a) For and on behalf of the board, the division and
2 commissioner shall perform the following administra-
3 tive duties:

4 (1) Collect and record all fees;

5 (2) Maintain records and files;

6 (3) Issue and receive application forms;

7 (4) Notify applicants of the results of the board
8 examination;

9 (5) Arrange space for holding examinations and
10 other proceedings;

11 (6) Issue licenses and temporary licenses as autho-
12 rized by this article and the board;

13 (7) Issue duplicate licenses upon submission of a
14 written request by the licensee attesting to loss of or
15 the failure to receive the original and payment by the
16 licensee of a fee established by regulation adopted by
17 the division;

18 (8) Notify licensees of renewal dates at least thirty
19 days before the expiration date of their license;

20 (9) Answer routine inquiries;

21 (10) Maintain files relating to individual licensees;

22 (11) Arrange for printing and advertising;

23 (12) Purchase supplies;

24 (13) Employ additional help when needed;

25 (14) Perform other services that may be requested
26 by the board;

27 (15) Provide inspection, enforcement and investiga-
28 tive services to the board; and

29 (16) Issue cease and desist orders to persons engaging
30 in contracting within the state without a valid license.

31 (b) All authority not specifically delegated to the
32 commissioner and division shall be the responsibility
33 of the board.

34 (c) Following successful completion of the examina-
35 tion, and prior to the issuance of the license, the
36 applicant shall certify by affidavit that the applicant:

37 (1) Is in compliance with the business franchise tax
38 provisions of chapter eleven of this code;

39 (2) Has registered, and is in compliance, with the
40 workers' compensation fund and the employment
41 security fund, as required by chapter twenty-three
42 and chapter twenty-one-a of this code; and

43 (3) Is in compliance with the applicable wage bond
44 requirements of section one, article five of this
45 chapter: *Provided*, That in the case of an out-of-state
46 contractor not doing business in this state and seeking
47 licensure for bidding purposes only, the applicant may

48 be granted a conditional license for bid purposes only.

§21-11-16. Rules.

1 The board may adopt rules and regulations as are
2 necessary to carry out the provisions of this article
3 pursuant to the provisions of chapter twenty-nine-a of
4 this code. The board may disseminate educational or
5 any other material designed to improve performance
6 standards of any contractor group to contractors
7 within the state. The board may adopt, and use, a seal
8 with the words "state contractor licensing board of
9 West Virginia".

§21-11-17. Recordkeeping.

1 (a) The board shall keep a record of all actions taken
2 and account for moneys received. All moneys shall be
3 deposited in a special account in the state treasury to
4 be known as the "West Virginia Contractor Licensing
5 Board Fund". Expenditures from said fund shall be
6 for the purposes set forth in this article and are not
7 authorized from collections but are to be made only in
8 accordance with appropriation by the Legislature and
9 in accordance with the provisions of article three,
10 chapter twelve of this code and upon the fulfillment of
11 the provisions set forth in article two, chapter five-a of
12 this code: *Provided*, That for the fiscal year ending the
13 thirtieth day of June, one thousand nine hundred
14 ninety-two expenditures are authorized from collec-
15 tions rather than pursuant to an appropriation by the
16 Legislature. Amounts collected which are found from
17 time to time to exceed the funds needed for purposes
18 set forth in this article may be transferred to other
19 accounts or funds and redesignated for other purposes
20 by appropriation of the Legislature.

21 (b) The board shall maintain at the principal office,
22 open for public inspection during office hours, a
23 complete indexed record of all applications, licenses
24 issued, licenses renewed and all revocations, cancella-
25 tions and suspensions of licenses. Applications shall
26 show the date of application, name, qualifications,
27 place of business and place of residence of each
28 applicant; and whether the application was approved

29 or refused.

30 (c) (1) All investigations, complaints, reports,
31 records, proceedings and other information received
32 by the commissioner and board and related to com-
33 plaints made to the commission or board or investiga-
34 tions conducted by the commission or board pursuant
35 to this article, including the identity of the complain-
36 ant or respondent, shall be confidential and shall not
37 be knowingly and improperly disclosed by any mem-
38 ber or former member of the board, the commissioner
39 or staff, except as follows:

40 (A) Upon a finding that probable cause exists to
41 believe that a respondent has violated the provisions of
42 this article, the complaint and all reports, records,
43 nonprivileged and nondeliberative materials intro-
44 duced at any probable cause hearing held pursuant to
45 the complaint are thereafter not confidential: *Pro-*
46 *vided*, That confidentiality of such information shall
47 remain in full force and effect until the respondent
48 has been served with a copy of the statement of
49 charges.

50 (B) Any subsequent hearing held in the matter for
51 the purpose of receiving evidence or the arguments of
52 the parties or their representatives shall be open to
53 the public and all reports, records and nondeliberative
54 materials introduced into evidence at such subsequent
55 hearing, as well as the board's and commissioner's
56 orders, are not confidential.

57 (C) The commissioner or board may release any
58 information relating to an investigation at any time if
59 the release has been agreed to in writing by the
60 respondent.

61 (D) The complaint as well as the identity of the
62 complainant shall be disclosed to a person named as
63 respondent in any such complaint filed immediately
64 upon such respondent's request.

65 (E) Where the commission or board is otherwise
66 required by the provisions of this article to disclose
67 such information or to proceed in such a manner that

68 disclosure is necessary and required to fulfill such
69 requirements.

70 (2) If, in a specific case, the commissioner or board
71 finds that there is a reasonable likelihood that the
72 dissemination of information or opinion in connection
73 with a pending or imminent proceeding will interfere
74 with a fair hearing or otherwise prejudice the due
75 administration of justice, the commissioner or board
76 shall order that all or a portion of the information
77 communicated to the commissioner or board to cause
78 an investigation and all allegations of violations or
79 misconduct contained in a complaint shall be confiden-
80 tial, and the person providing such information or
81 filing a complaint shall be bound to confidentiality
82 until further order of the board.

83 (d) If any person violates the provisions of subsec-
84 tion (c) of this section by knowingly and willfully
85 disclosing any information made confidential by such
86 section or by the commissioner or board, such person
87 shall be guilty of a misdemeanor, and, upon conviction
88 thereof, shall be fined not less than five hundred
89 dollars nor more than five thousand dollars, or impri-
90 soned in the county jail not more than one month, or
91 both fined and imprisoned.

92 (e) The commissioner shall certify to the state
93 auditor and to the board a detailed statement of all
94 moneys received and spent during the preceding fiscal
95 year.

§21-11-18. Reciprocity.

1 To the extent that other states which provide for the
2 licensing of contractors provide for similar action, the
3 board, in its discretion, may grant licenses of the same
4 or equivalent classification to contractors licensed by
5 other states, without written examination upon satis-
6 factory proof furnished to the board that the qualifica-
7 tions of such applicants are equal to the qualifications
8 of holders of similar licenses in this state, and upon
9 certification to the commissioner as required by
10 subsection (c), section fifteen of this article, and upon
11 payment of the required fee.

§21-11-19. Termination of board.

1 The West Virginia contractors licensing board shall
2 be terminated pursuant to the provisions of article ten,
3 chapter four of this code, on the first day of July, one
4 thousand nine hundred ninety-seven, unless sooner
5 terminated or unless continued or reestablished
6 pursuant to that article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Lomer Heck
.....
Chairman Senate Committee

Ernest C. Murre
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Samuel E. Blum
.....
Clerk of the Senate

Donald L. Hopp
.....
Clerk of the House of Delegates

Keith Burkette
.....
President of the Senate

Robert C. Cole
.....
Speaker House of Delegates

The within *approved* this the *3rd*.....
day of *April*....., 1991.

Yastou C. [Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 9/20/91

Time 4:35 PM