

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2554**

BY DELEGATES FOSTER, G., HIGGINBOTHAM, FRICH,  
COWLES, HAMRICK, HOWELL, WILSON, HARSHBARGER,  
MAYNARD AND MILLER, C.

[Originating in the Committee on Government  
Organization; March 6, 2017 ]



1 A BILL to repeal §21-11-1, §21-11-2, §21-11-3, §21-11-4, §21-11-5, §21-11-6, §21-11-7, §21-11-  
2 8, §21-11-9, §21-11-10, §21-11-10a, §21-11-11, §21-11-12, §21-11-13, §21-11-14, §21-  
3 11-15, §21-11-16, §21-11-17, §21-11-18 and §21-11-20 of the Code of West Virginia,  
4 1931, as amended; and to amend said code by adding thereto a new article, designated  
5 §30-41-1, §30-41-2, §30-41-3, §30-41-4, §30-41-5, §30-41-6, §30-41-7, §30-41-8, §30-  
6 41-9, §30-41-10, §30-41-11, §30-41-12, §30-41-13, §30-41-14, §30-41-15, §30-41-16,  
7 §30-41-17, §30-41-18, §30-41-19, §30-41-20 and §30-41-21 all relating to the West  
8 Virginia Contractor Act; providing a short title and declaration of policy with definitions;  
9 continuing the West Virginia Contractor Licensing Board, composition, terms,  
10 qualifications and appointment; administrative duties of board and legislative rules;  
11 necessity for contractor license and exemptions; procedure for licensing; providing for  
12 expiration date, fees and renewal of license; providing for revocation for unlawful use,  
13 assignment or transfer of license; prerequisites to obtaining building permit and mandatory  
14 written contracts; requiring informational list for basic universal design features; providing  
15 injunction and criminal penalties for violation of article; specific administrative duties of  
16 board and record keeping by the board; authorizing to grant reciprocity and to provide  
17 training to students who desire to obtain a West Virginia contractor license; and  
18 misdemeanor criminal penalties for violations of article.

*Be it enacted by the Legislature of West Virginia:*

1 That §21-11-1, §21-11-2, §21-11-3, §21-11-4, §21-11-5, §21-11-6, §21-11-7, §21-11-8,  
2 §21-11-9, §21-11-10, §21-11-10a, §21-11-11, §21-11-12, §21-11-13, §21-11-14, §21-11-15, §21-  
3 11-16, §21-11-17, §21-11-18 and §21-11-20 of the Code of West Virginia, 1931, as amended, be  
4 repealed; and that said code be amended by adding thereto a new article, designated §30-41-1,  
5 §30-41-2, §30-41-3, §30-41-4, §30-41-5, §30-41-6, §30-41-7, §30-41-8, §30-41-9, §30-41-10,  
6 §30-41-11, §30-41-12, §30-41-13, §30-41-14, §30-41-15, §30-41-16, §30-41-17, §30-41-18, §30-  
7 41-19, §30-41-20 and §30-41-21 all to read as follows:

**ARTICLE 41. WEST VIRGINIA CONTRACTOR LICENSING ACT.**

**§30-41-1 Short title.**

This article shall be known and may be cited as the “West Virginia Contractor Licensing Act”.

**§30-41-2. Policy declared.**

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

**§30-41-3. Definitions.**

1           (a) “Basic universal design” means the design of products and environments to be useable  
2 by all people, to the greatest extent possible, without the need for adaptation or specialization.

3           (b) “Board” means the West Virginia Contractor Licensing Board.

4           (c) “Cease and desist order” means an order issued by the board pursuant to the  
5 provisions of this article.

6           (d) “Contractor” means a person who in any capacity for compensation, other than as an  
7 employee of another, undertakes, offers to undertake, purports to have the capacity to undertake  
8 or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish  
9 any building, highway, road, railroad, structure or excavation associated with a project,  
10 development or improvement, or to do any part thereof, including the erection of scaffolding or  
11 other structures or works in connection therewith, where the cost of the undertaking, inclusive of  
12 labor and materials, is \$2,500 or more.

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

15           Contractor does not include:

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

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

20           (3) An individual who personally performs construction work on the site of real property  
21 which is owned in a personal capacity by a relative;

22           (4) A person who is licensed or registered as a professional and who functions under the  
23 control of any other licensing or regulatory board, whose primary business is real estate sales,  
24 appraisal, development, management and maintenance, who acting in his or her respective  
25 professional capacity and any employee of the professional, acting in the course of his or her  
26 employment, performs any work which may be considered to be performing contracting work;

27           (5) A pest control operator licensed under the provisions of section seven, article sixteen-  
28 a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the  
29 operator also performs structural repairs exceeding \$2,500 on property treated for insect pests;  
30 or

31           (6) A corporation, partnership or sole proprietorship whose primary purpose is to prepare  
32 construction plans and specifications used by the contractors defined in this subsection and who  
33 employs full-time a registered architect licensed to practice in this state or a registered  
34 professional engineer licensed to practice in this state. Employees of the corporation, partnership  
35 or sole proprietorship shall also be exempt from the requirements of this article.

36           (e) "Electrical contractor" means a person who whose principal business is the installation,  
37 erection, repair or alteration of electrical equipment for the generation, transmission or utilization  
38 of electrical energy.

39           (f) "General building contractor" means a person whose principal business is in connection  
40 with any structures built, being built, or to be built for the support, shelter and enclosure of persons,  
41 animals, chattels or movable property of any kind, requiring in the construction the use of more

42 than two contractor classifications, or a person who supervises the whole or any part of the  
43 construction.

44 (g) "General engineering contractor" means a person whose principal business is in  
45 connection with public or private works projects, including, but not limited to, one or more of the  
46 following: irrigation, drainage and water supply projects; electrical generation projects; swimming  
47 pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and  
48 sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and  
49 other liquid or gaseous substances; refineries; chemical plants and other industrial plants  
50 requiring a specialized engineering knowledge and skill; piers and foundations; and structures or  
51 work incidental thereto. A person holding the designation "general engineering contractor" is not  
52 permitted to practice engineering as defined by section three-e, article thirteen, chapter thirty  
53 unless that person is also properly licensed by the West Virginia Board of Registration for  
54 Professional Engineers.

55 (h) "Heating, ventilating and cooling contractor" means a person principal business is the  
56 installation, erection, repair, service or alteration of heating, ventilating and air conditioning  
57 equipment or systems to heat, cool or ventilate residential and commercial structures.

58 (i) "Journeyman general building contractor" means a general building contractor who is  
59 licensed to perform general building contractor operations where the cost of the undertaking,  
60 inclusive of labor and materials, does not exceed \$7,500.

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

63 (k) "Master general building contractor" means a general building contractor who is  
64 licensed to perform general building contractor operations without any restriction premised on the  
65 cost of the undertaking.

66 (l) "Multifamily contractor" means a person whose principal business is the construction,  
67 repair or improvement of a multifamily residential structure.

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

71 (n) "Piping contractor" means a person whose principal business is the installation of  
72 process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure  
73 vessels using joining methods of thread, weld, solvent weld or mechanical methods.

74 (o) "Plumbing contractor" means a person whose principal business is the installation,  
75 maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and  
76 plumbing appurtenances, venting systems and public or private water supply systems within or  
77 adjacent to any building or structure; included in this definition is installation of gas piping, chilled  
78 water piping in connection with refrigeration processes and comfort cooling, hot water piping in  
79 connection with building heating and piping for stand pipes.

80 (p) "Relative" means spouse, mother, father, sister, brother, son, daughter, aunt, uncle,  
81 niece, nephew, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law,  
82 brother-in-law, son-in-law or daughter-in-law.

83 (q) "Residential contractor" means a person whose principal business is in connection with  
84 construction, repair or improvement of real property used as, or intended to be used for, residential  
85 occupancy.

86 (r) "Specialty contractor" means a person whose principal business is specialty contracting  
87 services which do not substantially fall within the scope of any contractor classification as set out  
88 herein.

89 (s) "Residential occupancy" means occupancy of a structure for residential purposes for  
90 periods greater than thirty consecutive calendar days.

91 (t) "Residential structure" means a building or structure used or intended to be used for  
92 residential occupancy, together with related facilities appurtenant to the premises as an adjunct  
93 of residential occupancy, which contains not more than three distinct floors which are above grade

94 in any structural unit regardless of whether the building or structure is designed and constructed  
95 for one or more living units. Dormitories, hotels, motels or other transient lodging units are not  
96 residential structures.

97 (u) "Subcontractor" means a person who performs a portion of a project undertaken by a  
98 principal or general contractor or another subcontractor.

**§30-41-4. West Virginia contractor licensing board created; members; appointment; terms;**  
**vacancies; qualifications; quorum.**

1 (a) The West Virginia Contractor Licensing Board is continued. The board shall consist of  
2 eleven members appointed by the Governor by and with the advice and consent of the Senate  
3 for terms of four years. The members shall serve until their successors are appointed and have  
4 qualified. Eight of the appointed members shall be contractors duly licensed under this chapter,  
5 five of which shall also be the owner of a business engaged in the various contracting industries.  
6 No more than one licensee member shall be appointed from each of the following contractor  
7 classes: electrical contractor, general building contractor, general engineering contractor, heating,  
8 ventilating and cooling contractor, multifamily contractor, piping contractor, plumbing contractor  
9 and residential contractor, as defined in section three hereof. Two of the appointed members shall  
10 be building code officials who are not members of any contracting industry. Three of the appointed  
11 members shall be a layperson appointed to represent the interests of the public. Each of the three  
12 congressional districts existing on January 1, 2017 shall be represented by the board.

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

20 right of the remaining members to exercise all the powers of the board. Members previously  
21 appointed under section four, article eleven, chapter twenty-one shall serve until their successors  
22 are appointed and have qualified.

23 (c) The board shall elect a chair from one of the voting members of the board. The board  
24 shall meet at least once annually and at such other times as called by the chair or a majority of  
25 the board. A majority of the members appointed shall constitute a quorum of the board.

**§30-41-5. Powers of the board; rules.**

1 The board has all the powers set forth in article one of this chapter and in addition:

2 (a) The board shall propose rules for legislative approval in accordance with article three,  
3 chapter twenty-nine-a of this code relating to the following:

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

6 (A) Electrical contractor;

7 (B) Master general building contractor;

8 (C) General engineering contractor;

9 (D) Heating, ventilating and cooling contractor;

10 (E) Multifamily contractor;

11 (F) Piping contractor;

12 (G) Plumbing contractor;

13 (H) Residential contractor; or

14 (I) Specialty contractor;

15 (2) The minimum qualifications for applicants seeking to be licensed as a journeyman  
16 general building contractor;

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

18 (4) Procedures for application, examination and license renewal, and the manner in which  
19 the examination will be conducted;

20 (5) The continued competency of licensees for purposes of renewal and reinstatement of  
21 licenses;

22 (6) Fees charged under the provisions of this article; and

23 (7) Procedures for disciplinary action before the board.

24 (b) The board shall:

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

27 (2) Investigate alleged violations of this article and legislative rules, orders and final  
28 decisions of the board;

29 (3) Notify the board members of meeting dates and agenda items at least five days prior  
30 to the meetings; and

31 (4) Take minutes and records of all meetings and proceedings.

32 (c) The board may:

33 (1) Sue and be sued in its official name as an agency of this state;

34 (2) Hire, fix the compensation of and discharge an executive director;

35 (3) Hire, fix the compensation of and discharge the employees necessary to enforce the  
36 provisions of this article;

37 (4) Set the requirements to be an inspector;

38 (5) Confer with the Attorney General or assistants of the Attorney General in connection  
39 with legal matters and questions; and

40 (6) Take all other actions necessary and proper to effectuate the purposes of this article.

41 (d) Employees of the Division of Labor, designated under chapter twenty-one to effectuate  
42 the purposes of article eleven, chapter twenty-one shall remain dedicated to the effectuation of  
43 this article for one year from the effective date of this article. The Board may contract with the  
44 Division of Labor for such employee services thereafter.

**§30-41-6. Necessity for license; exemptions.**

1           (a) No person may engage in this state in any activity as a contractor, or submit a bid to  
2 perform work as a contractor, as defined in this article, unless that person holds a license issued  
3 under the provisions of this article. No firm, partnership, corporation, association or other entity  
4 may engage in contracting in this state unless an officer thereof holds a license issued pursuant  
5 to this article.

6           (b) Any person to whom a license has been issued under this article shall keep the license  
7 or a copy thereof posted in a conspicuous position at every construction site where work is being  
8 done by the contractor. The contractor's license number shall be included in all contracting  
9 advertisements and all fully executed and binding contracts. Any person violating the provisions  
10 of this subsection is subject, after hearing, to a warning, a reprimand, or a fine of not more than  
11 \$200.

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

13           (1) Work done exclusively by employees of the United States Government, the State of  
14 West Virginia, a county, municipality or municipal corporation, and any governmental subdivision  
15 or agency thereof;

16           (2) The sale or installation of a finished product, material or article or merchandise which  
17 is not actually fabricated into and does not become a permanent fixed part of the structure;

18           (3) Work performed personally by an owner or lessee of real property on property the  
19 primary use of which is for agricultural or farming enterprise;

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

22           (5) Work performed by a public utility company regulated by the West Virginia Public  
23 Service Commission and its employees;

24           (6) Repair work contracted by the owner of the equipment on an emergency basis in order  
25 to maintain or restore the operation of the equipment;

26 (7) Work performed by an employer's regular employees, for which the employees are  
27 paid regular wages and not a contract price, on property owned or leased by the employer which  
28 is not intended for speculative sale or lease;

29 (8) Work personally performed on a structure by the owner, a relative of the owner or an  
30 occupant thereof; and

31 (9) Work performed when the specifications for the work have been developed or  
32 approved by engineering personnel employed by the owner of a facility by registered professional  
33 engineers licensed pursuant to the laws of this state when the work to be performed because of  
34 its specialized nature or process cannot be reasonably or timely contracted for within the general  
35 area of the facility.

**§30-41-7. Application for and issuance of license.**

1 (a) A person desiring to be licensed as a contractor under this article shall submit to the  
2 board a written application requesting licensure, providing the applicant's social security number  
3 and such other information as the board may require on forms supplied by the board. The  
4 applicant shall pay a license fee: *Provided*, That electrical contractors already licensed under  
5 section four, article three-b, chapter twenty-nine of this code shall pay no more than \$50.

6 (b) A person desiring to be licensed as a journeyman general building contractor under  
7 this article shall submit to the board:

8 (1) A written application requesting licensure, including the applicant's social security  
9 number and such other information as the board may require on forms supplied by the board;

10 (2) A license fee; and

11 (3) One of the following:

12 (A) Proof of two years' experience with general building contractor operation and two  
13 sworn affidavits, that are less than six months old, from licensed contractors attesting to the  
14 applicant's ability to perform the functions of a journeyman general building contractor; or

15 (B) Proof of satisfactory completion of an accredited general building contractor education  
16 program and one sworn affidavit, less than six months old, from a licensed contractor attesting to  
17 the applicant's ability to perform the functions of a journeyman general building contractor.

18 (c) No contractor license, except for a journeyman general building contractor license,  
19 may be issued without examination pursuant to this section: *Provided*, That any person issued a  
20 contractor license by the board pursuant to this section may apply to the board for transfer of the  
21 license to a new business entity in which the license holder is the principal owner, partner or  
22 corporate officer: *Provided, however*, That a license holder may hold a license on behalf of only  
23 one business entity during a given time period. The board may transfer the license issued  
24 pursuant to this subsection to the new business entity without requiring examination of the license  
25 holder.

**§30-41-8. Unlawful use, assignment, transfer of license; revocation.**

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

**§30-41-9. Prerequisites to obtaining building permit; mandatory written contracts.**

1 (a) Any person making application to the building inspector or other authority of any  
2 incorporated municipality or other political subdivision in this state charged with the duty of issuing  
3 building or other permits for the construction of any building, highway, sewer or structure or for  
4 any removal of materials or earth, grading or improvement, shall, before issuance of the permit,  
5 either furnish satisfactory proof to the inspector or authority that the person is duly licensed under  
6 the provisions of this article to carry out or superintend the construction, or file a written affidavit  
7 that the person is not subject to licensure as a contractor or subcontractor as defined in this article.

8 The inspector or authority may not issue a building permit to any person who does not possess a  
9 valid contractor license when required by this article.

10 (b) No person licensed under the provisions of this article may perform contracting work  
11 of an aggregate value of \$7,500 or more, including materials and labor, without a written contract,  
12 setting forth a description and cost of the work to be performed, signed by the licensee and the  
13 person for whom the work is to be performed.

14 (c) The board shall file a procedural rule setting forth a standard contract form which meets  
15 the minimum requirements of this subsection for use by licensees. The board shall post the  
16 contract form on its website and shall assist licensees in the correct completion of the form. The  
17 board shall mail a written notice of the requirements imposed by the rule to each licensed  
18 contractor at the address provided to the board by the contractor on his or her last application for  
19 licensure or renewal.

**§30-41-10. Informational list for basic universal design features.**

1 (a) Ninety days after the Contractor Licensing Board certifies and makes available to the  
2 general public the standard form informational list of basic universal design features pursuant to  
3 this section, any contractor licensed under this article of any proposed residential housing in the  
4 state shall provide to the buyer an informational list of basic universal design features that would  
5 make the home entrance, interior routes of travel, the kitchen and the bathroom or bathrooms  
6 universally accessible. Basic universal design features are to include, but not be limited to, the  
7 following:

8 (1) At least one nonstep entrance into the dwelling;

9 (2) All doors on the entry-level floor, including bathrooms, have a minimum of thirty-six  
10 inches;

11 (3) At least one accessible bathroom on the entry-level floor with ample maneuvering  
12 space;

13 (4) Kitchen, general living space and one room capable of conversion into a bedroom, all  
14 with ample maneuvering space, on the entry-level floor; and

15 (5) Any other external or internal feature requested at a reasonable time by the buyer and  
16 agreed to by the seller.

17 (b) If a buyer is interested in a specific informational feature on the list established by  
18 subsection (a) of this section, the seller or builder upon request of the buyer shall indicate whether  
19 the feature is standard, limited, optional or not available and, if available, shall further indicate the  
20 cost of such a feature to the buyer.

21 (c) The standard form informational list of basic universal design features shall be certified  
22 and made available for reproduction by the board, in accordance with the provisions of subsection  
23 (a) of this section, based on mutual recommendation of the board, the American Institute of  
24 Architects-West Virginia, the Home Builders Association of West Virginia and the West Virginia  
25 Center for Excellence in Disabilities.

**§30-41-11. Notice included with invitations to bid and specifications.**

1 Any architect or engineer preparing any plan and specification for contracting work to be  
2 performed in this state shall include in the plan, specification and invitation to bid a reference to  
3 this article informing any prospective bidder that the person's contractor license number shall be  
4 included on any bid submission. A subcontractor shall furnish that person's contractor license  
5 number to the contractor prior to the award of the contract. If an apparent low bidder fails to submit  
6 a license number in accordance with this section, the Purchasing Division shall promptly request  
7 by telephone and electronic mail that the low bidder and the second low bidder provide the license  
8 number within one business day of the request. Failure of the bidder to provide the license number  
9 within one business day of receiving the request shall result in disqualification of the bid.

**§30-41-12. License renewal, lapse and reinstatement.**

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

3 lapsed: *Provided*, That no license which has lapsed for a period of ninety days or more may be  
4 renewed: *Provided, however*, That if a licensee is in a dispute with a state agency, and it is  
5 determined that the licensee is not at fault, the board shall renew the license.

6 (b) If continuing education or other requirements are made a condition of license  
7 reinstatement after lapse, suspension or revocation, these requirements must be satisfied before  
8 the license is reissued.

**§30-41-13. Violation of article; injunction; criminal penalties.**

1 (a) (1) Upon a determination that a person is engaged in contracting business in the state  
2 without a valid license, the board shall issue a cease and desist order requiring the person to  
3 immediately cease all operations in the state. The order shall be withdrawn upon issuance of a  
4 license to that person.

5 (2) After affording an opportunity for a hearing, the board may impose a penalty of not less  
6 than \$200 nor more than \$1,000 upon any person engaging in contracting business in the state  
7 without a valid license. The board may accept payment of the penalty in lieu of a hearing.

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

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

14 (1) For a first offense, a fine of not less than \$200 nor more than \$1,000;

15 (2) For a second offense, a fine of not less than \$500 nor more than \$5,000, or  
16 confinement in jail for not more than six months, or both fined and confined;

17 (3) For a third or subsequent offense, a fine of not less than \$1,000 nor more than \$5,000,  
18 and confinement in jail for not less than thirty days nor more than one year.

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

22 (d) Any person who undertakes any construction work without a valid license when a  
23 license is required by this article, when the total cost of the contractor's construction contract on  
24 any project upon which the work is undertaken is \$25,000 or more, shall, in addition to any other  
25 penalty herein provided, be assessed by the board an administrative penalty not to exceed \$200  
26 per day for each day the person is in violation.

**§30-41-14. Disciplinary powers of the board.**

1 (a) The board may impose the following disciplinary actions:

2 (1) Permanently revoke a license;

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

4 (3) Censure or reprimand a licensee;

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

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

8 (6) Impose a probationary period requiring a licensee to report regularly to the board on  
9 matters related to the grounds for probation; the board may withdraw probationary status if the  
10 deficiencies that require the sanction are remedied;

11 (7) Order a contractor who has been found, after hearing, to have violated any provision  
12 of this article or the rules of the board to provide, as a condition of licensure, assurance of financial  
13 responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a  
14 cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance:

15 Provided, That the amount of financial assurance required under this subdivision may not exceed  
16 the total of the aggregate amount of the judgments or liens levied against the contractor or the  
17 aggregate value of any corrective work ordered by the board or both: Provided, however, That

18 the board may remove this requirement for licensees against whom no complaints have been  
19 filed for a period of five continuous years; and

20 (8) A fine not to exceed \$1,000.

21 (b) No license issued under the provisions of this article may be suspended or revoked  
22 without a prior hearing before the board: *Provided*, That the board may summarily suspend a  
23 licensee pending a hearing or pending an appeal after hearing upon a determination that the  
24 licensee poses a clear, significant and immediate danger to the public health and safety.

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

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

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

36 (f) Any party adversely affected by any action of the board may appeal that action in either  
37 the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which  
38 the petitioner resides or does business, within thirty days after the date upon which the petitioner  
39 received notice of the final order or decision of the board.

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

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

43 (2) Willful failure or refusal to complete a construction project or operation with reasonable  
44 diligence, thereby causing material injury to another;

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

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

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

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

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

59 (8) Willful or deliberate acts in the capacity of a contractor when not licensed or as a  
60 contractor by a person other than the person to whom the license is issued except as an employee  
61 of the licensee;

62 (9) Willful or deliberate acts with the intent to evade the provisions of this article by: (i)  
63 aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or  
64 conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be  
65 used by an unlicensed person; or (iv) attempting to assign, transfer or otherwise dispose of a  
66 license or permitting the unauthorized use thereof;

67 (10) Willful, fraudulent or deceitful acts in the capacity as a contractor whereby substantial  
68 injury is sustained by another;

69 (11) Performance of work that is not commensurate with a general standard of the specific  
70 classification of contractor or which is below a building or construction code adopted by the  
71 municipality or county in which the work is performed;

72 (12) Knowing employment of a person or persons who do not have the legal right to be  
73 employed in the United States;

74 (13) Failure to execute written contracts prior to performing contracting work in accordance  
75 with section nine of this article;

76 (14) Failure to abide by an order of the board; or

77 (15) Failure to satisfy a judgment or execution ordered by a magistrate court, circuit court  
78 or arbitration board.

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

**§30-41-15. Administrative duties of board.**

1 (a) The board shall perform the following administrative duties:

2 (1) Collect and record all fees;

3 (2) Maintain records and files;

4 (3) Issue and receive application forms;

5 (4) Notify applicants of the results of the board examination;

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

7 (6) Issue licenses and temporary licenses as authorized by this article;

8 (7) Issue duplicate licenses upon submission of a written request by the licensee attesting  
9 to loss of or the failure to receive the original and payment by the licensee of a fee established by  
10 regulation adopted by the division;

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

13 (9) Answer routine inquiries;

14 (10) Maintain files relating to individual licensees;

15 (11) Arrange for printing and advertising;

16 (12) Purchase supplies;

17 (13) Employ additional help when needed;

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

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

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

22 (b) All authority not specifically delegated are the responsibility of the board.

23 (c) Prior to the issuance of the license and following successful completion of the  
24 examination when an examination is required, the applicant shall certify by affidavit that the  
25 applicant:

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

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

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

**§30-41-16. Rules.**

1           The board may propose rules for legislative approval in accordance with article three,  
2 chapter twenty-nine-a of this code that are necessary to carry out the provisions of this article.  
3 The board may disseminate educational or any other material designed to improve performance  
4 standards of any contractor group to contractors within the state. The board may adopt, and use,  
5 a seal with the words “State Contractor Licensing Board of West Virginia”. Rules previously  
6 authorized under section sixteen, article eleven, chapter twenty-one of this code shall remain in  
7 effect until amended, replaced or repealed by the legislature.

**§30-41-17. Record keeping.**

1           (a) The board shall keep a record of all actions taken and account for moneys received.  
2 All moneys shall be deposited in a special account in the State Treasury to be known as the “West  
3 Virginia Contractor Licensing Board Fund.” Expenditures from this fund shall be for the purposes  
4 set forth in this article and are not authorized from collections but are to be made only in  
5 accordance with appropriation by the Legislature and in accordance with the provisions of article  
6 three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two,  
7 chapter five-a of this code. Amounts collected which are found from time to time to exceed the  
8 funds needed for purposes set forth in this article may be transferred to other accounts or funds  
9 and redesignated for other purposes by appropriation of the Legislature.

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

15           (c) (1) All investigations, complaints, reports, records, proceedings and other information  
16 received by the board and related to complaints made to the board or investigations conducted  
17 by the board pursuant to this article, including the identity of the complainant or respondent, are

18 confidential and may not be knowingly and improperly disclosed by any member or former  
19 member of the board or staff, except as follows:

20 (A) Upon a finding that probable cause exists to believe that a respondent has violated  
21 the provisions of this article, the complaint and all reports, records, nonprivileged and  
22 nondeliberative materials introduced at any probable cause hearing held pursuant to the  
23 complaint are thereafter not confidential: *Provided*, That confidentiality of the information shall  
24 remain in full force and effect until the respondent has been served with a copy of the statement  
25 of charges.

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

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

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

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

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

44 (d) If any person violates the provisions of subsection (c) of this section by knowingly and  
45 willfully disclosing any information made confidential by this section or by the board, that person  
46 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor  
47 more than \$5,000, or confined in jail not more than one month, or both fined and confined.

48 (e) The board shall certify to the State Auditor a detailed statement of all moneys received  
49 and spent during the preceding fiscal year.

**§30-41-18. Reciprocity.**

1 To the extent that other states which provide for the licensing of contractors provide for  
2 similar action, the board may grant licenses of the same or equivalent classification to contractors  
3 licensed by other states, without written examination upon satisfactory proof furnished to the  
4 board that the qualifications of the applicants are equal to the qualifications of holders of similar  
5 licenses in this state, and upon certification to the board as required by subsection-c, section  
6 sixteen of this article, and upon payment of the required fee.

**§30-41-19. Board authorized to provide training.**

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

6 (b) For the purposes of this section, the board may expend funds from its special revenue  
7 account, known as the Contractor Licensing Fund, to support this activity.

**§30-41-20. Board to retain funds.**

1 The Contractor Licensing Fund, the West Virginia Contractor Licensing Board Fund, and  
2 any other special revenue account dedicated solely to the administration of the Contractor  
3 Licensing Board are hereby continued and may be used to effectuate the provisions of this article.

**§30-41-21. Interpretation of this article.**

- 1 Except as it relates to examination requirements and where the various types of
- 2 contractors are expressly treated differently, any reference to “contractor” or “contractors” within
- 3 this article should be liberally interpreted to include all contractors.

NOTE: The purpose of this bill is to transfer the West Virginia Contractor Act from administration and regulation by the Division of Labor to regulation under the provisions of professions and occupations in chapter thirty of this code. The bill retains the short title and declaration of policy with definitions of the existing act. It continues the West Virginia Contractor Licensing Board, composition, terms, qualifications and appointment, together with administrative duties of board and legislative rules, without the Division of Labor. The bill retains the necessity for contractor license and exemptions, procedure for licensing, expiration date, fees and renewal of license. It continues procedure for revocation for unlawful use, assignment or transfer of license. Also the prerequisites to obtaining building permit and mandatory written contracts. The requirement of informational list for basic universal design features is retained, as is the provision for injunction and criminal penalties for violation of article. Specific administrative duties of board and record keeping by the board are provided without the Division of Labor. The board is authorized to grant reciprocity and to provide training to students who desire to obtain a West Virginia contractor license. Misdemeanor criminal penalties for violations of article are retained.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.