

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

Contractor's Licensing Board

**Compared to Most States, West Virginia
Provides a Low Level of Consumer Protection
Against Financial Loss From Contractors**

**Board is Required to Issue a "Grandfathered"
License Ten Years after the Effective
Date of the Contractor Licensing Act**

OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex

CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890

July 2001

PE01-09-208

JOINT COMMITTEE ON GOVERNMENT OPERATIONS

House of Delegates

Vicki V. Douglas, Chair
Earnest (Earnie) H. Kuhn, Vice Chair
Scott G. Varner
Larry Border
Otis Leggett

Senate

Edwin J. Bowman, Chair
Billy Wayne Bailey Jr., Vice Chair
Oshel B. Craigo
Vic Sprouse
Sarah M. Minear

Citizen Members

Dwight Calhoun
John A. Canfield
Vacancy
W. Joseph McCoy
(Vacancy)

Aaron Allred, Legislative Auditor
Office of the Legislative Auditor

John Sylvia, Director
Performance Evaluation and Research Division

Brian Armentrout, Research Manager
Chris Nuckols, Research Analyst

July 2001

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

July 8, 2001

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Contractor's Licensing Board*, which will be presented to the Joint Committee on Government Operations on Sunday, July 8, 2001. The issues covered herein are "Compared to Most States, West Virginia Provides a Low Level of Consumer Protection Against Financial Loss From Contractors" and "Board is Required to Issue a "Grandfathered" License Ten Years after the Effective Date of the Contractor Licensing Act."

PERD delivered a copy of the report to the Board on June 25, 2001. We conducted an exit conference with the Contractor's Licensing Board on June 27, 2001. We received the agency response on July 2, 2001.

Let me know if you have any questions.

Sincerely,


John Sylvia

JS/wsc

Joint Committee on Government and Finance

TABLE OF CONTENTS

Executive Summary	3
Review, Objective, Scope and Methodology	5
Introduction & Background	7
Issue 1: Compared to Most States, West Virginia Provides a Low Level of Consumer Protection Against Financial Loss From Contractors	9
Issue 2: Board is Required to Issue a “Grandfathered” License Ten Years after the Effective Date of the Contractor Licensing Act	17

List of Tables

Table 1: Complaints Against Licensed and Unlicensed Contractors from 1998 to 2000	10
APPENDIX A: Transmittal Letter to Agency	19
APPENDIX B: Table 2: States Which Have A Recovery Fund Table 3: States Which Have Some Form of Bonding Requirement Table 4: States Which Have Some Form of Insurance Requirement	23
APPENDIX C: Agency Response	37

Executive Summary

The West Virginia Contractor Licensing Board was created by the 1991 Acts of the Legislature (West Virginia *Code* §21-11-4). The Board is mandated to protect the public from unfair, unsafe and unscrupulous bidding and construction practices.

Issue 1: Compared to Most States, West Virginia Provides a Low Level of Consumer Protection Against Financial Loss From Contractors.

During the 2001 Legislative Session, the Legislature amended West Virginia *Code* §21-11-14(h). House Bill 2801, which was passed on April 13, 2001 and is in effect 90 days from passage, eliminates the language which stipulates that a court of record judgment must be obtained before the Board can discipline a licensed contractor. In essence, this means that a consumer will be able to file a complaint directly with the Board without having to obtain a circuit court judgement. This amendment will allow the Board to discipline a contractor such as suspend or revoke the license prior to a circuit court judgement. **However, this amendment does not provide financial assurance.**

Although the intent of the Contractor Licensing Act is to protect the public from unfair, unsafe and unscrupulous practices, **citizens of the state can still lose thousands of dollars to contractors with little hope of any financial recovery.** In order to enhance public protection from unscrupulous and incompetent licensed contractors, consideration should be given to providing all consumers with some type of financial assurance. According to the Division of Labor and Board representatives, there are three basic methods for providing financial assurance to consumers. These include the following: 1) Contributing to a recovery trust fund; 2) Posting a performance bond; and 3) Acquiring an insurance policy. All three methods of financial assurance are currently being utilized in other states. The Legislative Auditor obtained information on the states of Maryland, Virginia, and California, which represent examples of all three methods.

Recommendation 1:

The Legislature should consider amending the West Virginia Code to allow for some method of financial assurance, such as insurance, bonding, or a recovery fund, to the consumer in order to protect consumers from unscrupulous and/or incompetent licensed contractors. If a recovery fund is to be used, the legislature should consider allowing fines collected to be deposited into the recovery fund.

Issue 2: The Board is Required to Issue a “Grandfathered” License Ten Years after the Effective Date of the Contractor Licensing Act.

The Contractor Licensing Act contains a “grandfather clause” which was initially established to make it easier for existing contractors to obtain a license. The “grandfather clause” in West Virginia Code §21-11-7(b) does not contain a termination date. Theoretically, this permits an individual who has not been working as a contractor since September 30, 1991 to obtain a contractor’s license without examination. However, most companies who request to be “grandfathered” at the present time have been working illegally for the past ten years. When a company is caught working without a valid contractor license, the individual/company will request to “grandfather” the company because they had been registered to do business during the September 30, 1990 - September 30, 1991 time period and they are currently in compliance with the Departments of Tax and Revenue, Workers Compensation, Employment Security, and the Secretary of State. The Board is currently compelled to issue a “grandfathered” license in these instances. If the “grandfather clause” was no longer in effect, then these companies who are working illegally would not be able to be “grandfathered” and would have to take an examination.

Recommendation 2:

The Legislature should consider eliminating the language in §21-11-7(b) of the West Virginia Code.

Review, Objective, Scope and Methodology

This preliminary performance review of the West Virginia Contractor Licensing Board is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. The Board is mandated to establish a system of licensure for contractors. This system is intended to ensure capable and skilled craftsmanship in construction projects, both public and private; fair bidding competition through uniform compliance with the laws of this state; and protection of the public from unfair, unsafe and unscrupulous bidding and construction practices.

The primary objectives of the review were to determine the most feasible method which would allow the greatest protection to consumers when they are taken advantage of by unscrupulous and/or incompetent licensed contractors; ascertain if the current procedure that a consumer must follow in order to have a licensed contractor disciplined is appropriate; and determine if the "grandfather clause" should be eliminated. The scope of the review included July 1994 through April 2001.

The Methodology included interviews, conversations and correspondence with the Administrative Secretary of the Board. Documents obtained from the Board's staff included: 1) The number of active licensed contractors in West Virginia; 2) The number of complaints received from consumers from 1998 to 2000; and 3) Correspondence regarding consumer protection methods. The review also involved analyzing Board meeting minutes from January 1998 to December 2000; annual reports from FY1997 to FY2000; and West Virginia *Code* §21-11-1 and Legislative Rule, Title 28. Every aspect of this review complied with **Generally Accepted Government Auditing Standards**.

Introduction & Background

The West Virginia Contractor Licensing Board was created by the 1991 Acts of the Legislature (West Virginia Code §21-11-4). The purpose of the Contractor Licensing Act is as follows:

...all persons desiring to perform contracting work in this state be duly licensed to ensure capable and skilled craftsmanship utilized in construction projects in this state, both public and private, fair bidding practices between competing contractors through uniform compliance with the laws of this state, and protection of the public from unfair, unsafe and unscrupulous bidding and construction practices.

The Division of Labor's Wage and Hour section provides field enforcement for the West Virginia Contractor Licensing Act and provides support to the Contractor Licensing Board. The object of the Contractor Licensing Act is to establish a system of licensure for contractors. The Contractor Licensing staff is comprised of six full-time employees, which includes an administrative secretary to the Board. In addition, there are 21 compliance officers, employed by the Division of Labor, who investigate complaints and perform routine compliance checks.

The Contractor Licensing Act requires that all construction contractors working in West Virginia be licensed. Currently, there are 17,410 active West Virginia contractors' licenses. The licensing procedure also ensures proper registration with the West Virginia Department of Tax and Revenue, Workers Compensation, Employment Security, and the Secretary of State. In addition, contractors who have not been working in West Virginia for the past five years are required to post a wage bond. The Board will not issue a license until this requirement has been met as well.

The Contractor Licensing Board consists of 10 members appointed by the governor. The Board is mandated to do things such as: 1) Hold at least one examination in each calendar quarter for each specific classification of contractor, designate the time and place of such examinations, and notify the applicants; 2) Forward results of examinations to the Division within twenty days following the examination; 3) Take minutes and records of all meetings and proceedings; and 4) 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.

Contractor licensing exams are administered in the following cities: 1) Charleston - 12 times a year; 2) Morgantown - nine times a year; 3) Martinsburg - nine times a year; and 4) Wheeling - six times a year. Experior, which is based out of Charleston, is the company which administers the tests and offers testing Monday through Thursday on a year-round basis. There are nine different types of contractor licensing exams and two types of specialty contractor exams. Exam scores are automatically reported to the Board within two business days after the examination. Once the applicant has successfully completed the examination(s), he or she must pay a \$90 licensing fee as well as be in compliance with the appropriate agencies. If the application is approved, the Board will mail the license to the applicant.

Issue 1: Compared to Most States, West Virginia Provides a Low Level of Consumer Protection Against Financial Loss From Contractors.

Homeowners hire licensed contractors to perform various residential projects. Unfortunately, a few of these contractors are dishonest or incompetent and either fail to complete a project, perform inferior work or receive money for a project and never return to do the work. The financial loss for consumers can be thousands of dollars. Therefore, the Contractor Licensing Board is needed, given the actual and potential harm to consumers.

Consumer Protection Can Be Enhanced

Although the intent of the Contractor Licensing Act is to protect the public from unfair, unsafe and unscrupulous practices, **citizens of the state can still lose thousands of dollars to contractors with little hope of any financial recovery.** Large residential projects, such as building a new home, normally have a written contract which will contain some kind of “financial assurance” through insurance or bonding requirements. However, most smaller projects involving remodeling or repairing an existing structure seldom involve a written contract. Consequently, there is no financial assurance in these smaller projects. The Board does not have authority to impose or assess damages. Its strongest disciplinary action is revocation or suspension of a license. Consumers who can afford to take contractors to court do not always recoup their losses. In order to enhance public protection from unscrupulous and incompetent licensed contractors, consideration should be given to providing all consumers with some type of financial assurance through either *insurance* or *bonding* requirements, or through the creation of a *recovery fund*. Most states have one of these types of financial assurances (See Appendix B).

Consumers Lose Thousands of Dollars to Contractors

A homeowner in West Virginia can file a complaint with the Contractor Licensing Board or the Attorney General’s Office. The smaller, residential projects are the main source of consumer complaints received by the Board. This is due to the fact that most large residential projects have a written contract. In addition, commercial construction projects usually incorporate some type of financial assurance such as performance bonds or insurance requirements into the contracts. Table 1 depicts the number of complaints against licensed and unlicensed contractors from 1998 to 2000.

Table 1		
Complaints Against Licensed and Unlicensed Contractors from 1998 to 2000		
Year	Licensed Contractors	Unlicensed Contractors
1998	73	43
1999	75	17
2000	40	11

Although the Board receives several complaints against both licensed and unlicensed contractors, there is no remedy to deal with these complaints which would provide consumer satisfaction. In order to illustrate the nature of some of the aforementioned complaints and to demonstrate the difficulty in receiving monetary relief, the Legislative Auditor analyzed five complaints made by consumers which were brought to the attention of the Contractor Licensing Board. These complaints are described below.

Consumer Loses \$31,715

A homeowner filed a suit against a licensed contractor for accepting money to purchase materials, and subsequently, did not purchase the materials nor did the contractor finish the project. The homeowner obtained a circuit court judgment against the contractor in the amount of approximately \$31,715. As a result of the judgment, the Board voted unanimously to revoke the contractor's license in November of 1998. **To date, the contractor has not paid the amount due the homeowner.**

Contractor abandons project

A homeowner took a licensed contractor to circuit court in order to obtain a judgment against the contractor. All together the homeowner paid the contractor over \$37,000, which was considerably more than the \$26,650 that she had agreed to pay. The contractor failed to complete the home improvements and abandoned the construction project without good cause. In addition, the homeowner and her daughter suffered damages to personal possessions as a result. The circuit court judge recommended that the contractor's license be revoked. After a disciplinary hearing was conducted, the Board voted unanimously to revoke the contractor's license.

Judgement Amount of \$2,500 Still Unpaid

The next example dealt with a contractor who was issued a contractor license in May of 2000 as a sole proprietorship. A separate contractor license was issued to the same contractor in September of 1991 for a different entity. In 1993, a homeowner obtained a judgment in the amount

of over \$2,500 against the contractor. As a result, the Board voted unanimously to suspend the license and was never reinstated by the Board. The same contractor was later issued a cease and desist order for working without a contractor license, and the Board issued a \$1,000 monetary penalty. In December of 2000, the Board voted unanimously to inactivate the contractor license issued in May of 2000 until the judgment has been satisfied and the \$1,000 penalty is paid. The \$1,000 fine has since been paid, however, the judgment is still outstanding.

Complaint of Unsatisfactory Work From an Unlicensed Contractor

The Legislative Auditor analyzed a complaint that was initially received by the Attorney General's Office and then forwarded to the Contractor Licensing Board. The homeowner complained that the contractor performed unsatisfactory work on a garage foundation construction project. As it turned out, the contractor was operating without a valid contractor license. The contractor was issued a cease and desist order and following a hearing, was fined \$500, which he did pay.

Unlicensed Contractor Refused to Pay for Material

A consumer complained that a contractor refused to pay for materials that he charged to the homeowner's account. The amount owed to the supplier was over \$8,000 and the cost of the project was approximately \$190,000. After the complaint was investigated, it was discovered that the contractor was operating without a valid contractor license. The contractor was issued a cease and desist order and was fined \$1,000 after a hearing was conducted in August of 2000. To date, the contractor has not paid the fine.

Amendment of Statute Helps, But Consumer Protection Is Still Lacking

According to West Virginia *Code* §21-11-14(a), the Contractor Licensing Board has powers to discipline licensed contractors. Some of these powers include: 1) Permanently revoke a license; 2) Suspend a license for a specified period; and 3) Censure or reprimand a licensee. However, in order for the Board to use its disciplinary powers, a consumer must first obtain a circuit court judgment against a licensed contractor. Currently, West Virginia *Code* §21-11-14(h) states in part:

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... Other than as specifically set out herein, the board shall have no power or authority to impose or assess damages. [Emphasis Added]

During the 2001 Legislative Session, the Legislature amended West Virginia *Code* §21-11-

14(h). House Bill 2801, which was passed on April 13, 2001 and is in effect 90 days from passage, eliminates the language which stipulates that a court of record judgment must be obtained before the Board can discipline a licensed contractor. When House Bill 2801 goes into effect, West Virginia Code §21-11-14(h) will read as follows:

In all disciplinary hearings the board has the burden of proof as to all matters in contention. No disciplinary action may be taken by the board except on the affirmative vote of at least six members thereof. Other than as specifically set out herein, the board has no power or authority to impose or assess damages.

In essence, this means that a consumer will be able to file a complaint directly with the Board without having to obtain a circuit court judgement. This amendment will allow the Board to discipline a contractor such as suspend or revoke the license prior to a circuit court judgement. **However, this amendment does not provide financial assurance.**

Possible Solutions to Help Homeowners Recover from Losses

According to the Division of Labor's former Deputy Commissioner, "...obtaining a favorable decision from the Contractor Licensing Board is not a guarantee that the plaintiff/complainant will ever receive any money from the contractor, often times the contractor is judgment proof or files bankruptcy." Since all homeowners in West Virginia do not have a guarantee of financial assurance, a method also needs to be developed which would provide monetary relief. According to the Division of Labor and Board representatives, there are three basic methods for providing financial assurance to consumers. These include the following: 1) Contributing to a recovery trust fund; 2) Posting a performance bond; and 3) Acquiring an insurance policy.

Recovery Trust Fund

According to Board representatives, "Recovery Trust Fund has been found to be the best means to provide absolute recovery to injured consumers. The *West Virginia Manufactured Housing Construction and Safety Standards Board* utilizes this method and it works extremely well." This trust fund was established in 1991 and is comprised of deposits made by licensees at the time of initial licensure (\$2,500 for a manufacturer, \$1,000 for a dealer, and \$500 for a contractor). If the fund drops below \$250,000, the board may assess each licensee an additional fee to restore the fund back to at least \$250,000. No assessments have ever been made and the fund currently maintains a balance of over \$1,000,000. When a complaint is filed with this particular board, all other remedies must be exhausted before the fund is utilized. Then the board will solicit bids from other contractors in order to correct the damages that the consumer has endured. After verifying the repair work, this board will pay the second contractor from the recovery fund. The contractor who initially caused the damages is responsible for the amount withdrawn from the recovery fund. The contractor's license would be suspended until the fund has been replenished to the level that it previously was. Failure to replenish the fund could cause the contractor to lose his or her license permanently.

Performance Bond

Requiring contractors to post a performance bond is another form of providing financial assurance. This method is probably the most frequently used, since performance bonds are required on almost all public and commercial projects. Performance bonding works best when a written contract is executed. However, most consumer complaints stem from residential remodeling and repair work, and the vast majority of these projects do not have a written contract. Therefore, without a written contract, requiring a performance bond may not be the best approach.

Insurance Policy

The third method to help provide monetary relief to consumers is requiring the contractor to have an insurance policy. Insurance is similar to how bonding works. However, a major difference between an insurance policy and a bond is that insurance protects the contractor from liability and the contractor remains primarily liable for his/her obligation under a bond. On occasions when a consumer has a civil suit pending, the insurance company will either defend against the suit or negotiate a settlement on behalf of the contractor. **Representatives of the Board are in favor of licensed contractors being required to carry insurance as opposed to posting a performance bond or contributing to a recovery fund.** These representatives feel that if a contractor is required to carry insurance to cover work performed, it would alleviate complaints made by homeowners. According to the Division of Labor's former Deputy Commissioner, "If licensed contractors were required to hold an insurance policy, the homeowner could file a claim against the contractors' insurance and receive monetary relief." All three methods of financial assurance are currently being utilized in other states. The Legislative Auditor obtained information on the states of Maryland, Virginia, and California, which represent examples of all three methods.

Methods of Financial Assurance Used by Other States

Maryland's Board of Heating, Ventilation, Air Conditioning and Refrigeration Contractors requires all Master, Master Restricted and Limited Contractor applicants who intend to enter into contracts to install or service HVACR systems to carry general liability and property damage insurance. General liability insurance coverage must be at least \$300,000 and property damage liability insurance coverage must be at least \$100,000. Licensees who hold a Master, Master Restricted or Limited Contractor license who permit their insurance to expire cannot legally continue to enter into contracts to provide HVACR services. Licensees who enter into HVACR contracts without the required insurance are guilty of a misdemeanor, and upon conviction, are subject to a fine not to exceed \$1,000 or imprisonment not exceeding six months or both.

The Virginia Department of Professional and Occupational Regulation operates the Contractor Transaction Recovery Fund. This fund provides relief to consumers who have incurred losses through the improper and dishonest conduct of a licensed contractor. Each contractor at the time of application is assessed \$25 which is deposited into the recovery fund. An additional \$30 fee is assessed to contractors at the time of renewal, which is every two years. The minimum balance

of the fund is \$400,000. If the fund drops or is in the process of dropping below \$400,000, the Board for Contractors is notified and will assess each licensee at the time of renewal an additional fee to bring the balance of the fund to at least \$400,000. In order to file a claim, a person must have been awarded a judgment against a licensed contractor in a court of competent jurisdiction. The judgment must be obtained against an individual or entity who is licensed by Virginia. A homeowner can recover a maximum of \$10,000 per residence. Multiple claims involving one contractor are limited to \$40,000 total. The Recovery Fund will not pay interest, punitive or exemplary damages. However, the monetary award can include attorney's fees and court costs, and the Board for Contractors may pay these.

If a recovery fund was to be established in West Virginia, the Contractor Licensing Board could pattern the fund after the state of Virginia as well as the West Virginia Manufactured Housing Construction and Safety Standards Board. Presently, there are 17,410 active licensed contractors in West Virginia. By assessing a \$25 fee to each of these contractors, **\$435,250** would be available to use as an initial investment for the establishment of a recovery trust fund. If the fund drops below a pre-determined level, the fee could be assessed again. In addition, consideration should be given to depositing cease and desist order fines into the recovery trust fund. Currently, this money is deposited into the Contractor Licensing Board Fund. The Board has averaged approximately \$43,666 in fines collected from FY 1995 to FY 2000. Since these monies are collected from contractors in violation of the law, it would be appropriate to use these monies towards compensating consumers who have been harmed from unscrupulous contractors. A recovery fund may also impose some additional administrative costs on the Board to process claims against the fund. These administrative expenses could be paid from the recovery fund.

The California Contractors State License Board requires all contractors to maintain a form of security deposit as a guarantee that they will perform in a good and workmanlike manner. Before an active contractor's license can be issued or renewed, the licensee must have a contractor license bond, or an approved alternative to the bond, on file with the Board. If the contractor does not comply with the conditions of the bond, a claim can be filed with the surety company. Claims against a surety company may be filed by homeowners, any person damaged by a willful and deliberate violation of a construction contract, or employees damaged by the contractor's failure to pay wages. A license bond is canceled 30 days from the date that the Board receives a cancellation notice from a bond company.

Conclusion

The Contractor Licensing Board is mandated with the responsibility of protecting the public from unscrupulous and incompetent licensed contractors. Given the actual and potential harm to consumers, the Board is needed. Currently, the strongest measure of protection the Board enforces is the revocation of a license. Individuals who can afford to bring a contractor to court are not always assured financial relief. Nearly every state in the country provides enhanced consumer protection against unscrupulous or incompetent contractors through either bonding or insurance

requirements or through the creation of a recovery fund. West Virginia is one of the few states that does not provide any enhanced protection to the consumer.

Recommendation 1:

The Legislature should consider amending the West Virginia Code to allow for some method of financial assurance, such as insurance, bonding, or a recovery fund, to the consumer in order to protect consumers from unscrupulous and/or incompetent licensed contractors. If a recovery fund is to be used, the legislature should consider allowing fines collected to be deposited into the recovery fund.

Issue 2: The Board is Required to Issue a “Grandfathered” License Ten Years after the Effective Date of the Contractor Licensing Act.

The Legislature passed the West Virginia Contractor Licensing Act (WV Code §21-11) in 1991 and became effective on October 1, 1991. The Contractor Licensing Act contains a “grandfather clause”, which is typical in other newly created licensing boards or commissions. West Virginia Code §21-11-7(b) states,

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

This “grandfather clause” was initially established to make it easier for existing contractors to obtain a license. For example, if a contractor was properly registered with the Department of Tax and Revenue on September 30, 1991, the contractor would be issued a license without having to test. Since the “grandfather clause” in West Virginia Code §21-11-7(b) does not contain a termination date, the same currently holds true for a contractor who can document being in compliance with the Departments of Tax and Revenue, Workers Compensation, Employment Security, and the Secretary of State. In addition, the contractor must provide the Board with some evidence of his or her contracting work between September 30, 1990 and September 30, 1991. Examples of this would include a contract, invoice, or signed affidavit. Theoretically, this permits an individual who has not been working as a contractor since September 30, 1991 to obtain a contractor’s license without examination.

Eliminating the “grandfather clause” would benefit the Board in a couple of ways. First, it would help ease the work load of the Contractor Licensing staff. Secondly, most companies who request to be “grandfathered” at the present time have been working illegally for the past ten years. When a company is caught working without a valid contractor license, the individual/company will request to “grandfather” the company because they had been registered to do business during the September 30, 1990 - September 30, 1991 time period and they are currently in compliance with the Departments of Tax and Revenue, Workers Compensation, Employment Security, and the Secretary of State. The Board is currently compelled to issue a “grandfathered” license in these instances. If the “grandfather clause” was no longer in effect, then these companies who are working illegally would not be able to be “grandfathered” and would have to take an examination.

Recommendation 2:

The Legislature should consider eliminating the language in §21-11-7(b) of the West Virginia Code.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

June 25, 2001

Mr. James Lewis, Commissioner
Division of Labor
Building 6, Room 749
Charleston, West Virginia 25305

Dear Mr. Lewis:

Pursuant to the West Virginia Sunset Law, we are transmitting a draft of the Preliminary Performance Review of the Contractor Licensing Board, which is tentatively scheduled to be presented to the Joint Committee on Government Operations on Sunday, July 8, 2001.

We want to schedule an exit conference with you on Wednesday, June 27, 2001 at 2:00 p.m. in the west wing of the Capitol Building, room W-314, to discuss any questions related to the report. Chris Nuckols, Research Analyst will contact you to verify the date and time. We would appreciate a written response to the report by Thursday, June 28, 2001.

If you have any questions, please contact me or Chris Nuckols.

Sincerely,

A handwritten signature in cursive script that reads "Brian Armentrout".

Brian Armentrout
Research Manager

MBA/cwn

c: Parma Zamora, Administrative Secretary
Contractor Licensing Board

Joint Committee on Government and Finance

APPENDIX B:

Table 2: States Which Have A Recovery Fund

**Table 3: States Which Have Some Form of
Bonding Requirement**

**Table 4: States Which Have Some Form of
Insurance Requirement**

**Table 2
States Which Have a Recovery Fund**

State	Amt. Assessed to Contractors	Contractors Req. to Comply
Alabama	Annual fee of \$30	Residential homebuilders and remodelers
Arizona	Initial fee of \$300	Residential contractors
Connecticut	Initial fee of \$100	Home Improvement contractors
Florida	NA	Various types of contractors
Hawaii	Initial fee of \$150	Various types of contractors
Indiana	\$30 for a Journeyman and \$75 for a Contractor	Plumbers
Maryland	One-time fee of \$100	Home Improvement contractors
Massachusetts	Initial fee is \$100 to \$500, based on the number of employees	Home Improvement contractors
Michigan	Initial fee of \$50	Residential builders, maintenance and alteration contractors, electrical, mechanical and plumbing contractors
Minnesota	Initial fee of \$100-\$200	Residential contractors
North Carolina	\$5 for each building permit issued for construction of single family dwelling units	General contractors (Fees are collected from city or county building inspections departments)
Virginia	Initial fee of \$25; assessment fee of \$30 every two years	Various types of contractors

Source: 2001 Contractors State Licensing Information Directory

**Table 3
States Which Have Some Form of Bonding Requirement***

State	Amt. Assessed to Contractors	Contractors Req. to Comply
Alaska	\$10,000 for General and \$5,000 for Specialty	General and Specialty contractors
Arizona	License bonds range from \$1,000 to \$105,000	All contractor license applicants
Arkansas	Surety or cash bond for not less than \$10,000	Various contractors
California	License bond of \$7,500 for all active licenses; \$10,000 for swimming pool contractors	All contractor license applicants
Colorado	Bond is required on all public works projects over \$50,000 for at least 50% of the total amount payable	NA
Connecticut	Bond of up to \$10,000 may be ordered by the Commissioner	Home Improvement contractors
Delaware	Performance bond equal to the amount of the contract price is required on a public works contract	NA
Florida	Contractors must execute a payment/performance bond for a public works contract exceeding \$100,000	NA
Georgia	Bond equal to 10% of the contract price is required from out-of-state contractors by the State Department of Revenue	Out-of-state contractors
Hawaii	Bonds in varying amounts (\$5,000 minimum) may be imposed by the Board for a variety of reasons	Various contractors

Idaho	\$2,000 surety bond	Plumbers
Illinois	\$5,000 surety bond for roofers; Out-of-state contractors must post a bond with the Dept. of Employment Security before starting work on any contract over \$5,000. A performance and liability bond may be required of each bidder of a public works contract involving an amount in excess of \$10,000 in a city with a population of 500,000 or more. A payment/performance bond equal to the value of the contract is required, if it is estimated at \$25,000 or more.	Roofers and various contractors
Iowa	Out-of-state contractors must provide a surety bond equal to 5% of the contract price, or \$1,000, whichever is greater, before starting a contract in excess of \$5,000. A \$50,000 two-year bond blanket may be provided to cover any number of contracts.	Various contractors
Kansas	For contracts that are required to be registered, a bond in the amount of 8% of the contract amount (minimum \$1,000) must be filed with the Dept. of Revenue. For sales tax exempt projects, a 4% bond is required (\$1,000 minimum).	Various contractors
Kentucky	A performance and payment bond equal to the contract price is required on public works contracts.	NA
Louisiana	A bond or other surety in the minimum amount of \$1,000.	Nonresidential contractors and subcontractors
Maine	Unless otherwise exempted, public works contracts exceeding \$50,000 require a performance and a payment bond equal to the amount of the contract.	NA

Massachusetts	Public works contracts with an estimated value of over \$5,000 require a bid bond of 5%.	NA
Minnesota	Electrical contractors must provide a \$5,000 bond; Public works projects exceeding \$10,000 require a performance and a payment bond. Local government authorities may accept a letter of credit in lieu of a bond if the contract is less than \$50,000	Electrical contractors and various other contractors
Nebraska	For construction work performed by out-of-state contractors, bonding is required according to the following schedule: a) \$2,500 to \$10,000 contract - \$1,000 bond; b) \$10,000 to \$100,000 contract - 10% of contract; and c) \$100,000 and above - 5% of contract in excess of \$100,000. Contractors not covered by the mechanic's lien laws shall provide a payment bond for a minimum of the contract value. Work for the Nebraska Dept. of Roads or the University of Nebraska requires a bond equal to 100% of the value of the contract.	Out-of-state contractors and various other contractors
Nevada	License bonds ranging from \$1,000 to \$50,000; After five years, the board may waive the bond requirement.	All contractors
New Hampshire	Public works contracts require a 100% performance and payment bond as well as a 5% bid guaranty.	NA
New Jersey	Electrical contractors are required to post a \$1,000 surety bond; Public works contracts require a performance and payment bond in an amount to be determined by the Director of the Division of Building and Construction.	Electrical contractors and various other contractors

New Mexico	A license bond, cash collateral or audited financial statement is required to establish financial responsibility. The amount of the bond ranges from \$500 to \$5,000 and is based on the anticipated dollar level of individual projects or permits in the state.	Various contractors
New York	The New York comptroller may require a payment bond before the approval of a public works contract	NA
North Carolina	Payment and performance bonds in the amount equal to the contract are required on public works contracts exceeding \$15,000, if the total construction contract exceeds \$50,000	NA
North Dakota	Electricians are required to post a \$5,000 bond. Public works contracts exceeding \$25,000, except for special municipal improvements, require a bond in an amount equal to the contract price. A 5% bond is required for public building contracts valued higher than \$50,000.	Electricians and various other contractors
Ohio	Public works contracts for the Department of Transportation require a performance and payment bond in the amount of 100% of the state's estimate of the job. Other public works contracts require a combined bond equal to the contract, or else a letter of credit, certified check, or cashier's check for 10% of the contract value.	NA
Oklahoma	Nonresident contractors must post a surety bond or cash deposit in the amount of three times the tax liability to be incurred under the contract. The bond or deposit must be posted to the Oklahoma Tax Commission.	Nonresident contractors

Oregon	General contractors must post a bond in the amount of \$15,000. All specialty contractors and consultants must post a bond in the amount of \$10,000, and limited contractors must post a bond in the amount of \$5,000. Public works contracts require a bid bond of 10% (cashier's or certified check) and a 100% performance bond.	General contractors, specialty contractors and various other contractors
Pennsylvania	Public works contracts require posting of 100% performance and payment bonds for contracts over \$5,000.	NA
Rhode Island	State public works contracts (public road, bridge, or state road) from \$500 to \$50,000 requires a performance/payment bond for not less than 50% of the contract value. Contracts exceeding \$50,000 may be exempted from the bond requirements. Contractors entering into public works contracts in excess of \$1,000 with any city, town agency or committee shall post a performance/payment bond for not less than 50% of the contract price. Contracts in excess of \$50,000 may be exempted.	NA
South Carolina	Residential builders must submit a bond for \$15,000 or a personal financial statement verifying a net worth of at least \$50,000. Residential speciality contractors must submit a \$5,000 bond if the individual homeowner contracts exceed \$5,000 in one category.	Residential contractors and residential speciality contractors
South Dakota	Electrical Contractors - A \$10,000 bond is required. For public work contracts under \$25,000, bond requirements may be waived. When the contract price is over \$25,000 performance/payment bonds are required in an amount of 100% of the contract price.	Electrical contractors and various other contractors

Tennessee	All contractors must file a surety bond before performance on any public work contracts. Contracts of \$10,000 or less may be exempted from this requirement. A payment bond for 25% of the contract price is required on public works contracts in excess of \$25,000.	Various contractors
Texas	A performance bond is required for public works contracts over \$25,000.	NA
Vermont	Performance, labor and material bonds are required for contracts awarded by the Agency of Transportation. Performance bonds are required for all contracts exceeding \$100,000. Performance bonding on projects less than \$100,000 may be waived by the Secretary of Transportation.	NA
Washington	Contractors must post cash deposits or surety bonds of \$6,000 for general and \$4,000 for specialty contractors. For public works, performance and payment bonds for 100% of the contract price are required.	General contractors, Specialty contractors, and various other contractors
West Virginia	Commercial contractors who have not actively engaged in contracting in the state for the last five years must post a wage bond equal to four weeks gross payroll, at full operating capacity, plus 15%. All highway projects require 100% performance bonding. A bond equal to the cost of materials and labor is required for public works other than highway projects.	Commercial contractors and various other contractors

<p>Wisconsin</p>	<p>Contractors who wish to work on a one or two family dwelling must hold a credential of financial responsibility. To apply for the financial responsibility credential, a contractor must show proof of liability or bond insurance requirements. Persons applying must be the owner, partner, chairman of the board, or chief executive applying on behalf of the contracting corporation. A \$25,000 bond is required for the credential. Applicants who submit a bond in an amount less than \$25,000 will be issued a restricted certification. Nonresident contractors shall file a surety bond with the Department of Revenue for 3% of any contract of \$50,000 or more. The bond is also required when two or more contracts total \$50,000 or more. Bond requirements may be waived at the Department's discretion. A combined performance/payment bond may be required by the state for contracts in excess of \$500. Highway contracts require a separate payment and performance bond for all contracts.</p>	<p>Residential contractors and various other contractors</p>
<p>Wyoming</p>	<p>Nonresident contractors shall file a \$500 performance and a \$3,000 indemnity bond on contracts between \$500 and \$100,000. For contracts exceeding \$100,000, the indemnity bond increases by \$1,000 per each additional \$100,000 or part thereof, to a maximum of \$25,000. Public works contracts from \$7,500 to \$100,000 require a bond of 50% of the contract price. Contracts of \$25,000 or more require a bond in an amount equal to 100% of the contract price.</p>	<p>Nonresident contractors and various other contractors</p>
<p>* Bonds can be for the benefit of the consumer, the state, or the employees.</p>		
<p>Source: 2001 Contractors State Licensing Information Directory</p>		

Table 4 States Which Have Some Form of Insurance Requirement*		
State	Amt. Assessed to Contractors	Contractors Req. to Comply
Alaska	Contractors are required to provide proof of insurance in the minimum amount of \$20,000 for property damage.	NA
Connecticut	“Major contractors” must prove to have public liability and property damage insurance.	Commercial, residential, and public works construction projects that exceed the threshold limits requires registration as a “major contractor”
Delaware	Proof of liability insurance in the amount of \$300,000.	Electrical contractors
Florida	Liability and property damage insurance is required.	Electrical contractors
Hawaii	Applicants must submit a certificate of insurance from their insurer showing liability coverage in the amount of \$50,000 per occurrence for property damage liability.	Various contractors
Illinois	Applicants must provide proof of liability insurance in the amount of \$100,000 for each occurrence of property damage.	Roofers
Louisiana	Applicants must file insurance certificates for liability coverage in a minimum amount of \$100,000.	Residential contractors
Maryland	Home Improvement contractors must have \$50,000 in liability insurance. HVACR - Master, master restricted, and limited licensees, who wish to be classified as “insured to contract”, must carry liability and property damage insurance coverage in a minimum amount of \$400,000, per occurrence.	Home Improvement contractors and Heating, Ventilation, Air Conditioning, and Refrigeration contractors (HVACR)
Minnesota	Applicants must show evidence of liability insurance.	Electrical contractors

Mississippi	Contractors must provide a certificate of insurance showing current insurance minimum coverage of \$300,000 per occurrence and \$600,000 aggregate for general liability purposes.	Commercial contractors
New Jersey	Applicants must provide proof of a current certificate of general liability insurance in the minimum amount of \$300,000.	Electrical contractors
North Dakota	Each applicant shall submit a certificate of liability insurance from the applicant's insurance carrier.	NA
Oklahoma	Electrical Contractors - Commercial general liability insurance of \$50,000 is required. Mechanical Contractors - The applicant must maintain a \$50,000 commercial general liability insurance policy.	Electrical contractors and Mechanical contractors
Oregon	Applicants must carry liability insurance, from \$100,000 to \$500,000, depending on the category.	All contractors
Rhode Island	Applicants must provide a certificate of a single limit liability coverage of at least \$300,000.	NA
Texas	General liability and products/completed operations insurance policies are required in minimum amounts of \$100,000 for Class B licenses and \$300,000 for Class A licenses.	Air Conditioning and Refrigeration contractors
Utah	Contractors are required to carry public liability insurance in a total amount of \$300,000.	NA
Washington	Contractors are required to carry liability insurance in the amount of \$100,000 for public liability and \$20,000 for property damage.	NA
* Insurance can be for the benefit of the consumer or the employees.		
Source: 2001 Contractors State Licensing Information Directory		

APPENDIX C
Agency Response

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6, Capitol-Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

HTTP://WWW.STATE.WV.US/LABOR

BOB WISE
Governor



JAMES R. LEWIS
Commissioner

June 29, 2001

RECEIVED

JUL 2 2001

Brian Armentrout, Research Manager
Office of Legislative Auditor
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Dear Mr. Armentrout::

I have reviewed the preliminary performance report of the Contractor's Licensing Board and respectfully submit the following comments.

Recommendation 1, states the Legislature consider amending the West Virginia Code to offer consumers greater protection from financial loss when dealing with incompetent or unscrupulous licensees of the board. Financial recourse for the consumer can be obtained through bonding, insurance or a trust recovery fund.

I agree with the recommendation, but the following areas should be considered in changing the Code. The West Virginia Code must be amended not only to establish insurance, bonding or trust recovery as a vehicle for consumer recourse but, initially a building code must be adopted and a system for alternative dispute resolution put in place to conduct inspections, make determinations on liability and allow due process for licensees. The concept is simple but the implementation will be involved.

Recommendation 2 the Legislature should consider eliminating the language in §21-11-7(b) of the West Virginia Code.

I agree with the recommendation.

Sincerely,

Handwritten signature of James R. Lewis in cursive script.
James Lewis, Commissioner

JL:fc

