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REGULATORY BOARD REVIEW CONTRACTOR LICENSING BOARD

AUDIT OVERVIEW

The West Virginia Contractor Licensing Board Is Needed to Protect the Public

The Contractor Licensing Board Complies with Some of the General Provisions of Chapter 30 of the West Virginia Code, but Much Improvement Is Needed

Because the Contractor Licensing Board Is New to Chapter 30, It Recently Activated Its Own Website Separate from the DOL



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October 6, 2024

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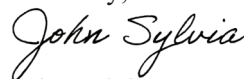
The Honorable Chris Phillips
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Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the Contractor Licensing Board. The issues covered herein are:

1. The West Virginia Contractor Licensing Board Is Necessary to Protect the Public;
2. The Contractor Licensing Board Complies with Some of the General Provisions of Chapter 30 of the West Virginia Code, but Much Improvement Is Needed; and
3. Because the Contractor Licensing Board Is New to Chapter 30, It Recently Activated Its Own Website Separate from the DOL.

We transmitted a draft copy of the report to the Board on September 18, 2024. The commissioner of the Division of Labor chose not to provide a written response to the report. If you have any inquiries on this report, please let me know.

Sincerely,

John Sylvia

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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted a regulatory board review of the Contractor Licensing Board (Board) pursuant to the Performance Review Act, Chapter 4, Article 10 of the West Virginia Code. Objectives of this audit were to assess the continued need for the Board, and its compliance with the general provisions of Chapter 30 and other applicable laws. The issues of this report are highlighted below.

Frequently Used Acronyms

AG – Attorney General
CE – continuing education
DOL – Division of Labor
FY – fiscal year
HVAC - heating, ventilation, and air conditioning
MOU – memorandum of understanding
OASIS – Our Advanced Solution with Integrated Systems
PERD – Performance Evaluation and Research Division

Report Highlights:

ISSUE 1: The West Virginia Contractor Licensing Board Is Needed to Protect the Public

- The Board was transferred from Chapter 21 of West Virginia State Code to Chapter 30 with the passage of HB 2006 in 2021.
- The potential for monetary harm from unscrupulous contractors can be particularly damaging and significant.
- In an effort to protect the public, the Board oversees over 7,000 annual on-site inspections conducted by the DOL.
- PERD recommends that the Legislature continue the Board as currently regulated.

ISSUE 2: The Contractor Licensing Board Complies with Some of the General Provisions of Chapter 30 of the West Virginia Code, but Much Improvement Is Needed

- The Board is facing no financial or budgetary concerns and is financially self-sufficient.
- The continuing education requirements for the Board under W. Va. Code §30-1-7a are problematic and the Legislature should consider an exemption for the Board.
- The Board's internal controls are lacking and should consider utilizing the State Treasurer's Lockbox System.
- The Board should request replacement board appointees from the governor.

ISSUE 3: Because the Contractor Licensing Board Is New to Chapter 30, It Recently Activated Its Own Website Separate from the DOL

- Because the Contractor Licensing Board is the newest regulatory licensing board to join Chapter 30,

it recently launched its own website on September 9, 2024.

- While PERD normally conducts a uniform website review as part of all Chapter 30 regulatory board reviews, PERD determined that the transitional status of the Board's website would not result in a fair assessment; therefore, a review of the website was not conducted.
- As a preliminary measure, PERD recommends that the Board follow all website-related Chapter 30 requirements for its new website.

PERD's Response to the Board's Written Response

PERD submitted a draft copy of the report to the agency on September 18, 2024. The commissioner of the Division of Labor chose not to provide a written response to the report.

Recommendations

1. *PERD recommends that the Legislature continue the Contractor Licensing Board.*
2. *The Board should consider utilizing the State Treasurer's lockbox system to further enhance internal controls and reduce the risk of fraud.*
3. *Consideration should be given to codify the process by which the Board receives complaints involving court judgments from the Attorney General's Office either statutorily or by legislative rule.*
4. *The Legislature should consider amending either the continuing education requirements of W. Va. Code §30-1-7a or the Board's enabling statute (W. Va. Code §30-42-1 et seq.) to exempt the Board's licensees from continuing education requirements.*
5. *The Board should contact the Governor's Office for board member appointments.*
6. *The chair, the executive director, or the chief financial officer of the Board should attend the State Auditor's Training Session for regulatory boards every year.*
7. *The Board should amend its register of applicants to include all information as required by §30-1-12(a).*
8. *The Board should make a form available for register requests, in accordance with §30-1-12(c).*
9. *The Board should amend its roster of licensees to meet the standards described in §30-1-13.*
10. *The Board should propose a rule to not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure.*
11. *The Board should consider promulgating procedural rules to implement the process of waiving initial*

occupational licensing fees for low-income individuals and military families.

12. *The Board should include all information required by §30-1-12(e) on its new website to ensure statutory compliance.*
13. *The Board should include full complaint records that involved disciplinary action on its website to comply with Chapter 30's public access requirements.*

ISSUE 1

The West Virginia Contractor Licensing Board Is Needed to Protect the Public

Issue Summary

This is a Regulatory Board Review of the Contractor Licensing Board (Board) pursuant to West Virginia Code §4-10-10. One objective is to determine if there is a need for continuation, consolidation, or termination of the Board. The Board licenses contractors from multiple classifications that deal with a variety of residential and commercial construction-related projects. In considering the need for a regulatory board, the Performance Evaluation and Research Division (PERD) determines if there would be significant adverse effects to the public if the professions were unregulated. PERD determines that the public could be harmed if the practice of various contractors went unregulated. **Therefore, PERD recommends that regulation by the Board be continued as currently structured.**

The Board licenses contractors from multiple classifications that deal with a variety of residential and commercial construction-related projects.

Contractors Are a Specialized Profession

The West Virginia Contractor Licensing Act, W. Va. Code §30-42-3, defines “contractor” as:

A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, structure, or excavation associated with a project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

Contractors are required to be licensed when the cost of a project is \$5,000 or more for residential work, or \$25,000 or more for commercial work.

As designated by W. Va. Code §30-42-3(d), the threshold for licensure is when the cost of a project is \$5,000 or more for residential work, or \$25,000 or more for commercial work. To attain licensure, contractors must obtain a business registration tax number from the West Virginia State Tax Department, register their business with the Secretary of State’s Office, and pass the West Virginia business and law examination by a score of at least 70%. The Board oversees licensure for nine separate specified classes of contractor, including:

- electrical;
- general building;
- general engineering;

- heating, ventilating, and cooling;
- multifamily;
- piping;
- plumbing;
- residential; and
- specialty.

Contractor services can be performed at a commercial business location or on private property at a customer's residence. Legislation enacted in 2021 specifically exempted painters and landscapers from the list of classifications requiring licensure. Due to the potentially time-consuming and costly nature of the work provided by contractors to business owners and residential customers, continued regulation is crucial to protect the public from unscrupulous contractors. Larger projects can easily meet totals ranging in the thousands of dollars, creating financial and legal detriments for customers who incidentally hire contractors that perform faulty workmanship. Low quality or incompetent work, especially related to housing construction, also runs the risk of causing physical harm to the public.

Legislation enacted in 2021 specifically exempted painters and landscapers from the list of classifications requiring licensure.

The Legislature originally established the Board through the Contractor Licensing Act of 1991 in Chapter 21, Article 11 of the West Virginia Code, which is under the Division of Labor (DOL). However, during the 2021 regular legislative session, the Legislature passed House Bill 2006 that repealed W. Va. Code §21-11-1, et seq., and reenacted the Board under W. Va. Code §30-42-1, et seq., effective June 15, 2021. Although the Board was removed from under the DOL, State Code §30-42-5(d)(14) requires the Board to contract with the DOL to execute essential functions such as inspections, enforcement, and investigation services. To comply with this requirement, the Board established a memorandum of understanding (MOU) with the DOL on June 30, 2021. The MOU additionally tasks the DOL with administrative functions such as payroll, invoicing, rulemaking, issuing annual reports, and creating a separate website for the Board. Board meetings are also held in the DOL building on the State Capitol Complex, generally four times per year. The current MOU is set to expire on December 31, 2024.

Although the Board was removed from under the DOL, State Code §30-42-5(d)(14) requires the Board to contract with the DOL to execute essential functions such as inspections, enforcement, and investigation services.

Contracting Is Regulated by All 50 States to Some Degree

In a written statement to PERD, the Board explained,

The importance of contractor licensing is evident by the fact that every state in the nation and the District of Columbia require a state-issued contractor license for at least one type of contractor classification. The vast majority of states issue licenses at the state level for

various contractor classifications, and of the states that do not, licensing is typically done at the municipal level.

Notably, all 50 states regulate at least one of the nine contractor classifications listed under the Board's purview. General contracting is regulated by every state, except Maine and New Hampshire, which do not require contractors to be licensed; however, electricians and plumbers in Maine, and electricians in New Hampshire are subject to licensing.

West Virginia is one of nine states that have stand-alone contractor licensing boards, including Alabama, Arkansas, Louisiana, Mississippi, Nevada, North Carolina, Oregon, and Rhode Island. Furthermore, 10 states do not regulate contractor licensing at the state government level but are subject to licensure or certification by municipalities. The remaining 29 states have contractor licensing via umbrella boards or under an executive agency, such as a Department of Commerce.

The contractor licensing status of West Virginia's surrounding states varies. Kentucky regulates at the municipal level. Maryland regulates traditional contractor construction work with the Home Improvement Commission, which is under the Maryland Department of Labor's Division of Occupational and Professional Licensing. Ohio regulates contractors through the Construction Industry Licensing Board under the Department of Commerce. Pennsylvania primarily regulates contractors at the municipal level but also requires contractors to register with the state Attorney General's Office. The Virginia Department of Professional and Occupational Regulation covers 20 different boards including the Board of Contractors.

All 50 states regulate at least one of the nine contractor classifications listed under the Board's purview.

The Board Licenses Over 17,000 Contractors Annually

The Board issues annual licenses to around 17,000 contractors, over 7,000 of which are based out of state. Licensees must meet qualifications established in W. Va. Code §30-42-1 et seq. Table 1 shows the number of licensees regulated by the Board between fiscal years (FY) 2021 and 2024.

Pennsylvania primarily regulates contractors at the municipal level but also requires contractors to register with the state Attorney General's Office.

Table 1
Contractor Licensing Board
Number of Licensees
FY 2021 – FY 2024

Fiscal Year	In-State	Out-of-State	International	Total
2021	9,733	7,177	6	16,916
2022	9,878	7,372	5	17,255
2023	9,734	7,383	4	17,121
2024	9,584	7,536	8	17,128
Average	9,732	7,367	6	17,105

Sources: Contractor Licensing Board Annual Reports and data provided by the Board to PERD.

From fiscal years 2021 to 2024, the Board received an average of five complaints per year.

Complaints Brought Before the Board Indicate a Potential for Significant Financial Harm

Due to the specific type of work performed by contractors, the general cost of building materials, and the long-term nature of many projects undertaken by contractors, the Board's licensees could possibly cause unique financial hardship and duress if unregulated under scenarios involving unethical behavior or faulty workmanship. From fiscal years 2021 to 2024, the Board received an average of five complaints per year (see Issue 2 for further discussion). However, in these complaints, the average cost in damages to customers who had been faulted by unscrupulous contractors was **\$55,569**.

Damages involved in various complaints over the last four years ranged from \$3,000 to nearly \$700,000. In the most egregious example, the Board processed a complaint wherein a licensee's faulty workmanship violated building codes, required a professional inspection to double-check the contractor's initial work, and subsequently had to be completely repaired – all at the expense of the customer. This resulted in a total judgment of **\$695,201** worth of damages.

Moreover, W. Va. Code §30-42-10(b) provides another safeguard by requiring that no licensed contractor “*may perform contracting work of an aggregate value of \$10,000 or more, including materials and labor, without a written contract, setting forth a description and cost of the work to be performed, signed by the licensee and the person for whom the work is to be performed.*” The Legislature's desire to require a written contract further speaks to the potentially costly nature of contracting work.

The Legislature's desire to require a written contract further speaks to the potentially costly nature of contracting work.

In Addition to Complaints, the Board Oversees Contractor Licensing Inspections and Investigations to Protect the Public

According to W. Va. Code §30-42-5(d)(14), the Board’s administrative duties and powers include inspection, enforcement, and investigative services. W. Va. Code §21-1-3 also confers power to the commissioner of the DOL and his or her authorized representatives “to make or cause to be made all necessary inspections, including inspections relating to enforcing the West Virginia Contractor Licensing Act, §30-42-1 et seq.” Accordingly, through the MOU with the DOL, the Board utilizes 13 labor inspectors who verify compliance with State Code by conducting on-site visits at locations around the state. In instances where unlicensed contractors are found to be actively undergoing projects, the inspectors issue cease-and-desist orders, effective immediately, until the issue can be brought before the Board. The Board will then add a disciplinary hearing to its next meeting’s agenda to take appropriate action. In some cases, licensees will correct their noncompliance issues prior to the board meeting to avoid disciplinary action. The Board may also use its authority to request an action plan from a licensee to ensure the contractor is making efforts to correct noncompliance. Finally, under dire circumstances, the Board may revoke a contractor’s license altogether.

Through the MOU with the DOL, the Board utilizes 13 labor inspectors who verify compliance with State Code by conducting on-site visits at locations around the state.

Table 2 lists the number of on-site licensing inspections conducted between FY 2021 and 2024, and the number of cease-and-desist orders issued as a result of the inspections. As can be observed, the Board issues an average of over 300 cease-and-desist orders against contractors per year.

Table 2 Contractor Licensing Board Inspections FY 2021 – FY 2024			
Fiscal Year	Number of Inspections Conducted	Number of Cease-and-Desist Orders Issued	Percentage
2021	7,917	376	5%
2022	8,294	307	4%
2023	8,155	259	3%
2024	6,384	294	5%
Average	7,688	309	4%
Sources: DOL Annual Reports and written testimony from agency.			

The Board issues an average of over 300 cease-and-desist orders against contractors per year.

In addition to investigating formal complaints, the Board conducts other investigations that resulted from informal inquiries as authorized by §30-42-5(d)(14). In some instances, the Board may be notified of questionable contractors by the West Virginia Offices of the Insurance Commissioner, WorkForce West Virginia, or another occupational licensing board that oversees individuals in similar fields, such as the West Virginia Board of Architects. While these inquiries are initial allegations, they can lead to formal disciplinary hearings resulting in license suspensions or revocations. Between FY 2021 and 2024, the Board pursued and resolved a total of 20 investigations.

Conclusion

The Board licenses over 17,000 contractors, roughly 40 percent of which are based out of state. West Virginia Code includes nine different classifications under the definition of contractor, providing the potential for a wide variety of cost and workmanship to be involved with the licensees under the Board. Considering the large licensure pool and various fields related to contracting work, regulation is essential to verify compliance with the law, administer action against unscrupulous contractors, and facilitate fulfillment of monetary damages ordered by the court system. To serve this function, the Board conducts an average of over 7,000 annual on-site inspections and issues an average of over 300 cease-and-desist orders. The Board also responds to complaints deriving from various state government entities. Therefore, PERD contends that regulation of contractors is necessary to protect the public.

Considering the large licensure pool and various fields related to contracting work, regulation is essential to verify compliance with the law, administer action against unscrupulous contractors, and facilitate fulfillment of monetary damages ordered by the court system.

Recommendations

1. *PERD recommends that the Legislature continue the Contractor Licensing Board.*

ISSUE 2

The Contractor Licensing Board Complies with Some of the General Provisions of Chapter 30 of the West Virginia Code, but Much Improvement Is Needed

Issue Summary

Although relatively new to Chapter 30, the Board complies with some of the general provisions of W. Va. Code §30-1-1 et seq., including being financially self-sufficient, filing annual reports, and resolving complaints in a timely manner with due process for licensees. However, the Board should consider using the State Treasurer's lockbox system to ensure proper internal controls. The Board's current roster and register also need improvements to satisfy statutory requirements. Furthermore, the Board must ensure that the chair or chief executive officer annually attends the State Auditor's Seminar on Regulatory Boards. The Board should additionally promulgate rules to comply with certain Chapter 30 requirements related to licensees. Finally, action should be taken, either legislatively or via rule promulgation, to establish an exception for the Board regarding continuing education requirements listed in §30-1-7a.

The Board should additionally promulgate rules to comply with certain Chapter 30 requirements related to licensees.

The Board Complies with Some General Provisions of Chapter 30

Unlike other regulatory licensing boards, the Contractor Licensing Board is relatively new to Chapter 30's general provisions due to the relatively recent passage of HB 2006 in 2021, which transferred the Board out of Chapter 21. Consequently, the Board is still transitioning to meet new statutory requirements. The Board is compliant with the following provisions of Chapter 30:

- Each Board member has attended at least one seminar provided under §30-1-2a during each term of office.
- The Board adopted an official seal (§30-1-4).
- The Board met at least once annually (§30-1-5(a)).
- The Board resolved all complaints within one year of the status report (§30-1-5(c)).
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c)).
- The Board promulgated procedural rules specifying the investigation and resolution procedure of all complaints (§30-1-8(k)).
- The Board submitted an annual report to the governor and the Legislature describing transactions for the preceding two years (§30-1-12(b)).

The Contractor Licensing Board is relatively new to Chapter 30's general provisions due to the relatively recent passage of HB 2006 in 2021, which transferred the Board out of Chapter 21.

The Board is not compliant with the following provisions:

- The chairperson, the executive director or the chief financial officer of the Board did not attend the annual orientation session conducted by the State Auditor in 2023 (§30-1-2a (c)(2)).
- The Board does not provide public access on a website to all completed disciplinary actions in which discipline was ordered (§30-1-5(d)).
- The Board has not established CE requirements (§30-1-7a).
- The Board's register of applicants does not include all appropriate information specified in §30-1-12(a), such as the applicant's individual name, age, educational and other qualifications, mailing address, and other requirements.¹
- The Board does not have a form available for those wishing to request the register of applicants, as prescribed in §30-1-12(c).
- The Board's roster is not in alphabetical order and only includes the names of the businesses instead of the name of the licensee (§30-1-13).
- The Board has not promulgated rules waiving initial occupational licensing fees for low-income and military families (§30-1-23(d)).
- The Board has not promulgated rules in accordance with W. Va. Code §30-1-24(b)(1) stipulating that the Board may not disqualify applicants from initial licensure because of a prior criminal conviction unless the conviction is for a crime that bears a rational nexus to the profession.

The Board does not provide public access on a website to all completed disciplinary actions in which discipline was ordered.

The Board Is Financially Self-Sufficient

The Board is financially self-sufficient as required by W. Va. Code §30-1-6(c). It is PERD's opinion that cash reserves that are from one to two times a board's annual expenditures are at a prudent level. The Board's revenues primarily come from contractor licensing and renewal fees. Annual disbursements include staff salaries, benefits, travel, office expenses, and computer expenses.

The Board's revenues primarily come from contractor licensing and renewal fees.

However, the timing of the Board's transition to Chapter 30 in June 2021, briefly created a unique financial situation. The beginning of FY 2022 required the creation of a new department number for the Board within Our Advanced Solution with Integrated Systems (OASIS), the State's central accounting system. Previously, the Board's finances had been maintained in a fund under the DOL's department number. The DOL commissioner explained to PERD:

¹ During the 2023 legislative session, Senate Bill 240 was passed and signed into law, effective June 9, 2023, that amended W. Va. Code §30-1-12(a) to substitute "mailing address" for "place of residence" in the register.

Due to the June 15, 2021 effective date of HB2006, the process to submit expenditures for FY2022 was already completed and closed. We started working immediately with the IRS, State Tax Department, State Auditor, and State Budget office to create all necessary accounts in order to transfer all monies from [DOL to an individual board fund].

The commissioner further stated that “Once [the new fund] was established, we transferred all monies in a timely manner and the CLB started operating as a stand-alone agency.”

Table 3 displays the Board’s finances for FY 2021 through 2024. As previously explained, FY 2022 was the first complete year during which the Board had its own department number separate from the DOL within OASIS. There is a notable discrepancy of \$3,564 between the ending cash balance for FY 2021 and the beginning cash balance for FY 2022. After careful review of OASIS financial data, PERD could not pinpoint the cause of the FY 2022 cash balance increase discrepancy, but it is likely a result of the agency transitioning funds from the DOL to a new department number. When questioned about the discrepancy, the DOL commissioner stated, “We knew moving the CL Board on June 15, 2021 and operating for 16 days at the end of a fiscal year would create a lot of unknowns and issues. We did our best with the guidance from the State Budget office. We have no explanation for the +\$3,564 discrepancy. As you have identified, the following three (3) full fiscal year cash balances are spot on.”

As previously explained, FY 2022 was the first complete year during which the Board had its own department number separate from the DOL within OASIS.

Table 3
Contractor Licensing Board
Change in Revenues and Expenditures
FY 2021 - FY 2024

FY	Beginning Cash Balance	Revenues	Expenditures	Ending Cash Balance	End-of-Year Cash as a Percentage of Annual Expenditures
2021	\$422,181	\$1,611,157	\$1,140,165	\$916,117	80%
2022	\$919,681	\$1,580,952	\$1,054,896	\$1,467,160	139%
2023	\$1,467,160	\$1,586,144	\$1,137,982	\$1,925,707	169%
2024	\$1,925,707	\$1,593,026	\$1,097,121	\$2,427,446	221%
Average	\$1,183,682	\$1,592,820	\$1,107,541	\$1,684,107	152%

Source: PERD calculations based on OASIS report WV-FIN-GL-151 Cash Balance report.

The Board's Internal Controls Are Lacking and It Should Consider Utilizing the State Treasurer's Lockbox System

The Board receives revenue through the U.S. mail, walk-ins, and via the e-Government services program on its website. PERD's analysis of the Board's financials found that roughly half of the Board's revenue derived from online transactions between FY 2021 and 2024. Therefore, the other half of the Board's revenue requires an employee to physically receive payments. The Board has three employees who process finances, but this is not enough personnel to segregate duties for proper internal control. Segregation of duties is important as a safeguard designed to reduce the risk against improper use or loss of the Board's resources. The three employees who process revenue and disbursements include:

- Administrative Services Manager I – revenue and disbursements
- Administrative Secretary – revenue
- Regulatory Licensing Support Specialist I – revenue and disbursements.

All three employees process payments from licensees, but two of the same three employees also handle disbursements. To have adequate segregation of duties, there should be controls in place preventing one person from performing **two or more** control activities associated with purchasing and receiving revenue, such as authorizing transactions, receiving merchandise, receiving and depositing revenue, recording transactions, and maintaining custody of assets.

As an example of adequate segregation of duties for handling cash, the State Treasurer's Office Cash Receipts Handbook for West Virginia Spending Units specifies, *"Unless otherwise authorized by the State Treasurer's Office, an individual should not have the sole responsibility for more than one of the following cash handling components:*

- *collection,*
- *depositing,*
- *disbursement, and*
- *reconciling."*

Furthermore, the Board does not utilize the State Treasurer's Lockbox system, which would minimize the handling of revenue. The State Treasurer's Office provides a lockbox operation whereby remittances can be retrieved from a post office box, opened, sorted, imaged, deposited, and the information forwarded to the Board by the State Treasurer's Office for a fee. The use of the lockbox operation helps to mitigate the risk of fraud and benefits efficiency to boards with a relatively small staff. **Therefore, PERD recommends that the Board consider utilizing the State Treasurer's lockbox system to improve internal controls and reduce the risk of fraud.**

The Board has three employees who process finances, but this is not enough personnel to segregate duties for proper internal control.

The Board does not utilize the State Treasurer's Lockbox system, which would minimize the handling of revenue.

Given the lack of internal controls, PERD examined the Board’s revenue and expenditures to assess the risk of fraud and gain reasonable assurance that fraud has not occurred. To make this assessment, PERD calculated the minimum expected revenue for the Board by multiplying licensee fees by the number of reported licensees. Table 4 provides a comparison of actual and expected revenues for the Board for FY 2021 through 2024. Given that actual revenues exceeded the expected revenue for every year reviewed, PERD deems the likelihood of fraud having occurred on the revenue side as relatively low.

Given that actual revenues exceeded the expected revenue for every year reviewed, PERD deems the likelihood of fraud having occurred on the revenue side as relatively low.

Table 4 Contractor Licensing Board Expected Revenue and Actual Revenue FY 2021 – FY 2024				
Fiscal Year	Number of Licensees	Expected Revenue	Actual Revenue	Difference
2021	16,916	\$1,522,440	\$1,611,157	\$88,717
2022	17,255	\$1,552,950	\$1,580,952	\$28,002
2023	17,121	\$1,540,890	\$1,586,144	\$45,254
2024	17,128	\$1,541,520	\$1,593,026	\$51,506
Average	17,105	\$1,539,450	\$1,592,820	\$53,370
Sources: PERD calculations based on OASIS report WV-FIN-GL-151, and fees set by 28 CSR 2.				

To assess the risk of fraud on the expenditure side, PERD calculated the percentage of expected and required expenditures for FY 2021 through 2024 (see Table 5). PERD determines that the risk of fraud is relatively low on the expenditure side when a Board’s required and expected expenditures are 90 percent or more of total annual expenditures. PERD’s evaluation of the Board’s expenditures shows that on average 97 percent of expenses are expected and required.

PERD’s evaluation of the Board’s expenditures shows that on average 97 percent of expenses are expected and required.

Table 5 Contractor Licensing Board Percentage of Expected and Required Expenditures FY 2021 – FY 2024	
FY	Percent of Expected and Required Expenditures
2021	99%
2022	92%
2023	99%
2024	99%
<i>Source: PERD calculations based on data from OASIS WVFIN-GL-151 report.</i>	

Both the initial licensure and renewal fee for West Virginia contractors is \$90.

The Board's Initial Licensure and Renewal Fees Are Generally Lower than Those of Surrounding States

West Virginia and surrounding states' licensure and renewal fees can be seen in Table 6. Both the initial licensure and renewal fee for West Virginia contractors is \$90. The fee was originally \$100 in 1992, but has held steady at \$90 since 1996.

The \$90 licensing fee is lower than most surrounding states. Because contractor licensing and the various types of classifications vary by state, however, it is difficult to make a direct comparison on a state-to-state basis. The following include some of the more layered examples of contractor regulation with respect to West Virginia's border states:

- Kentucky does not license general contractors at the state level, but municipal governments in cities like Louisville establish regulations and annual fees.
- The Ohio Division of Industrial Compliance, within the state Department of Commerce, oversees a licensing board that issues state licenses to electrical, refrigeration, plumbing, hydronics, and heating, ventilation, and air conditioning (HVAC) contractors. However, Columbus, Cleveland, and Cincinnati also require separate contractor licenses issued at the municipal level for those doing business in Ohio's three largest cities.
- Pennsylvania does not require board oversight or contractor licensing at the state level, but home improvement contractors are required to register with the state Attorney General's Office every two years. General contractors working in Pittsburgh, however,

The \$90 licensing fee is lower than most surrounding states.

are required to obtain a license (subject to annual renewal) from the city's Department of Permits, Licenses, and Inspections in addition to the Attorney General registration.

Table 6
Contractor Licensing Fees
West Virginia and Surrounding States

State/Municipality	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	N/A	N/A	N/A
Louisville-Jefferson County Metro Government	\$125	\$125	Annual
Maryland Department of Labor, Home Improvement Commission	\$370	\$375	Biennial
Ohio Department of Commerce, Construction Industry Licensing Board	\$25	\$60	Annual
City of Columbus	\$250	\$300	Annual
Pennsylvania Attorney General	\$50	\$50	Biennial
City of Pittsburgh	\$90	\$90	Annual
Virginia Department of Professional and Occupational Regulation, Board for Contractors*	Class A: \$360	Class A: \$240	Biennial
	Class B: \$345	Class B: \$225	
	Class C: \$210	Class C: \$195	
W. Va. Contractor Licensing Board	\$90	\$90	Annual
Annual Average	\$125	\$121	---
<i>Sources: Various state and municipal codes, and W. Va. CSR §28-2-5.</i> <i>*Virginia fees are based on Class A, B, or C licenses. Each class has individual fee structures and requirements, with Class A being the most expensive and requiring the contractor to have a minimum of five years of experience.</i>			

To reasonably compare West Virginia contractor licensing with surrounding states' regulations, it is also significant to consider which classifications are included, as this tends to vary by state. While the West Virginia Board includes 9 different trade categories, surrounding states' contractor classifications range from 1 to as many as 15. West Virginia and other states include trades such as plumber, HVAC technician, and electrician within the confines of contractor, while other states license or certify these common professions separately. Table 7 below conveys the number of classification types included in each surrounding states' definition of "contractor." Kentucky is exempt from the table since it does not license contractors at the state level. Louisville, Columbus, and Pittsburgh are included because they regulate contractors at the municipal

While the West Virginia Board includes 9 different trade categories, surrounding states' contractor classifications range from 1 to as many as 15.

level.

Table 7
Regulated Contractor Classifications
West Virginia and Surrounding States

State/Municipality	Number of Classifications	Contractor Classification Types
Louisville-Jefferson County Metro Government	15	Building A, Building B, electrical, fire detection, fire suppression, HVAC, refrigeration, moving, range hood, range suppression, sign, solid fuel, wrecking A, wrecking B, wrecking supervisor
Maryland	1	Home improvement
Ohio	5	Electrical, HVAC, refrigeration, plumbing, and hydronics
City of Columbus	1	General contractor
Pennsylvania	1	Home improvement
City of Pittsburgh	1	General contractor
Virginia	7	Commercial building, electrical, highway, HVAC, plumbing, residential, specialty
West Virginia	9	Electrical, general building, general engineering, HVAC, multifamily, piping, plumbing, residential, specialty
<i>Sources: Individual state and municipal codes and regulations, and W. Va. Code §30-42-5.</i>		

The Board Resolves Complaints in a Timely Manner

PERD reviewed the 21 complaints the Board received between FY 2021 and 2024. Table 8 provides an overview of the complaints and the average time to resolve them. According to W. Va. Code §30-1-5(c), each regulatory board must resolve a complaint within 18 months of the initial filing. The Board is also required to send status reports to the party filing the complaint and the respondent within six months after the complaint was initially filed. During the scope of the audit, the Board resolved all complaints within six months and evidence shows that the Board informed the parties of the status of the complaints.

During the scope of the audit, the Board resolved all complaints within six months and evidence shows that the Board informed the parties of the status of the complaints.

Table 8
Contractor Licensing Board
Complaint Resolution Statistics
FY 2021 – FY 2024

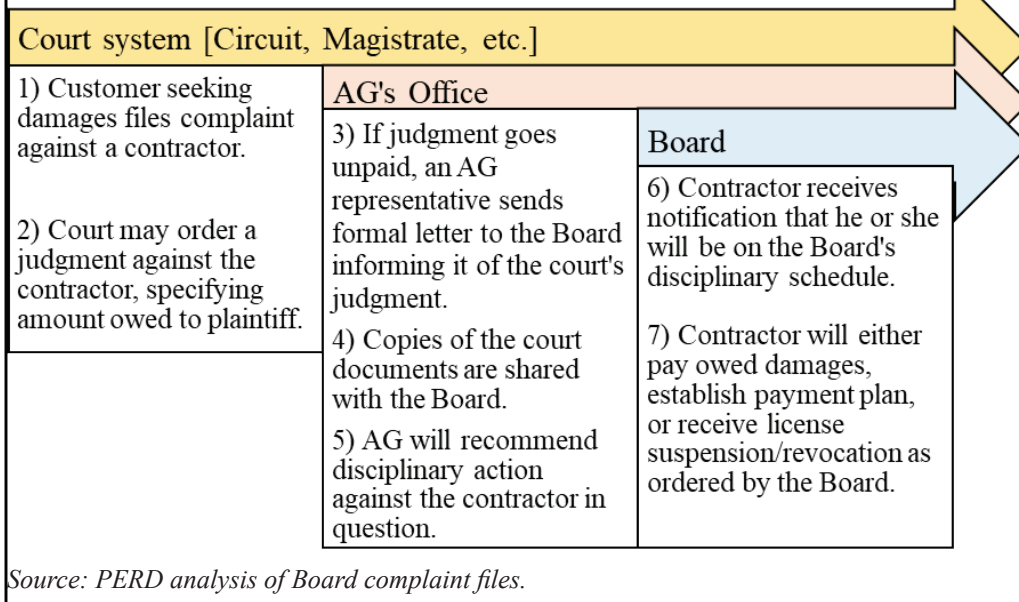
Fiscal Year	Number of Complaints Received	Number of Cases with Disciplinary Actions	Average Resolution Time in Days
2021	2	1	44
2022	4	3	80
2023	6	3	91
2024	9	6	69
<i>Source: PERD's analysis of the Board's complaint files</i>			

The Process by Which the Attorney General's Office Informs the Board of Judgments Made Against Licensees Should Be Promulgated in a Rule

Some complaints that came before the Board during the scope of the audit originated with a collaborative process involving the Office of the West Virginia Attorney General (AG). In many cases, the genesis for a board complaint will arise from a judgment initially made against a licensee in a West Virginia magistrate or circuit court when a consumer files a formal civil complaint against a contractor. If the court rules against the contractor and awards damages to the plaintiff, a representative from the AG's Office will alert the DOL of the facts of the case via letter, encouraging the Board to *"take such disciplinary action...as may be necessary,"* including suspension of the contractor's license, *"until such time as the judgment is satisfied."* Figure 1 illustrates the major steps taken by the key parties in this type of complaint.

In many cases, the genesis for a board complaint will arise from a judgment initially made against a licensee in a West Virginia magistrate or circuit court when a consumer files a formal civil complaint against a contractor.

Figure 1
Process For Complaints Brought to Board By the AG



In many cases, the threat of license suspension or revocation prompts the contractor to proactively satisfy the original court judgment by either paying the damages or establishing a payment plan prior to the Board's disciplinary hearing. This is evidence that the Board's authority influences the payment of damages owed to members of the public who have been wronged by contractors in West Virginia. Although effective, the communicative process between the AG's Office and the Board is not required by law or included in either entity's written policies. **Therefore, due to the valuable nature of this intergovernmental collaboration, consideration should be given to codify this process either statutorily or by legislative rule.**

In many cases, the threat of license suspension or revocation prompts the contractor to proactively satisfy the original court judgment by either paying the damages or establishing a payment plan prior to the Board's disciplinary hearing.

The Board Has Not Established Continuing Education, but the Legislature Should Consider an Exemption from this Chapter 30 Requirement

Since the June 2021 effective date of HB 2006, the Board has not established CE requirements for its licensees, as required by W. Va. Code §30-1-7a. When asked if the Board planned to implement CE in the future, the DOL commissioner explained, "*The Contractor Licensing Board has discussed continuing education but has not established any requirements due to the complexities and practicalities involved in implementing.*" It

Although effective, the communicative process between the AG's Office and the Board is not required by law or included in either entity's written policies.

was further explained to PERD that since many of the Board’s licensees hold multiple contractor classifications, it would be unclear if licensees would be required to complete CE related to each separate classification. The commissioner also elaborated:

The vast majority of the Board’s licensees are business entities, not individuals. As such, the Board has struggled with determining who the appropriate individuals would be to take continuing education on behalf of an entity. For example, should it be the officers of a corporation, the general or managing partners of a general partnership or limited partnership, the members / managers of a limited liability company, or a full-time employee? What happens when an officer, partner, member, manager, or full-time employee, who has completed a continuing education requirement on behalf of an entity, leaves the employment of, or severs the relationship with, the entity?

When asked if the Board planned to implement CE in the future, the DOL commissioner explained, “The Contractor Licensing Board has discussed continuing education but has not established any requirements due to the complexities and practicalities involved in implementing.”

Research conducted by PERD regarding other states’ CE policies for contractors found that the majority of states have no formal CE requirements for the general contractor occupation. Table 9 below displays contractor CE requirements for surrounding states, as well as the renewal period. As can be observed, only Ohio requires CE hours at the state regulation level. CE is required for contractors in certain municipalities in Kentucky and Pennsylvania, such as Louisville or Pittsburgh.

Table 9 CE Requirements for Contractors West Virginia and Surrounding States		
State	Hours	Renewal Period
Kentucky*	0	-
Louisville, KY	6	Annual
Maryland	0	-
Ohio	8	Annual
Pennsylvania*	0	-
Pittsburgh, PA	8	Annual
Virginia	0	Biennial
West Virginia	-	N/A
Sources: Various state and municipal codes; written testimony from DOL. *CE is regulated by municipalities and not at the state level.		

Research conducted by PERD regarding other states’ CE policies for contractors found that the majority of states have no formal CE requirements for the general contractor occupation.

Ultimately, out of the nine states (including West Virginia) that regulate contractor licensing as stand-alone boards, half do not require CE of their licensees. Out of all 50 states, 28 do not require CE for contractors at either the state or municipal level. **Therefore, PERD recommends that the Legislature amend either the continuing education provision of W. Va. Code 30-1-7a or the Board’s enabling statute (W. Va. Code §30-42-1 et seq.) to exempt the Board’s licensees from the CE requirements.**

The Board Should Request Replacement Appointees from the Governor

All 10 board members are currently serving under expired terms, with the most recent having expired on June 30, 2024. No new appointments have been made since March 2021, and the longest running term has been expired since June 2017. W. Va. Code §30-42-4 prescribes staggered terms for members first appointed, four-year terms thereafter, and a requirement that *“at least four members of the board shall reside, at the time of their appointment, in each congressional district as existing on January 1, 2023.”* The agency stated that all board members are serving until they are replaced or reappointed due to the change in congressional districts and the Board moving to Chapter 30. The Board also indicated in March 2024, *“We have conveyed to the Governor’s Office how challenging it is to find individuals wanting to serve on this board and provided our recommendation to appoint all members with staggered terms.”*

In July 2024, PERD asked if the Board had attempted to request new appointments from the governor. The DOL commissioner responded, *“It is our understanding that since the Board was moved to Chapter 30 on June 15, 2021 and is deemed a new agency, the existing board members will be the inaugural members and officially appointed at a later date.”* In turn, PERD requested a legal opinion from the Office of the Legislative Auditor’s Legislative Services Division (Legislative Services) seeking clarification regarding the impact of the Board’s move to Chapter 30 with respect to term timelines. Legislative Services noted that W. Va. Code §30-42-4(a) states that the Board is *“continued”* as opposed to *“created,”* which was the term initially used in the original 1991 Contractor Licensing Act codifying the Board under Chapter 21. In the opinion of Legislative Services:

The use of the term “continued” and the fact that there was no date mentioned for re-appointments of current seats

Out of all 50 states, 28 do not require CE for contractors at either the state or municipal level.

No new appointments have been made since March 2021, and the longest running term has been expired since June 2017.

indicates that the current board members would continue under the appointments that were in existence when the Contractor Licensing Board was moved to Chapter 30, which terms are now expired. The original expiration dates should be used to determine future appointments and term expirations.

Therefore, PERD recommends that the Board contact the Governor's Office for board member appointments.

PERD found that neither the chair nor anyone representing the Board as a chief financial officer attended the seminar in 2023.

The Board Should Ensure that the Chair or Chief Financial Officer Attends the Required Training Sessions

W. Va. Code §30-1-2a(c)(3) states that each board member shall attend the State Auditor's Training Session for regulatory boards at least once during each term of office, and that the chair, the executive director, or the chief financial officer must attend each year. All current board members attended the training session in 2021, and the chief financial officer attended in 2022. However, following a review of the seminar's attendance records, PERD found that neither the chair nor anyone representing the Board as a chief financial officer attended the seminar in 2023. **Therefore, PERD recommends that the chair, the executive director, or the chief financial officer of the Board attends the State Auditor's Training Session for regulatory boards every year.**

The Board Should Amend Its Register of Applicants and Roster of Licensed Practitioners to Fully Comply with Chapter 30

According to W. Va. Code §30-1-12(a), the Board shall keep a register of all applicants for license, showing several categories of information for each applicant. While the Board does maintain an organized list of rejected, processed, and refunded applicants, this potential register in its current state would need to be amended to satisfy all Chapter 30 requirements. The running spreadsheet of applicants, as provided to PERD, *does* contain the following:

While the Board does maintain an organized list of rejected, processed, and refunded applicants, this potential register in its current state would need to be amended to satisfy all Chapter 30 requirements.

- the date of each application,
- an indication whether the applicant was rejected,
- the date of the action, and
- the license number (when applicable, since rejected applicants do not have one).

The same running spreadsheet of applicants, as provided to PERD, does not contain the following, per Chapter 30:

- the applicant’s name,
- age,
- educational and other qualifications,
- mailing address,
- whether an exam was required (although it does indicate whether the application was for a new applicant or a renewal), and
- any suspension or revocation.

In addition, the register should include all applicants since June 15, 2021, the effective date of HB 2006 when the Board formally became subject to Chapter 30. **Therefore, PERD recommends that the Board amend its register of applicants to include all information as required by §30-1-12(a).**

In a similar vein, W. Va. Code §30-1-12(c) states, “*The register of applicants shall be made available upon written request on a form prescribed by the board.*” Said form is required to include the following:

- legal identity,
- purpose for which the register is sought,
- a telephone number where the requester may be contacted by the board, and
- whether copies of the register are requested.

When asked if the Board provides a form for those requesting the register of applicants, the DOL commissioner stated, “*The board does not require a form to be completed for this type of request. We educate the public regarding the search engine on our website. If a complete list of all current licensees is needed, we ask for a written request be submitted via US Mail or email to CLBoard@wv.gov.*” While PERD agrees that the online search tool for board licensees is beneficial to the public for informational purposes, all Chapter 30 boards are subject to the aforementioned form requirements. **Therefore, PERD recommends that the Board make a form available for register requests, in accordance with §30-1-12(c).**

W. Va. Code §30-1-13 also requires the Board to “*maintain a complete roster of the names of all persons licensed, or registered, and practicing in this state the profession or occupation to which such board relates, arranged alphabetically by name*” and to make it available on its website. While the Board’s roster is complete with the entire list of

The register should include all applicants since June 15, 2021, the effective date of HB 2006 when the Board formally became subject to Chapter 30.

While PERD agrees that the online search tool for board licensees is beneficial to the public for informational purposes, all Chapter 30 boards are subject to the aforementioned form requirements.

licensees, it is not arranged in alphabetical order, nor does it contain the names of individuals licensed – but instead includes only business names. **Therefore, PERD recommends that the Board amend its roster of licensees to meet the standards described in §30-1-13.**

The Board Should Promulgate Rules Where Required by Statute

W. Va. Code §30-1-24 states: “Boards subject to the requirements of this section may not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure.” With respect to this provision, the DOL commissioner stated to PERD that the Board does not ask its applicants to disclose prior criminal conviction history, so “it was not necessary for the Board to promulgate a rule related to the rational nexus language provided for in W. Va. Code §30-1-24(c).” However, W. Va. Code §30-1-24(b)(5) of this provision stipulates: “Every board subject to the provisions of this section shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section.”

PERD requested a legal opinion from Legislative Services to confirm the requirement of §30-1-24. Legislative Services responded:

The use of the word “shall” indicates that this is a mandate for all boards under Chapter 30 and not permissive. In spite of the board’s not requesting information from applicants regarding prior criminal conviction history, the board must propose rules that address this. The fact that the Contractor Licensing Board’s current applications for initial licensure or renewals does not include requests for this type of information does not exempt the board from complying with the rulemaking requirements under Chapter 30 now that this board falls under this chapter.

Therefore, PERD recommends that the Board propose a rule for legislative approval to not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure.

With respect to this provision, the DOL commissioner stated to PERD that the Board does not ask its applicants to disclose prior criminal conviction history, so “it was not necessary for the Board to promulgate a rule related to the rational nexus language provided for in W. Va. Code §30-1-24.”

The fact that the Contractor Licensing Board’s current applications for initial licensure or renewals does not include requests for this type of information does not exempt the board from complying with the rulemaking requirements under Chapter 30 now that this board falls under this chapter.

Additionally, W. Va. Code §30-1-23(3)(b) stipulates that each board “*shall waive all initial occupational licensing fees*” for low-income individuals and military families. This statutory requirement was originally enacted during the 2019 Regular Session. The requirement also had previously stipulated that each board shall propose rules for legislative approval to implement the waiver provision. PERD found that the Board had not complied with the proposed rule requirement since it became a Chapter 30 regulatory board in June 2021. However, during the 2024 Regular Session, House Bill 5117 passed, effective May 29, 2024, that amended the original rule-making requirement for the waiver from a “*shall*” to a “*may*” provision. When asked about the waiver and proposing a rule, the DOL commissioner responded:

The Board has not promulgated a rule relating to waiver of initial licensing fees for low-income and/or military families because W. Va. Code §30-1-23(d) provides for a permissive grant of rulemaking authority rather than mandatory; however, the Board will waive such licensing fees for all individuals who meet the statutory requirements enumerated in §30-1-23.

Although the Board is no longer mandated to propose a rule to implement the waiver process, it should consider a procedural rule, nevertheless. A number of the Board’s 17,000 licensees will likely meet the criteria of low income or they may have a military background. Also, W. Va. Code §30-1-23(c) states that individuals seeking a waiver of initial occupational licensing fees must apply to the appropriate board “*in a format prescribed by the board or licensing authority*” and the board shall process the application within 30 days of receiving it from the applicant. Boards must also confirm an individual’s household adjusted gross income is below 130 percent of the federal poverty line or confirm enrollment in a state or federal public assistance program, and confirm an individual’s military status, including spouses or surviving spouses of deceased service members who have not remarried. Moreover, the public would have a better understanding of what is required if the application and the Board’s website explained the process.

PERD observes that most boards have implemented rules to waive the initial licensing fee for military families and low-income individuals. The West Virginia Board of Occupational Therapy, for example, has an entire page on its website regarding the waiver, including directions for the application process and links to the two separate applications for low-income individuals, and military families that are submitted with the initial licensing application for those seeking the waiver. The West

PERD found that the Board had not complied with the proposed rule requirement since it became a Chapter 30 regulatory board in June 2021.

PERD observes that most boards have implemented rules to waive the initial licensing fee for military families and low-income individuals.

Virginia Board of Medicine’s website also proactively communicates the existence of such waivers to initial licensees, and a legislative rule filed in 2020 explains the process for licensees to request the waiver as well as the required documentation for the two different classes. The Contractor Licensing Board’s new website does not include a waiver form regarding this provision, nor does the initial licensing application include language informing applicants that a fee waiver is available to low-income individuals or military families that qualify.

While the Board indicates that it will meet the statutory requirements concerning the waiver, in PERD’s opinion it would better serve the Board to have the waiver process in a procedural rule as part of its administrative policy. **Therefore, PERD recommends that the Board consider promulgating procedural rules to implement the process of waiving the initial occupational licensing fees for qualifying individuals.**

The Contractor Licensing Board’s new website does not include a waiver form regarding this provision, nor does the initial licensing application include language informing applicants that a fee waiver is available to low-income individuals or military families that qualify.

Conclusion

PERD finds that the Board complies with some general provisions of Chapter 30; however, much improvement is needed. In fairness to the Board, PERD acknowledges that the Board has been under the general provisions of Chapter 30 for a relatively short time. Furthermore, the uniqueness of the Board’s professions warrants consideration of it being exempt from the continuing education requirement. The Board should consider using the State Treasurer’s Office lockbox system to process fees to reduce the risk of fraud. The Board should also amend its register and roster, and promulgate rules regarding applicants with criminal backgrounds. Although the Board is no longer mandated to promulgate legislative rules for the process of waiving the initial licensing fees for low-income individuals and military families, the Board should consider procedural rules for waiving initial licensing fees. Overall, while the Board has generally good practices, it needs to improve compliance with Chapter 30 requirements to ensure consistency and adherence to state laws.

Overall, while the Board has generally good practices, it needs to improve compliance with Chapter 30 requirements to ensure consistency and adherence to state laws.

Recommendations

2. *The Board should consider utilizing the State Treasurer’s lockbox system to further enhance internal controls and reduce the risk of fraud.*

3. *Consideration should be given to codify the process by which the Board receives complaints involving court judgments from the Attorney General's Office either statutorily or by legislative rule.*
4. *The Legislature should consider amending either the continuing education requirements of W. Va. Code §30-1-7a or the Board's enabling statute (W. Va. Code §30-42-1 et seq.) to exempt the Board's licensees from continuing education requirements.*
5. *The Board should contact the Governor's Office for board member appointments.*
6. *The chair, the executive director, or the chief financial officer of the Board should attend the State Auditor's Training Session for regulatory boards every year.*
7. *The Board should amend its register of applicants to include all information as required by §30-1-12(a).*
8. *The Board should make a form available for register requests, in accordance with §30-1-12(c).*
9. *The Board should amend its roster of licensees to meet the standards described in §30-1-13.*
10. *The Board should propose a rule to not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure.*
11. *The Board should consider promulgating procedural rules to implement the process of waiving initial occupational licensing fees for low-income individuals and military families.*

ISSUE 3

Because the Contractor Licensing Board Is New to Chapter 30, It Recently Activated Its Own Website Separate from the DOL

Issue Summary

Websites are important to Chapter 30 boards, not only for the Board to comply with certain statutory requirements, but also to help the Board serve the public and its licensees. Because the Contractor Licensing Board is the newest regulatory licensing board to join Chapter 30, it recently launched its own website on September 9, 2024. Although PERD normally conducts a standard website review as part of all Chapter 30 board reviews, PERD determined that the transitional status of the Board's website would not result in a fair assessment; therefore, a review of the website was not warranted. However, preliminary recommendations regarding the Board's website are made to help ensure the Board will follow Chapter 30 requirements after the new site is active.

Although PERD normally conducts a standard website review as part of all Chapter 30 board reviews, PERD determined that the transitional status of the Board's website would not result in a fair assessment; therefore, a review of the website was not warranted.

The Board's New Website Went Live on September 9, 2024

The Board's previous page within the DOL's website was the starting point for the Board's new website, including the Board's background information, a list of board members and staff, board meeting minutes, pertinent forms, a contractor license search, relevant statutes and rules, and a digital method for renewing licenses. Leading up to the launch of the new website, the DOL published an online notice informing licensees of the upcoming website.

W. Va. Code §30-1-12(e) stipulates that every board shall maintain a website to promote public access. Eight different categories of information are required to be included on the website, such as the name of each board member, meeting minutes, and a notice of each upcoming board meeting. While the Board indicated to PERD that it is continuing to enhance the new website, the site in its current state does not include "contact information for each staff member, including office telephone number, office location, and office mailing address," or "a secure electronic means of contacting each staff member," as prescribed by W. Va. Code §30-1-12(e). **Therefore, the Board should include all information required by §30-1-12(e) on its new website to ensure statutory compliance.**

Leading up to the launch of the new website, the DOL published an online notice informing licensees of the upcoming website.

Additionally, W. Va. Code §30-1-5(d) states that every Board "shall provide public access on a website to all completed disciplinary actions in which discipline was ordered." The Board's current website

maintains access to previous board meeting minutes that include summaries of disciplinary actions taken against licensees; however, the website does not include the full record of the disposition of the complaints as designated by Code. **Therefore, PERD recommends that the Board include full complaint records that involved disciplinary action on its new website to comply with the Chapter 30 public access requirements.**

The website does not include the full record of the disposition of the complaints as designated by Code.

Conclusion

The Board became a regulatory board under West Virginia Code, Chapter 30, in June 2021. Consequently, the Board is still transitioning under the requirements of the general provisions of Chapter 30-1 et seq. The Board finalized and launched its own website as recent as September 9, 2024. Given this recent development, PERD determined that an evaluation of the website at this time is not warranted. However, PERD reports some preliminary observations of the website to facilitate further improvements towards complying with requirements of West Virginia Code §30-1 et seq., and to enhance the user-friendliness and transparency of the website.

PERD reports some preliminary observations of the website to facilitate further improvements towards complying with requirements of West Virginia Code §30-1 et seq., and to enhance the user-friendliness and transparency of the website.

Recommendations

1. *The Board should include all information required by §30-1-12(e) on its new website to ensure statutory compliance.*
2. *The Board should include full complaint records that involved disciplinary action on its website to comply with Chapter 30's public access requirements.*

Appendix A

Transmittal Letter

WEST VIRGINIA LEGISLATURE

Performance Evaluation and Research Division

1900 Kanawha Blvd. East
Building 1, Room W-314
Charleston, WV 25305-0610
(304) 347-4890



John Sylvia
Director

September 18, 2024

Mitchell E. Woodrum, Commissioner
Division of Labor
1900 Kanawha Boulevard, East
State Capitol Complex - Building 3, Room 200
Charleston, WV 25305

Dear Commissioner Woodrum:

This is to transmit a draft copy of the Regulatory Board Review of the Contractor Licensing Board. This report is tentatively scheduled to be presented during the October interim meeting of the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by **Friday, September 20, 2024**. In addition, we need your written response by noon on **Thursday, September 26, 2024**, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by **Thursday, October 3, 2024** to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the Performance Evaluation and Research Division advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Enclosure

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the Contractor Licensing Board (Board) as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code*, as amended. The purpose of the Board, as established in West Virginia Code §30-42, is to enforce the West Virginia Contractor Licensing Act by protecting the public from unfair, unsafe, and unscrupulous bidding and construction practices.

Objectives

The objectives of this review are to determine if the Board should be continued, consolidated, or terminated, and if conditions warrant a change in the degree of regulations. In addition, this review is intended to assess the Board's compliance with the general provisions of Chapter 30, Article 1 of the *West Virginia Code*, the Board's enabling statute §30-42, and other applicable rules and laws.

Scope

The evaluation includes a review of the Board's internal controls, policies and procedures, annual reports, meeting minutes, complaint files, inspections, revenues, expenditures, and cash balances for fiscal years (FY) 2021-2024. PERD also reviewed continuing education requirements and verification, the Board's compliance with the general provisions of W. Va. Code §30-1-1 et seq. for regulatory boards and other applicable laws, and key features of the Board's website.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

PERD staff visited the Board's Charleston office on the Capitol Complex and met with its staff. Testimonial evidence was gathered through interviews to gain a better understanding of the Board's operating procedures. All testimonial evidence was confirmed in writing or corroborated by other sources of information.

In order to determine if the Board complies with the general provision of W. Va. Code §30-1-1 et seq., its enabling statute and rules, and other applicable laws, PERD collected and analyzed all complaint files, meeting minutes, annual reports, and budget information covering the last four complete fiscal years. PERD also reviewed board procedures for investigating and resolving complaints, and requested written testimony concerning the Board's continuing education procedures. PERD obtained additional information from the State Auditor's Office, Secretary of State's Office, and the State Treasurer's Office for corroborating purposes. Some information was also used as supporting evidence to determine the sufficiency and appropriateness of the overall evidence.

Further, PERD compared the Board's actual revenues to expected revenues to assess the risk of fraud, and to obtain reasonable assurance that revenue figures were sufficient and appropriate. Expected revenues were approximated by applying license fees to the number of licensees for the period of FY 2021 to 2024.

Expected revenues were higher than actual revenues; therefore, we concluded that the risk of fraud on the revenue side was reasonably low, would not affect the audit objectives, and actual revenues were sufficient and appropriate.

PERD also tested the Board's expenditures for FY 2021 to 2024 to assess the risk of fraud on the expenditure side. The test involved determining if required and expected expenditures were at least 90 percent of total expenditures. Required and expected expenditures are items such as salaries and benefits, travel reimbursement, board-member compensation, insurance, office rent, and utilities. PERD determined that during the scope of the review, required and expected expenses were between 92 and 99 percent of total expenditures. These percentages gave reasonable assurance that the risk of fraud on the expenditure side was relatively low, and was not significant enough to affect the audit objectives.

PERD's audit process frequently uses data from the State's central financial system known as the West Virginia Our Advanced Solution with Integrated Systems (OASIS). Therefore, it is necessary to determine the sufficiency and appropriateness of OASIS data. The Office of the Legislative Auditor tests OASIS data by reviewing the statewide single audit and the Division of Highways' financial audit annually. The Legislative Auditor's staff also requests and reviews on a quarterly basis any external or internal audit of OASIS. The Legislative Auditor's auditing staff continuously tests OASIS information through its numerous audits. Also, at the start of each audit, PERD asks audited agencies if they have encountered any issues of accuracy with OASIS data. Based on these actions, it is PERD's professional judgement that the information in OASIS is reasonably accurate for auditing purposes under the 2018 Government Auditing Standards (Yellowbook). However, in no manner should this statement be construed as a statement that 100 percent of the information in OASIS is accurate.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



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