

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 743

By: Snyder and Long (Lewis)
of the Senate

and

Paulk of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 1003, 1682, as amended by Section 2 of Enrolled House Bill No. 2075 of the 2nd Session of the 44th Oklahoma Legislature, 1689, as last amended by Section 6 of Enrolled House Bill No. 2075 of the 2nd Session of the 44th Oklahoma Legislature, 1850.2, as amended by Section 1, Chapter 137, O.S.L. 1993, and 1850.4, as amended by Section 2, Chapter 249, O.S.L. 1993, 1850.5, as amended by Section 7, Chapter 236, O.S.L. 1993 and 1850.8, as amended by Section 3, Chapter 249, O.S.L. 1993 (59 O.S. Supp. 1993, Sections 1850.2, 1850.4, 1850.5 and 1850.8), which relate to regulation of plumbing, electrical and mechanical contracting trades; amending Section 3, Chapter 282, O.S.L. 1993 (25 O.S. Supp. 1993, Section 307.1), which relates to teleconference meetings; amending Section 2, Chapter 272, O.S.L. 1992 (59 O.S. Supp. 1993, Section 15.1A), which relates to definitions used in the Oklahoma Accountancy Act; requiring Commissioner of Health establish process for voluntary review of project plans and specifications for certain purpose; requiring rule include certain provisions; clarifying language; adding definitions; creating Variance and Appeals Boards for certain purposes including reviewing and approving certain requests for using certain alternative materials or systems and for hearing appeals contesting interpretation of the state's plumbing installation code, electrical installation code and mechanical installation code; providing for approval of alternative material or system under certain conditions; requiring written application be submitted to State Commissioner of Health and be approved prior to use of alternative material or system; providing for certain fees; providing procedures for appeals; providing for membership, appointments, terms, qualifications, reimbursement, meetings and quorum of the Variance and Appeals Boards; deleting certain conflicting provision pertaining to Appeals Board; modifying powers and duties of the Committee of the Mechanical Examiners and the Department of Health relating to conducting certain investigations and examinations; extending period of renewal for certain licenses without necessity of examination; including Variance and Appeals Boards in certain exception to prohibition of teleconference

meetings by public bodies; modifying definition;
providing for codification; providing an effective date;
and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1002.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Commissioner of Health shall establish by rule a process for the formal review of the plans and specifications for a project prior to bid dates for the project to ensure that the project plans and specifications are in conformance with applicable plumbing, electrical and mechanical installation codes. The rule shall provide that the review shall be completed in a timely manner, not to exceed fourteen (14) calendar days from the date of the submission of a completed application for review which is accompanied by the review fee not to exceed Two Hundred Dollars (\$200.00) to be established by the rule. Upon completion of the review, the plans and specifications shall be returned to the applicant with documentation indicating either approval of plans and specifications which are in compliance with the applicable codes, or modifications which must be made to bring the plans and specifications into conformance. Submission of such plans and specifications for review by the Department shall be voluntary.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 1003, is amended to read as follows:

Section 1003. ~~When~~ As used in this act:

1. "Board" means the State Board of Health~~;~~;
2. "Commissioner" means the State Commissioner of Health~~;~~;
3. "Committee" means the State Committee of Plumbing Examiners appointed by the State ~~Commissioner~~ Board of Health~~;~~;
4. "Plumbing Hearing Board" means the State Plumbing Hearing Board ~~herein created. It consists~~ which shall consist of the State Commissioner of Health as chairman, and the members of the State Committee of Plumbing Examiners~~;~~;
5. "Apprentice~~,~~" or "plumber's apprentice~~,~~" means~~,~~ ~~and is hereby defined to be,~~ any person sixteen (16) years of age or over

who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing under the direct supervision of a licensed journeyman plumber or plumbing contractor~~;~~;

6. "Journeyman plumber" means~~, and is hereby defined to be,~~ any person other than a master plumber or plumbing contractor who engages in or works at the actual installation, alteration, repair and/or renovation of plumbing~~;~~;

7. "Master plumber" is a term used and defined under laws which ~~are herein~~ have been repealed. A person formerly known as a master plumber is henceforth to be known as a "plumbing contractor~~;~~" herein defined~~;~~;

8. "Plumbing contractor" means, and is hereby defined to be, any person skilled in the planning, superintending and practical installation of plumbing and is familiar with the laws, rules and regulations governing the same. This definition may be construed to mean any person who has qualified and is licensed under this act as a plumbing contractor, who may operate as an individual, a firm, partnership or corporation to engage in the business of plumbing, or the business of contracting to do, or furnish labor and/or labor and materials for, the installation, repair, maintenance or renovation of plumbing, according to the requirements of this act~~;~~;

9. "Plumbing" means, and includes~~;~~;

~~(a)~~ a. ~~All~~ all piping, fixtures, appurtenances and appliances for, and in connection with, a supply of water within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a water main or other source of supply~~;~~;

~~(b)~~ b. ~~All~~ all piping, fixtures, appurtenances and appliances for sanitary drainage or storm drainage facilities, including venting systems for such facilities, within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a public disposal system or other acceptable terminal~~;~~; and

~~(c)~~ c. ~~The~~ the installation, repair, maintenance and renovation of all piping, fixtures, appurtenances and appliances for a supply of water, or for the disposal of waste water, liquid waste, or sewage within or adjacent to any building, structure, or conveyance, on the premises and to the source of supply of water or point of disposal of wastes; and

10. "Variance and Appeals Board" means the Oklahoma State Plumbing Installation Code Variance and Appeals Board.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1021.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created the Oklahoma State Plumbing Installation Code Variance and Appeals Board. The Variance and Appeals Board shall hear testimony and shall review sufficient technical data submitted by an applicant to substantiate the proposed installation of any material, assembly or manufacturer-engineered components, equipment or system that is not specifically prescribed by an appropriate installation code, an industry consensus standard or fabricated or installed according to recognized and generally accepted good engineering practices, where no ordinance or regulation of a governmental subdivision applies. If it is determined that the evidence submitted is satisfactory proof of performance for the proposed installation, the Variance and Appeals Board shall approve such alternative, subject to the requirements of the appropriate installation code. Applications for the use of an alternative material or method of construction shall be submitted in writing to the State Commissioner of Health for approval prior to use. Applications shall be accompanied by a filing fee, not to exceed Fifty Dollars (\$50.00), as set by rule of the State Board of Health.

2. The Variance and Appeals Board shall also hear appeals from contractors, licensed by the Occupational Licensing Service of the State Department of Health, and any party who has an ownership interest in or is in responsible charge of the design of or work on the installation, who contest the Department's

interpretation of the state's model plumbing installation code as applied to a particular installation. Such appeals shall be based on a claim that:

- a. the true intent of the installation code has been incorrectly interpreted,
- b. the provisions of the code do not fully apply, or
- c. an equal or better form of installation is proposed.

Such appeals to the Variance and Appeals Board shall be made in writing to the State Commissioner of Health within fourteen (14) days after a code interpretation or receipt of written notice of the alleged code violation by the licensed contractor.

B. The Variance and Appeals Board shall consist of the State Commissioner of Health or his or her designated representative and the following members who, except for the State Fire Marshal or designee, shall be appointed by the Commissioner from a list of names submitted by the professional organizations of the professions represented on the Board and who shall serve at the pleasure of the Commissioner:

1. Two members shall be appointed from the State Committee of Plumbing Examiners; one shall be a contractor with five (5) years of experience and one shall be a journeyman with five (5) years of experience;

2. One member shall be a registered design professional who is a registered architect with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work;

3. One member shall be a registered design professional with at least ten (10) years of structural engineering or architectural experience, five (5) of which shall have been in responsible charge of work;

4. One member shall be a registered design professional with mechanical or plumbing engineering experience; provided, such member shall have at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work;

5. One member shall be a registered design professional with electrical engineering experience; provided, such member shall

have at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work; and

6. One member shall be the State Fire Marshal or a designee of the State Fire Marshal.

C. Members, except the Commissioner and State Fire Marshal, the Commissioner's and State Fire Marshal's designated representatives, and employees of the Department, shall be reimbursed for travel expenses pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes, from the revolving fund created pursuant to Section 1018 of Title 59 of the Oklahoma Statutes.

D. The Variance and Appeals Board shall meet after the Commissioner receives proper application for a variance, accompanied by the filing fee, or proper notice of an appeal, as provided in subsection A of this section.

E. The State Commissioner of Health, or the Commissioner's designated representative, shall serve as chair of the Variance and Appeals Board. A majority of the members of the Variance and Appeals Board shall constitute a quorum for the transaction of the business of the board.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1681.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Commissioner of Health shall establish by rule a process for the formal review of the plans and specifications for a project prior to bid dates for the project to ensure that the project plans and specifications are in conformance with applicable plumbing, electrical and mechanical installation codes. The rule shall provide that the review shall be completed in a timely manner, not to exceed fourteen (14) calendar days from the date of the submission of a completed application for review which is accompanied by the review fee not to exceed Two Hundred Dollars (\$200.00) to be established by the rule. Upon completion of the review, the plans and specifications shall be returned to the applicant with documentation indicating either approval of plans and specifications which are in compliance with the applicable

codes, or modifications which must be made to bring the plans and specifications into conformance. Submission of such plans and specifications for review by the Department shall be voluntary.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 1682, as amended by Section 2 of Enrolled House Bill No. 2075 of the 2nd Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1682. As used in the Electrical License Act:

1. "Board" means the State Board of Health;
2. "Commissioner" means the State Commissioner of Health;
3. "Committee" means the Committee of Electrical Examiners appointed by the State Board of Health;
4. "Department" means the State Department of Health;
5. "Electrical apprentice" means any person sixteen (16) years of age or older whose principal occupation is the learning of and assisting in the installation of electrical work under the direct supervision of a licensed journeyman electrician or electrical contractor;
6. "Journeyman electrician" means any person other than an electrical contractor who engages in the actual installation, alteration, repair or renovation of electrical facilities unless specifically exempted by the provisions of the Electrical License Act;
7. "Electrical contractor" means any person skilled in the planning, superintending and practical installation of electrical facilities who is familiar with the laws, rules and regulations governing such work. Electrical contractor also means any individual, firm, partnership, corporation or business performing skills of an electrical contractor or an electrician or the business of contracting, or furnishing labor or labor and materials for the installation, repair, maintenance or renovation of electrical facilities according to the provisions of the Electrical License Act;
8. "Electrical facilities" means all wiring, fixtures, appurtenances, and appliances for, and in connection with, a supply of electricity within or adjacent to any building,

structure or conveyance on the premises but not including the connection with a power supply meter or other power supply source; ~~and~~

9. "Category" means the classification by which licenses and electrical work may be limited. Such categories shall include but shall not be limited to installation, maintenance, repair, alteration, residential, oilfield, and commercial; and

10. "Variance and Appeals Board" means the Oklahoma State Electrical Installation Code Variance and Appeals Board.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 1689, as last amended by Section 6 of Enrolled House Bill No. 2075 of the 2nd Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1689. A. The Commissioner and the Committee shall act as the Electrical ~~Appeals and~~ Hearing Board and shall comply with the provisions of Article II of the Administrative Procedures Act, Section 309 et seq. of Title 75 of the Oklahoma Statutes.

B. The Electrical ~~Appeals and~~ Hearing Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any electrical contractor, journeyman electrician or electrical apprentice. The Board shall suspend or revoke any license or registration obtained by false or fraudulent representation. The Board shall also suspend or revoke any license or registration for any of the following:

1. Making a material misstatement in the application for a license or registration, or the renewal of a license or registration;

2. Loaning or illegally using a license;

3. Demonstrating incompetence to act as a journeyman electrician or electrical contractor;

4. Violating any provisions of the Electrical License Act, or any rule, regulation or order prescribed by the Commission or any ordinance or regulation for the installation of electrical facilities made or enacted by a city or town by authority of the Electrical License Act; or

5. Willfully failing to perform normal business obligations without justifiable cause.

C. Any person whose license or registration has been revoked by the Electrical Appeals and Hearing Board may apply for a new license one (1) year from the date of such revocation.

D. Notwithstanding any other provision of law, a political subdivision of this state that has adopted a nationally recognized electrical code and appointed an inspector pursuant to the provisions of Section 1693 or Section 1031 et seq. of this title for such work shall have jurisdiction over the interpretation of said code and the installation of all electrical work done in that political subdivision, subject to the provisions of the Oklahoma Inspectors Act, Section 1031 et seq. of this title. Provided, a state inspector may work directly with an electrical contractor, journeyman electrician or electrical apprentice in such a locality if a violation of the code creates an immediate threat to life or health.

E. In the case of a complaint about, investigation of, or inspection of any license, registration, permit or electrical work in any political subdivision of this state which has not adopted a nationally recognized electrical code and appointed an inspector pursuant to the provisions of Section 1693 or Section 1031 et seq. of this title for such work, the Commissioner of Health shall have jurisdiction over such matters.

F. 1. No individual, business, company, corporation, association or other entity subject to the provisions of Section 1680 et seq. of this title shall install, modify or alter electrical facilities in any incorporated area of this state which has not adopted a nationally recognized electrical code and appointed an inspector pursuant to the provisions of Section 1693 or Section 1031 et seq. of this title for such work without providing notice of such electrical work to the Commissioner of Health. A notice form for reproduction by an individual or entity required to make such notice shall be provided by the Commissioner of Health upon request.

2. Notice to the Commissioner of Health pursuant to this subsection shall not be required for electrical maintenance or replacement of existing electrical appliances or fixtures or of any petroleum refinery or its research facilities.

3. Enforcement of this subsection is authorized pursuant to Section 1680 et seq. of this title, or under authority granted to the Commissioner of Health.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1697 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created the Oklahoma State Electrical Installation Code Variance and Appeals Board. The Variance and Appeals Board shall hear testimony and shall review sufficient technical data submitted by an applicant to substantiate the proposed installation of any material, assembly or manufacturer-engineered components, equipment or system that is not specifically prescribed by an appropriate installation code, an industry consensus standard or fabricated or installed according to recognized and generally accepted good engineering practices, where no ordinance or regulation of a governmental subdivision applies. If it is determined that the evidence submitted is satisfactory proof of performance for the proposed installation, the Variance and Appeals Board shall approve such alternative, subject to the requirements of the appropriate installation code. Applications for the use of an alternative material or method of construction shall be submitted in writing to the State Commissioner of Health for approval prior to use. Applications shall be accompanied by a filing fee, not to exceed Fifty Dollars (\$50.00), as set by rule of the State Board of Health.

2. The Variance and Appeals Board shall also hear appeals from contractors, licensed by the Occupational Licensing Service of the State Department of Health, and any party who has an ownership interest in or is in responsible charge of the design of or work on the installation, who contest the Department's interpretation of the state's model electrical installation code

as applied to a particular installation. Such appeals shall be based on a claim that:

- a. the true intent of the installation code has been incorrectly interpreted,
- b. the provisions of the code do not fully apply, or
- c. an equal or better form of installation is proposed.

Such appeals to the Variance and Appeals Board shall be made in writing to the State Commissioner of Health within fourteen (14) days after a code interpretation or receipt of written notice of the alleged code violation by the licensed contractor.

B. The Variance and Appeals Board shall consist of the State Commissioner of Health or his or her designated representative and the following members who, except for the State Fire Marshal or designee, shall be appointed by the Commissioner from a list of names submitted by the professional organizations of the professions represented on the Board and who shall serve at the pleasure of the Commissioner:

1. Two members shall be appointed from the Committee of Electrical Examiners; one shall be a contractor with five (5) years of experience and one shall be a journeyman with five (5) years of experience;

2. One member shall be a registered design professional who is a registered architect with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work;

3. One member shall be a registered design professional with at least ten (10) years of structural engineering or architectural experience, five (5) of which shall have been in responsible charge of work;

4. One member shall be a registered design professional with mechanical or plumbing engineering experience; provided, such member shall have at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work;

5. One member shall be a registered design professional with electrical engineering experience; provided, such member shall

have at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work; and

6. One member shall be the State Fire Marshal or a designee of the State Fire Marshal.

C. Members, except the Commissioner and the State Fire Marshal and the Commissioner's and State Fire Marshal's designated representatives, and employees of the Department, shall be reimbursed for travel expenses pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes, from the revolving fund created pursuant to Section 1694 of Title 59 of the Oklahoma Statutes.

D. The Variance and Appeals Board shall meet after the Commissioner receives proper application for a variance, accompanied by the filing fee, or proper notice of an appeal, as provided in subsection A of this section.

E. The State Commissioner of Health, or the Commissioner's designated representative, shall serve as chair of the Variance and Appeals Board. A majority of the members of the Variance and Appeals Board shall constitute a quorum for the transaction of the business of the board.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 1850.2, as amended by Section 1, Chapter 137, O.S.L. 1992 (59 O.S. Supp. 1993, Section 1850.2), is amended to read as follows:

Section 1850.2 As used in the Mechanical Licensing Act:

1. "Air conditioning system" means the process of treating air by controlling its temperature, humidity, and cleanliness, to meet the requirements of a designated area;

2. "Board" means the State Board of Health;

3. "Committee" means the Committee of Mechanical Examiners;

4. "Department" means the Oklahoma State Department of Health;

5. "Gas piping" means and includes all natural gas piping within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a natural gas meter, regulator, or other source of supply;

6. "Heating systems" means and includes systems consisting of air heating appliances from which the heated air is distributed and shall include any accessory apparatus and equipment installed in connection therewith;

7. "Mechanical contractor" or "contractor" means any person engaged in the business of planning, contracting, supervising or furnishing labor or labor and materials for mechanical work;

8. "Mechanical journeyman" or "journeyman" means any person other than a contractor or apprentice who engages in mechanical work;

9. "Mechanical apprentice" or "apprentice" means any person sixteen (16) years of age or older whose principal occupation is learning mechanical work on the job under the direct supervision of a journeyman or contractor;

10. "Mechanical firm" means any corporation, partnership, association, proprietorship or other business entity which plans or engages, or offers to engage, in mechanical work for another within this state;

11. "Mechanical work" means the installation, maintenance, repair, or renovation, in whole or in part, of any heating system, cooling system, mechanical refrigeration system or ventilation system or any equipment or piping carrying chilled water, air for ventilation purposes, or natural gas, or the installation, maintenance, repair, or renovation of process piping used to carry any liquid, substance, or material, including steam and hot water used for space heating purposes not under the jurisdiction of the Department of Labor, provided that minor repairs to such systems are excluded;

12. "Refrigeration system" means the erection, installation, repairing and servicing of a system employing a fluid which normally is vaporized and liquefied in an air conditioning system, food preservation measure or manufacturing process; ~~and~~

13. "Sheet metal" means the erection, installation and repairing of all ferrous or nonferrous duct work and all other materials used in all air conditioning; and

14. "Variance and Appeals Board" means the Oklahoma State Mechanical Installation Code Variance and Appeals Board.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.3a of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Commissioner of Health shall establish by rule a process for the formal review of the plans and specifications for a project prior to bid dates for the project to ensure that the project plans and specifications are in conformance with applicable plumbing, electrical and mechanical installation codes. The rule shall provide that the review shall be completed in a timely manner, not to exceed fourteen (14) calendar days from the date of the submission of a completed application for review which is accompanied by the review fee not to exceed Two Hundred Dollars (\$200.00) to be established by the rule. Upon completion of the review, the plans and specifications shall be returned to the applicant with documentation indicating either approval of plans and specifications which are in compliance with the applicable codes, or modifications which must be made to bring the plans and specifications into conformance. Submission of such plans and specifications for review by the Department shall be voluntary.

SECTION 10. AMENDATORY 59 O.S. 1991, Section 1850.4, as amended by Section 2, Chapter 249, O.S.L. 1993 (59 O.S. Supp. 1993, Section 1850.4), is amended to read as follows:

Section 1850.4 A. There is hereby established the Committee of Mechanical Examiners which shall consist of five (5) members. All members shall be citizens of the United States and shall be residents of this state.

B. Four (4) members of the Committee shall be appointed by the Board.

1. One member of the Committee shall be a contractor;

2. One member of the Committee shall be a journeyman.

Such members shall have at least five (5) years' actual experience in mechanical work.

3. Two members shall be lay members.

C. 1. In making the initial appointments, the Board shall designate two members for terms expiring in 1988 and two members for terms expiring in 1989. The Board shall make the initial appointments to the Committee by December 1, 1987. Thereafter, the members shall hold office for terms of two (2) years or until their successors have been appointed and qualified.

2. Beginning July 1, 1993, as the terms of these members expire, the positions of the contractor member and the lay member whose term first expires shall be filled by appointment by the Speaker of the House of Representatives and the positions of the journeyman member and the lay member whose term next expires shall be filled by appointment by the President Pro Tempore of the Senate, pursuant to subsection E of this section.

D. 1. The fifth member of the Committee shall be an employee of the Department who shall be appointed by the Commissioner of Health.

2. Beginning July 1, 1993, such member shall be replaced by a lay member appointed pursuant to subsection E of this section.

E. Beginning July 1, 1993, members of the Committee shall be appointed as follows:

1. Two members shall be appointed by the President Pro Tempore of the Senate and shall be mechanical journeymen with five (5) years' actual experience in mechanical work as journeymen;

2. Two members shall be appointed by the Speaker of the House of Representatives and shall be mechanical contractors with five (5) years' actual experience in mechanical work as contractors;
and

3. One member shall be a lay member appointed by the Commissioner of Health.

F. Members appointed pursuant to subsection E of this section shall hold office for terms of two (2) years and until their successors have been appointed and qualified. Any vacancy on the Committee shall be filled for the unexpired term within thirty (30) days in the manner in which that position was originally filled. Members may be removed for misconduct, incompetency or neglect of duty.

G. A majority of the Committee shall constitute a quorum for the transaction of business, and the Committee shall elect a chairman from its number. Each member shall receive travel expenses in accordance with the provisions of the State Travel Reimbursement Act. The Committee shall meet at least quarterly to conduct examinations, and special meetings may be called by the chairman or the Commissioner of Health.

H. The Committee shall:

1. Assist and advise the Board on all matters pertaining to the formation of rules and regulations pursuant to the provisions of the Mechanical Licensing Act;

2. Assist and advise the Department on the examinations for applicants for licenses as a mechanical contractor or journeyman and on all matters relating to the licensing of mechanical contractors and mechanical journeymen and the registering of mechanical apprentices; and

~~3. Conduct investigations into the qualifications of applicants for licensure and registration at the request of the Department;~~

~~4. Conduct investigations and proceedings, at the request of the Department, for alleged violations of the Mechanical Licensing Act;~~

~~5. Develop and administer the examinations for applicants for licenses as a mechanical contractor or journeyman;~~

~~6. Assist and advise the Board or Department in such other matters as is requested thereby; and~~

~~7. Notwithstanding any other section of law, authorize the Commissioner to contract with the State Board of Vocational and Technical Education or other entities for facilities for testing applicants, provided that the integrity of the testing is maintained and adequate notice is given to persons interested in taking the exam at that location.~~

SECTION 11. AMENDATORY 59 O.S. 1991, Section 1850.5, as amended by Section 7, Chapter 236, O.S.L. 1993 (59 O.S. Supp. 1993, Section 1850.5), is amended to read as follows:

Section 1850.5 The Department shall have the power and duty to:

1. Issue, renew, suspend, revoke, modify or deny licenses to engage in mechanical work pursuant to the Mechanical Licensing Act;
2. Register apprentices;
3. Enter upon public and private property for the purpose of inspecting workers' licenses and mechanical work for compliance with the provisions of the Mechanical Licensing Act and of the rules and regulations of the Board promulgated thereto;
4. Employ personnel to conduct investigations and inspections;
5. Enforce the standards and rules and regulations promulgated pursuant to the Mechanical Licensing Act;
6. Reprimand or place on probation, or both, any holder of a license or registration pursuant to the Mechanical Licensing Act;
7. Investigate complaints and hold hearings;
8. Initiate disciplinary proceedings, request prosecution of and initiate injunctive proceedings against any person who violates any of the provisions of this act or any rule promulgated pursuant to this act;
9. Establish and levy administrative fines against any person who violates any of the provisions of this act or any rule promulgated pursuant to this act; ~~and~~
10. Conduct investigations into the qualifications of applicants for licensure and registration on the request of the Department;
11. Develop and administer the examinations approved by the Committee of Mechanical Examiners for applicants for licenses as a mechanical contractor or journeyman; and
12. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of the Mechanical Licensing Act and the rules and regulations of the Board promulgated thereto.

SECTION 12. AMENDATORY 59 O.S. 1991, Section 1850.8, as amended by Section 3, Chapter 249, O.S.L. 1993 (59 O.S. Supp. 1993, Section 1850.8), is amended to read as follows:

Section 1850.8 A. Except as authorized by the provisions of subsection B of this section, the Department shall issue a license as a mechanical journeyman or mechanical contractor to any person who:

1. Has been certified by the Committee as having successfully passed the appropriate examination; and

2. Has paid the license fee and has otherwise complied with the provisions of the Mechanical Licensing Act. The license fees shall be annually as follows:

- a. mechanical contractor Fifty Dollars (\$50.00),
- b. mechanical journeyman Twenty-five Dollars (\$25.00),
and
- c. apprentice registration Ten Dollars (\$10.00).

B. The Department shall license without examination any person who can demonstrate to the Committee that such person has been actually engaged in mechanical work for at least one (1) year during the five (5) years preceding January 1, 1988. This license shall be issued at the same level of competency and for the same category of mechanical work in which the person was previously occupied.

C. All licenses shall be nontransferable. No license shall be issued for longer than one (1) year and all licenses shall expire on June 30 of each year. Licenses may be renewed upon application and payment of the required fees and payment of any penalty for late renewal, as shall be established by the Board. Licenses, issued without state examination, that have not been renewed by ~~December 31~~ June 30 of the year following expiration, shall not be renewed until the applicant passes the appropriate examination. Any person issued a mechanical license pursuant to subsection B of this section which expired June 30, 1993, and was not renewed by December 31, 1993, may renew the license without examination through July 30, 1994. Persons who are licensed under this act may have their license placed on inactive status by

paying the annual renewal fee and eliminating the bonding and insurance requirements. No late fee shall be charged to renew a license which expired while the applicant was in military service if application is made within one (1) year of discharge from the military service.

D. The Department is authorized to establish, upon approval by the Board, and issue, subject to the provisions of the Mechanical Licensing Act, limited licenses in each area of mechanical work based on the experience, ability, examination scores and the education of the applicant. The limited licenses shall authorize the licensee to engage in only those activities and within the limits specified in the license.

E. No mechanical licenses shall be issued pursuant to subsection B of this section after July 1, 1993.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.16 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created the Oklahoma State Mechanical Installation Code Variance and Appeals Board. The Variance and Appeals Board shall hear testimony and shall review sufficient technical data submitted by an applicant to substantiate the proposed installation of any material, assembly or manufacturer-engineered components, equipment or system that is not specifically prescribed by an appropriate installation code, an industry consensus standard or fabricated or installed according to recognized and generally accepted good engineering practices, where no ordinance or regulation of a governmental subdivision applies. If it is determined that the evidence submitted is satisfactory proof of performance for the proposed installation, the Variance and Appeals Board shall approve such alternative, subject to the requirements of the appropriate installation code. Applications for the use of an alternative material or method of construction shall be submitted in writing to the State Commissioner of Health for approval prior to use. Applications

shall be accompanied by a filing fee, not to exceed Fifty Dollars (\$50.00), as set by rule of the State Board of Health.

2. The Variance and Appeals Board shall also hear appeals from contractors, licensed by the Occupational Licensing Service of the State Department of Health, and any person who has ownership interest in or is in responsible charge of the design of or work on the installation, who contest the Department's interpretation of the state's model mechanical installation code as applied to a particular installation. Such appeals shall be based on a claim that:

- a. the true intent of the installation code has been incorrectly interpreted,
- b. the provisions of the code do not fully apply, or
- c. an equal or better form of installation is proposed.

Such appeals to the Variance and Appeals Board shall be made in writing to the State Commissioner of Health within fourteen (14) days after a code interpretation or receipt of written notice of the alleged code violation by the licensed contractor.

B. The Variance and Appeals Board shall consist of the State Commissioner of Health or his or her designated representative and the following members who, except for the State Fire Marshal or designee, shall be appointed by the Commissioner from a list of names submitted by the professional organizations of the professions represented on the Board and who shall serve at the pleasure of the Commissioner:

1. Two members shall be appointed from the Committee of Mechanical Examiners; one shall be a contractor with five (5) years of experience and one shall be a journeyman with five (5) years of experience;

2. One member shall be a registered design professional who is a registered architect with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work;

3. One member shall be a registered design professional with at least ten (10) years of structural engineering or architectural

experience, five (5) of which shall have been in responsible charge of work;

4. One member shall be a registered design professional with mechanical or plumbing engineering experience; provided, such member shall have at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work;

5. One member shall be a registered design professional with electrical engineering experience; provided, such member shall have at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work; and

6. One member shall be the State Fire Marshal or a designee of the State Fire Marshal.

C. Members, except the Commissioner and the State Fire Marshal, the Commissioner's and State Fire Marshal's designated representatives, and employees of the Department, shall be reimbursed for travel expenses pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes, from the revolving fund created pursuant to Section 1850.13 of Title 59 of the Oklahoma Statutes.

D. The Variance and Appeals Board shall meet after the Commissioner receives proper application for a variance, accompanied by the filing fee, or proper notice of an appeal, as provided in subsection A of this section.

E. The State Commissioner of Health, or the Commissioner's designated representative, shall serve as chair of the Variance and Appeals Board. A majority of the members of the Variance and Appeals Board shall constitute a quorum for the transaction of the business of the board.

SECTION 14. AMENDATORY Section 3, Chapter 282, O.S.L. 1993 (25 O.S. Supp. 1993, Section 307.1), is amended to read as follows:

Section 307.1 A. No public body shall hold meetings by teleconference except:

1. The Variance and Appeals Boards created in Sections 3, 7 and 13 of this act;

2. Oklahoma Futures; and

~~2.~~ 3. The Oklahoma State Regents for Higher Education.

B. No public body authorized to hold meetings by teleconference shall conduct an executive session by teleconference.

SECTION 15. AMENDATORY Section 2, Chapter 272, O.S.L. 1992 (59 O.S. Supp. 1993, Section 15.1A), is amended to read as follows:

Section 15.1A As used in ~~this act~~ the Oklahoma Accountancy Act:

1. "Accountancy" means the profession or practice of accounting;
2. "Applicant" means an individual or entity which has made application to the Board for a certificate, license, or permit and said application has not been approved;
3. "Attestation" means a written communication that expresses a conclusion about the reliability of a written assertion that is the responsibility of another party;
4. "Audit" can only be performed by an individual or entity who is registered with the Board and holding a valid permit issued pursuant to the Oklahoma Accountancy Act and means a systematic investigation or appraisal of information, procedures, or operations performed in accordance with generally accepted auditing standards in the United States, for the purpose of determining conformity with established criteria and communicating the results to interested parties;
5. "Board" means the Oklahoma Accountancy Board;
6. "Candidate" means an individual who has been qualified and approved by the Board to take an examination for a certificate or license;
7. "Certificate" means the Oklahoma document issued by the Board to a candidate upon successful completion of the certified public accountant examination designating the holder as a certified public accountant pursuant to the laws of Oklahoma. "Certificate" shall also mean the Oklahoma document issued by reciprocity to an individual who has previously been certified in another jurisdiction;

8. "Certified public accountant" means any person who has received a certificate from the Board;

9. "Client" means the individual or entity which retains a registrant to perform professional services;

10. "Compilation" when used with reference to financial statements, means presenting information in the form of financial statements which is the representation of management or owners without undertaking to express any assurance on the statements;

11. "CPA" or "C.P.A." means certified public accountant;

12. "Designated manager" means the individual domiciled in Oklahoma and appointed by the firm partners or shareholders to be responsible for the administration of the office;

13. "Entity" means an organization whether organized for profit or not, corporation, partnership, or governmental agency;

14. "Examination" means the written test administered, supervised, and graded by or at the direction of the Board which is required for a certificate as a certified public accountant or a license as a public accountant;

15. "Executive director" means the chief administrative officer of the Board;

16. "Financial statements" means a written statement and related footnotes purporting to show actual or anticipated financial position, the results of operations, cash flow, or changes in financial position which relate to a specific period of time, on the basis of generally accepted accounting principles. The term "financial statements" also includes specific elements, accounts, or items of such statements, but does not include incidental financial data included in management advisory services, reports to support recommendations to a client nor does it include tax returns and supporting schedules;

17. "Firm" means an entity which is either a sole proprietorship, partnership, or professional corporation including individual partners or shareholders which is engaged in accountancy;

18. "Holding out" means any representation by an individual that he or she holds a certificate or license and a valid permit,

or by an entity that it holds a valid permit. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate or license and valid permit in connection with the services or products offered;

19. "Individual" means a human being;

20. "License" means the Oklahoma document issued by the Board to a candidate upon successful completion of the public accountant examination designating the holder as a public accountant pursuant to the laws of Oklahoma. "License" shall also mean the Oklahoma document issued by the Board by reciprocity to a public accountant who has previously been licensed by examination in another jurisdiction;

21. "Management advisory services", "management consulting services", or "management services" (hereinafter collectively referred to as "MAS") means the function of providing advice and/or technical assistance, performed in accordance with standards for MAS engagements and MAS consultations such as those issued by the American Institute of Certified Public Accountants, where the primary purpose is to help the client improve the use of its capabilities and resources to achieve its objectives including but not limited to:

- a. counseling management in analysis, planning, organizing, operating, and controlling functions,
- b. conducting special studies, preparing recommendations, proposing plans and programs, and providing advice and technical assistance in their implementation,
- c. reviewing and suggesting improvement of policies, procedures, systems, methods, and organization relationships, and
- d. introducing new ideas, concepts, and methods to management.

MAS shall not include recommendations and comments prepared as a direct result of observations made while performing an audit, review, or compilation of financial statements or while providing tax services, including tax consultations;

22. "MAS engagement" means that form of MAS in which an analytical approach and process is applied in a study or project. MAS engagement constitutes more than an incidental effort devoted to some combination of activities relating to the determination of client objectives, fact finding, opportunity or problem definition, evaluation of alternatives, formulation of proposed action, communication of results, implementation, and follow-up;

23. "MAS consultation" means that form of MAS based primarily on existing personal knowledge about the client, the circumstances, the technical matters involved, and the mutual intent of the parties. MAS consultation may include but is not limited to advice or information given by a registrant in a short time frame wherein information is received through verbal discussions with the client and is accepted by the registrant as represented. The response of the registrant may be definitive when existing personal knowledge is deemed adequate; otherwise it may be qualified, in which case limitations are stated. A qualified response often reflects cost, time, scope, or other limitations imposed by the specific circumstances of the client;

24. "PA" or "P.A." means public accountant;

25. "Partnership" means a contractual relationship based upon a written, oral, or implied agreement, between two or more individuals who combine their resources and activities in a joint enterprise and share in varying degrees and by specific agreement in the management and in the profits or losses. A partnership may be general or limited as those terms are defined by the laws of this state;

26. "Permit" means the written authority granted annually by the Board to individuals or firms to practice public accounting in Oklahoma which is issued pursuant to the Oklahoma Accountancy Act;

27. a. "Practice of public accounting" refers to the activities of a registrant in reference to accountancy.

~~a. a registrant~~ An individual or firm shall be deemed to be engaged in the practice of public accounting ~~when performed by a certified public accountant or~~

~~public accountant if the registrant performs the following:~~

~~(1) if the individual or firm holds himself or itself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting and auditing, taxation and Management Advisory Services and qualified and ready to render professional services therein as a certified public accountant or public accountant, and performs the following:~~

~~(2) (1) maintains an office for the transaction of business as a certified public accountant or public accountant,~~

~~(3) (2) offers to prospective clients to perform or who does perform on behalf of clients professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records or an attestation concerning any other written assertion,~~

~~(4) (3) prepares or certifies for clients reports on audits or investigations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports which are to be used for publication or for the purpose of obtaining credit, or for filing with a court of law or with any governmental agency, or for any other purpose,~~

~~(5) (4) generally or incidentally to the work described herein, renders professional services to clients in any or all matters relating to accounting procedure and to the~~

- recording, presentation, or certification of financial information or data,
- ~~(6)~~ (5) keeps books, or prepares trial balances, financial statements, or reports, all as a part of bookkeeping services for clients,
- ~~(7)~~ (6) prepares or signs as the tax preparer, tax returns for clients, consults with clients on tax matters, conducts studies for clients on tax matters and prepares reports for clients on tax matters,
- ~~(8)~~ (7) prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans, or
- ~~(9)~~ (8) provides management advisory services to clients~~†.~~

b. ~~an~~ An individual or firm not holding a certificate ~~or~~ license or permit shall not be deemed to be engaged in the practice of public accounting if the individual or firm does not hold ~~himself or herself~~ itself out, solicit, or advertise for clients using the certified public accountant or public accountant designation and engages only in the following services:

- (1) keeps books, or prepares trial balances, financial statements, or reports, provided such instruments do not use the terms "audit", "audited", "review" or "reviewed" or are not exhibited as having been prepared by a certified public accountant or public accountant,
- (2) prepares or signs as the tax preparer, tax returns for clients, consults with clients on tax matters, conducts studies for clients on tax matters and prepares reports for clients on tax matters,

(3) prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans, or

(4) provides management advisory services to clients~~†~~.

c. ~~a~~ A person is not holding himself or herself out, soliciting or advertising for clients within the meaning of this section solely by reason of displaying a CPA certificate or a PA license in the office, identifying himself or herself as a CPA or PA on letterhead or business cards, or identifying himself or herself as a CPA or PA. However, the designation of CPA or PA on such letterheads, business cards, public signs, advertisements, publications directed to clients or potential clients, or financial or tax documents of a client constitutes the practice of public accounting and requires a permit;

28. "Professional corporation" means a corporation organized pursuant to the laws of Oklahoma;

29. "Professional services" means any services performed or offered to be performed by a permit holder for a client in the course of the practice of public accounting;

30. "Public accountant" means any individual who has received a license from the Board;

31. "Quality review" means a review performed pursuant to a set of quality review rules established by the Board of one or more aspects of the professional work of an individual or firm holding a valid permit by an individual who holds the same type of permit as the individual or firm being reviewed but who is not affiliated with the individual or firm being reviewed. The term peer review is encompassed in the broader term quality review;

32. "Registrant" means a CPA, PA, or firm composed of certified public accountants or public accountants or combination

of both currently registered with the Board pursuant to the authority of the Oklahoma Accountancy Act;

33. "Report", when used with reference to financial statements, or specified elements, accounts or items of a financial statement, means an opinion or other form of language that states or implies assurance as to the reliability of any financial statements, or specified elements, accounts or items of a financial statement, and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. This definition is not intended to include a report on financial statements prepared by a person not holding a certificate or license. However, such report shall not refer to "audit", "audited", "review" or "reviewed", nor use the language "in accordance with standards established by the American Institute of Certified Public Accountants" or successor of said entity;

34. "Representation" means any oral or written communication including but not limited to the use of title or legends on letterheads, business cards, office doors, advertisements, and listings conveying the fact that an individual or entity holds a certificate, license or permit; and

35. "Review", when used with reference to financial statements, means a registrant performing inquiry and analytical procedures that provide the registrant with a reasonable basis for expressing limited assurance that there are no material

modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or if applicable, with another comprehensive basis of accounting.

SECTION 16. This act shall become effective July 1, 1994.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-2607

JY