WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2000

ENROLLED
Committee Substitute for
SENATE BILL NO. __103_____

(By Senator __Fanning______)

PASSED __March 11, 2000
In Effect ninety days from Passage
AN ACT to amend and reenact sections four and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia contractor licensing board; the composition and residency requirements of the board; disciplinary powers of the board; board administrative appeal hearings; and legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections four and fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

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

(a) There is hereby created the West Virginia contractor licensing board. The board shall consist of ten members appointed by the governor by and with the advice and consent of the Senate for terms of four years. Such members shall serve until their successors are appointed and have qualified. Eight of the appointed members shall be owners of businesses engaged in the various contracting industries, with at least one member appointed from each of the following contractor classes: One electrical contractor, one general building contractor, one general engineering contractor, one heating, ventilating and cooling contractor, one multifamily contractor, one piping contractor, one plumbing contractor and one residential contractor, as defined in section three hereof. Two of the appointed members shall be building code officials who are not members of any contracting industry. At least three members of the board shall reside at the time of their appointment in each congressional district as existing on the first day of January, one thousand nine hundred ninety-eight. The commissioner of labor, the secretary of the department of tax and revenue or his designee, and the commissioner of the bureau of employment programs or his designee shall be ex officio nonvoting members of the board.

(b) Terms of the members first appointed shall be two members for one year, two members for two years, three members for three years and three members for four years, as designated by the governor at the time of appointment. Thereafter, terms shall be for four years. A member who has served all or part of two consecutive terms shall not be subject to reappointment unless four years have elapsed.
since the member last served. Vacancies shall be filled by appointment by the governor for the unexpired term of any member whose office is vacant and shall be made within sixty days of the occurrence of the vacancy. A vacancy on the board shall not impair the right of the remaining members to exercise all the powers of the board.

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


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

(1) Permanently revoke a license;

(2) Suspend a license for a specified period;

(3) Censure or reprimand a licensee;

(4) Impose limitations or conditions on the professional practice of a licensee;

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

(6) 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.
(b) The board may summarily suspend a licensee pending a hearing or pending an appeal after hearing upon a determination that the licensee poses a clear, significant and immediate danger to the public health and safety.

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

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

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

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

(g) The following are causes for disciplinary action:

(1) Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the licensee;

(2) Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to another;
(3) Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;

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

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

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

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

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

(9) Willfully or deliberately acting with the intent to evade the provisions of this article by: (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer or otherwise dispose of a license or permitting the unauthorized use thereof;
(10) Engaging in any willful, fraudulent or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another; or

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

(h) 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 thereof. Except for violations of section thirteen of this article, no disciplinary action shall be taken by the board for any such cause as is set out herein unless the licensee has been finally adjudicated as having perpetrated such act in a court of record: Provided, That, after the effective date of the legislative rules required by subsection (i) of this section, no disciplinary action may be taken by the board for any cause except under the same procedures applicable to all other state boards of examination or registration set forth in section eight, article one, chapter thirty of this code. Other than as specifically set out herein, the board shall have no power or authority to impose or assess damages.

(i) On or before the first day of January, two thousand one, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...........................................this the ...........................................

Day of ..............................................2000

Governor