

HB 4247

FILED

2004 APR -5 P 4: 23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

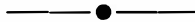
SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4247

(By Delegates Mahan, R. Thompson, Cann, Kominar,
Armstead and Faircloth)



Passed March 13, 2004

In Effect from Passage

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E N R O L L E D

H. B. 4247

(BY DELEGATES MAHAN, R. THOMPSON, CANN, KOMINAR,
ARMSTEAD AND FAIRCLOTH)

[Passed March 13, 2004; in effect from passage.]

AN ACT to amend and reenact §30-13-21 and §30-13-22 of the code of West Virginia, 1931, as amended, all relating to clarifying the board of registration for professional engineers may assess civil penalties.

Be it enacted by the Legislature of West Virginia:

That §30-13-21 and §30-13-22 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. ENGINEERS.

§30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, restore or renew, probation, civil penalty, reprimand.

- 1 (a) The board may suspend or revoke or refuse to issue,
- 2 restore or renew a certificate of registration of, or place on
- 3 probation, impose a civil penalty or reprimand any professional
- 4 engineer who has:

5 (1) Perpetrated any fraud or deceit in obtaining or attempt-
6 ing to obtain or renew a certificate of registration or certificate
7 of authorization;

8 (2) Been negligent, incompetent or committed an act of
9 misconduct in the practice of engineering;

10 (3) Been convicted of or has entered a plea of nolo conten-
11 dere to any crime under the laws of the United States or any
12 state or territory thereof, which is a felony whether related to
13 practice or not; and conviction of or entry of a plea of nolo
14 contendere to any crime, whether a felony, misdemeanor or
15 otherwise, an essential element of which is dishonesty, or which
16 is directly related to the practice of engineering;

17 (4) Failed to comply with any of the provisions of this
18 article or any of the rules promulgated under it;

19 (5) Been disciplined by another state, territory, the District
20 of Columbia, foreign country, the United States government or
21 any other governmental agency, if at least one of the grounds
22 for discipline is the same or substantially equivalent to those
23 grounds for discipline contained in this article;

24 (6) Failed within thirty days to provide information
25 requested by the board as a result of a formal or informal
26 complaint to the board which would indicate a violation of this
27 article;

28 (7) Knowingly made false statements or signed false
29 statements, certificates or affidavits to induce payment;

30 (8) Aided or assisted another person in violating any
31 provision of this article or the rules promulgated;

32 (9) Violated any terms of probation imposed by the board
33 or using a seal or practicing engineering while the professional

34 engineer's license is suspended, revoked, nonrenewed or
35 inactive;

36 (10) Signed or affixed the professional engineer's seal or
37 permitted the professional engineer's seal or signature to be
38 affixed to any specifications, reports, drawings, plans, design
39 information, construction documents or calculations or revi-
40 sions which have not been prepared or completely checked by
41 the professional engineer or under the professional engineer's
42 direct supervision or control;

43 (11) Engaged in dishonorable, unethical or unprofessional
44 conduct of a character likely to deceive, defraud or harm the
45 public;

46 (12) Provided false testimony or information to the board;
47 and

48 (13) Been habitually intoxicated or addicted to or by the use
49 of drugs or alcohol.

50 (b) In addition to any other penalty provided in this article,
51 the board may assess civil penalties against any person who
52 violates any provision of this article or any rule promulgated by
53 the board for each offense in an amount determined by the
54 board.

55 (c) The board shall prepare and shall adopt "rules of
56 professional responsibility for professional engineers". The
57 board may revise and amend these "rules of professional
58 responsibility for professional engineers" from time to time and
59 shall notify each registrant in writing of any revisions or
60 amendments.

61 (d) The board may:

62 (1) Revoke a certificate of authorization;

63 (2) Suspend a certificate of authorization of any firm for a
64 period of time not exceeding two years where one or more of its
65 officers or directors of the firm have been found guilty of any
66 conduct which would authorize a revocation or suspension of
67 his or her certificate of registration under the provisions of this
68 article;

69 (3) Place the person or firm on probation for a period of
70 time and make the person or firm subject to conditions as the
71 board may specify;

72 (4) Assess a civil penalty and related costs for each count
73 or separate offense in an amount set by the board.

§30-13-22. Disciplinary action — Procedures.

1 (a) Any person may file a complaint with the board that a
2 person or firm subject to the provisions of this article has
3 committed a fraud, been deceitful, been grossly negligent,
4 incompetent, guilty of misconduct or has violated the “rules of
5 professional responsibility for professional engineers”.

6 (b) All complaints, unless dismissed by the board as
7 unfounded, trivial or unless settled informally, shall be heard by
8 the board within six months after the date each complaint was
9 received by the board.

10 (c) The board shall fix the time and place for hearings on
11 complaints and a copy of all charges, together with a notice of
12 the time and place of hearing on the complaint the person or
13 firm complained against or mailed to the last known address of
14 the person or firm at least thirty days prior to the hearing. At the
15 hearing, the person or firm shall have the right to appear in
16 person or by counsel, or both, to cross-examine witnesses and
17 to produce evidence and witnesses in his, her or its defense. If
18 the accused person or firm fails or refuses to appear, the board

19 may proceed to hear the complaint and determine the validity
20 of the charges.

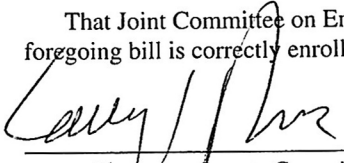
21 (d) If after the hearing a majority of the board votes in favor
22 of sustaining the charges, the board shall reprimand or assess a
23 civil penalty against the person or firm complained against. The
24 board may also suspend, revoke, refuse to issue or refuse to
25 restore or renew an individual's certificate of registration or a
26 firm's certificate of authorization. In addition, the board may
27 place a registrant on probation.

28 (e) Any person or firm aggrieved by any action of the board
29 in assessing a civil penalty, denying, suspending, refusing to
30 issue, refusing to restore or renew or revoking a certificate of
31 registration or a certificate of authorization, may appeal the
32 board's decision to the circuit court.

33 (f) Any civil penalty assessed as a result of a hearing shall
34 be paid within fifty days after the decision becomes final.

35 (g) The board may, upon petition of a person or firm,
36 reissue a certificate of registration or authorization, provided
37 that a majority of the members of the board votes in favor of
38 such issuance.

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



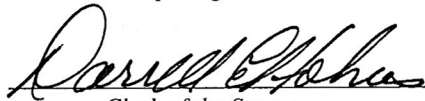
Chairwoman Senate Committee



Chairman House Committee

Originating in the House.

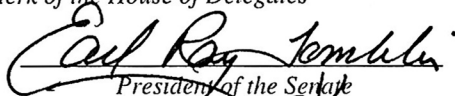
In effect from passage.



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 5th
day of April, 2004.



Governor

PRESENTED TO THE

GOVERNOR

DATE 3/31/04

TIME 10:00 am