WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4299

(By Delegates Stemple and Kominar)

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Passed March 11, 2004

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4299

(BY DELEGATES STEMPEL AND KOMINAR)

[Passed March 11, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §21-11-3, §21-11-4, §21-11-6, §21-11-12, §21-11-13, §21-11-15, §21-11-17 and §21-11-20 of the code of West Virginia, 1931, as amended, all relating to modifications to the West Virginia Contractor Licensing Act; by increasing the cost of the undertaking in the definition of a contractor; providing compensation for board members; increasing the penalty for failing to conspicuously display license; exempting certain work from licensure; decreasing the period that a lapsed license may be renewed; providing for an appeal of penalty for contracting without a license; and removal of references to the board in certain sections.

Be it enacted by the Legislature of West Virginia:

That §21-11-3, §21-11-4, §21-11-6, §21-11-12, §21-11-13, §21-11-15, §21-11-17 and §21-11-20 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-3. Definitions

(a) “Commissioner” means the commissioner of the division of labor.

(b) “Board” means the West Virginia contractor licensing board.

c) “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 structures or works in connection therewith, where the cost of the undertaking is two thousand five hundred dollars or more.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

(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) 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 such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;

(4) A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in subsection (c) of this section and who 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 such corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article.

(d) “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.

(e) “General building contractor” means a person 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 such construction.

(f) “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.

(g) "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.

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

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

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

(k) "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.

(l) "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; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, and piping for stand pipes.

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

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

(o) “Residential occupancy” means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.

(p) “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 of 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.

(q) “Subcontractor” means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

(r) “Division” means the division of labor.
(s) “Cease and desist order” means an order issued by the commissioner pursuant to the provisions of this article.

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

(a) The West Virginia contractor licensing board is continued. 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 reap-
pointment 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 compensation not to exceed the amount paid to members of the Legislature for the interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day spent attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board. A majority of the members appointed shall constitute a quorum of the board.

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

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

(b) Any person to whom a license has been issued under this article shall keep the license or a copy thereof posted 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. Any person violating the
provisions of this subsection shall be subject, after hearing, to
a warning, a reprimand, or a fine of not more than two hundred
dollars.

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

(1) 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;

(2) 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 the structure;

(3) 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) A material supplier who renders advice concerning use
of products sold and who does not provide construction or
installation services;

(5) Work performed by a public utility company regulated
by the West Virginia public service commission and its
employees;

(6) Repair work contracted for by the owner of the equip-
ment on an emergency basis in order to maintain or restore the
operation of such equipment;

(7) 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
which is not intended for speculative sale or lease;
(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility 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.

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

(a) A license which is not renewed on or before the renewal date shall lapse. The board may establish by regulation a delayed renewal fee to be paid for issuance of any license which has lapsed: 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.

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

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

(a)(1) Upon a determination that a person is engaged in contracting business in the state without a valid license, the board or commissioner shall issue a cease and desist order requiring such person to immediately cease all operations in the state. The order shall be withdrawn upon issuance of a license to such person.
(2) After affording an opportunity for a hearing, 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 the state without a valid license. The board may accept payment of the penalty in lieu of a hearing.

(3) Within thirty days after receipt of the final order issued pursuant to this section, any party adversely affected by the order may appeal the order to the circuit court of Kanawha County, West Virginia, or to the circuit court of the county in which the petitioner resides or does business.

(b) Any person continuing to engage in contracting business in the state without a valid license after service of a cease and desist order is guilty of a misdemeanor and, upon conviction, is subject to the following penalties:

(1) For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) 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;

(3) 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.

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

(d) Any person who undertakes any construction work without a valid license when such license is required by this
article, 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 herein provided, be assessed by the board an administrative penalty not to exceed two hundred dollars per day for each day the person is in violation.


(a) The division and commissioner shall perform the following administrative duties:

1. Collect and record all fees;
2. Maintain records and files;
3. Issue and receive application forms;
4. Notify applicants of the results of the board examination;
5. Arrange space for holding examinations and other proceedings;
6. Issue licenses and temporary licenses as authorized by this article;
7. Issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the division;
8. Notify licensees of renewal dates at least thirty days before the expiration date of their license;
9. Answer routine inquiries;
10. Maintain files relating to individual licensees;
(11) Arrange for printing and advertising;

(12) Purchase supplies;

(13) Employ additional help when needed;

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

(15) Provide inspection, enforcement and investigative services to the board; and

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

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

(c) Following successful completion of the examination, and prior to the issuance of the license, the applicant shall certify by affidavit that the applicant:

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

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

(3) Is in compliance with the applicable wage bond requirements of section one, article five of this chapter: Provided, That in the case of an out-of-state contractor not doing business in this state and seeking licensure for bidding purposes only, the applicant may be granted a conditional license for bid purposes only.

§21-11-17. Record keeping.
(a) The division shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the state treasury to be known as the “West Virginia Contractor Licensing Board Fund”. Expenditures from said fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) The division shall maintain at the principal office, open for public inspection during office hours, a complete indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses. Applications shall show the date of application, name, qualifications, place of business and place of residence of each applicant; and whether the application was approved or refused.

(c) (1) All investigations, complaints, reports, records, proceedings and other information received by the commissioner and board and related to complaints made to the commissioner or board or investigations conducted by the commissioner or board pursuant to this article, including the identity of the complainant or respondent, shall be confidential and shall not be knowingly and improperly disclosed by any member or former member of the board, the commissioner or staff, except as follows:
(A) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of this article, the complaint and all reports, records, nonprivileged and nondeliberative materials introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential; Provided, That confidentiality of such information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges.

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

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

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

(E) Where the commissioner or board is otherwise required by the provisions of this article to disclose such information or to proceed in such a manner that disclosure is necessary and required to fulfill such requirements.

(2) If, in a specific case, the commissioner or board finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commissioner or board shall order that all or a portion of the information communicated to the commissioner or board to cause an
66 investigation and all allegations of violations or misconduct
67 contained in a complaint shall be confidential, and the person
68 providing such information or filing a complaint shall be bound
69 to confidentiality until further order of the board.

70 (d) If any person violates the provisions of subsection (c) of
71 this section by knowingly and willfully disclosing any informa-
72 tion made confidential by such section or by the commissioner
73 or board, such person shall be guilty of a misdemeanor, and,
74 upon conviction thereof, shall be fined not less than five
75 hundred dollars nor more than five thousand dollars, or impris-
76 oned in the county jail not more than one month, or both fined
77 and imprisoned.

78 (e) The commissioner shall certify to the state auditor and
79 to the board a detailed statement of all moneys received and
80 spent during the preceding fiscal year.

§21-11-20. Board authorized to provide training.

1 (a) On behalf of the board, the division may enter into
2 work-sharing agreements with state vocational and technical
3 training schools to provide classroom training to students who
4 desire to obtain a West Virginia contractor license. The purpose
5 of the training is limited to instruction applicable to the
6 contractor license examinations required by the board. The
7 terms of the work-sharing agreements shall be determined by
8 the West Virginia contractor licensing board and county boards
9 of education.

10 (b) For the purposes of this section, the division is autho-
11 rized to expend funds from its special revenue account, known
12 as the contractor licensing fund, to support this activity.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th day of March 2004

Governor