

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1997)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1079

By: Mass

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to professions and occupations;
9 enacting the State Licensing for General Contractors
10 Act; providing short title; stating certain duties of
11 the State Board of Health relating to such act;
12 prohibiting certain rules; defining terms; creating
13 the Examination Commission for General Contractors;
14 providing for membership, appointment, terms,
15 qualifications, vacancies, removal, service,
16 reimbursement, meetings, officers and quorum count;
17 requiring the State Board of Health to keep certain
18 records and account for certain funds; requiring the
19 deposit of certain funds in the General Contractors
20 Revolving Fund; stating certain duties of the
21 Commission; requiring the Board to keep a register of
22 all applicants; specifying information to be kept;
23 providing for prima facie evidence of certain facts;
24 specifying roster as public record; providing for
25 costs; requiring certain report; providing for powers
26 and duties of the Board; providing for powers and
27 duties of the Commission; providing requirements and
28 qualification for licensure; requiring certain fees;
29 specifying licenses; requiring the Commission to
30 conduct certain examinations; stating purposes;
31 authorizing the issuance of certain certificates of
32 licensure under certain conditions; delineating
examinees; authorizing certain reexaminations upon
payment of certain fees; requiring the submission of
new application under certain circumstances;
providing for the expiration of certificates of
licensure; providing for renewals and fees and
procedures related thereto; requiring certain
notification by the Commission; providing for certain
late payments; providing for certain disciplinary
actions and procedures; authorizing any person to
prefer certain charges, and providing procedures
related thereto; requiring the Board to promulgate
certain disciplinary rules; requiring the Board to
provide a system of recordkeeping for disciplinary
actions; specifying records; providing for certain
reissuance under certain conditions; providing for
rights of the general contractor; limiting
professional acts of licensee which are not regulated
under this act; providing jurisdiction pursuant to
other occupational licenses; prohibiting relief from
other laws or codes; requiring compliance with act by
certain date; prohibiting certain acts; prohibiting
certain persons from being held criminally liable
under certain circumstances; authorizing certain
restraining orders and injunction relief under

1 certain conditions, and providing procedures related
2 thereto; authorizing the district court to have
3 certain jurisdiction; requiring certain architects
4 and engineers to notify bidders of certain
5 information; providing for reciprocity; creating the
6 General Contractors Revolving Fund, and providing
7 procedures related thereto; providing for
8 codification; providing an effective date; and
9 declaring an emergency.

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

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1160 of Title 59, unless there
13 is created a duplication in numbering, reads as follows:

14 This act shall be known and may be cited as the "State Licensing
15 for General Contractors Act".

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1161 of Title 59, unless there
18 is created a duplication in numbering, reads as follows:

19 The State Board of Health, in pursuance of its general power of
20 supervision over the interests of the health and life of the
21 citizens of this state, is hereby authorized, empowered and
22 directed, through the Commissioner of Health, to make, prescribe,
23 enforce, amend and repeal rules governing the examination and
24 licensing of persons desiring or intending to engage in the business
25 trade of contracting, the establishment and levying of
26 administrative fines, the initiation of disciplinary proceedings,
27 the requesting of prosecution of and initiation of injunctive
28 proceedings against any person who violates any of the provisions of
29 the State Licensing for General Contractors Act or any rule
30 promulgated pursuant to this act, and to establish requirements for
31 the issuance of a license as a general contractor. Provided
32 however, the rules shall not be inconsistent with the terms and
conditions provided for in the State Licensing for General
Contractors Act.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1162 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the State Licensing for General Contractors Act:

5 1. "Board" means the State Board of Health;

6 2. "Building contractor" includes private, public, commercial,
7 industrial and residential buildings of all types;

8 3. "Commission" means the Examination Commission for General
9 Contractors;

10 4. "Commissioner" means the Commissioner of Health;

11 5. "Contractor" includes all prime and general contractors,
12 subcontractors, independent contractors and persons engaged in
13 contract labor who through negotiations or competitive bidding enter
14 into contracts to furnish labor, materials or both and the required
15 equipment to perform the contract for a fixed price and who in
16 pursuit of independent business undertake a job in whole or in part
17 retaining substantial control of the method and manner of
18 accomplishing the desired result, and means any person, firm, joint
19 venture, partnership, copartnership, association, corporation, or
20 other organization engaged in the primary business of the
21 construction, alteration, repairing, dismantling, or demolition of
22 roads, bridges, viaducts, sewers, water and gas mains, streets,
23 disposal plants, water filters, tanks, towers, airports, buildings,
24 dams, levees, canals, railways and rail facilities, oil and gas
25 wells, water wells, pipelines, refineries, industrial or processing
26 plants, chemical plants, power plants, electric or telephone or any
27 other type of energy or message transmission lines or equipment, or
28 any other type of construction excluding family farm operations.

29 The term contractor shall not include the state or any agency,
30 institution, or political subdivision of the state or any duly
31 constituted authority of a political subdivision; and

1 6. "Residential contractor" includes any general contractor
2 constructing only residences.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1163 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 There is hereby created until July 1, 2005, in accordance with
7 the Oklahoma Sunset Law, the Examination Commission for General
8 Contractors. The Commission shall be composed of five (5) members
9 appointed by the State Board of Health for staggered terms. The
10 State Board of Health shall select members only from lists of names
11 provided by the contracting industries of this state. After the
12 initial appointments, the terms shall each be for five (5) years.
13 Each of the members shall be a general contractor; one shall have as
14 the larger part of the member's business the construction of
15 buildings, two shall have as the larger part of their business the
16 construction of residences, and two shall be holders of unlimited
17 general contractor's license. Members shall serve until the
18 expiration of their respective terms and until their successors are
19 appointed and qualified. Vacancies occurring during a term shall be
20 filled by appointment of the Board for the remainder of the
21 unexpired term. The Board may remove any member of the Commission
22 for misconduct, incompetency, or neglect of duty. No Commission
23 member shall serve more than two complete consecutive terms. Board
24 members shall be reimbursed for expenses incurred in the performance
25 of their official duties in accordance with the State Travel
26 Reimbursement Act.

27 SECTION 5. NEW LAW A new section of law to be codified
28 in the Oklahoma Statutes as Section 1164 of Title 59, unless there
29 is created a duplication in numbering, reads as follows:

30 A. The initial meeting of the Commission shall be at the call
31 of the Board. At the meeting a chair and vice-chair shall be
32 elected from and by the membership of the Commission. Meetings

1 shall be held at least four times each year at the call of the
2 chair. At the first meeting each year, the officers shall be
3 elected. Three members of the Commission shall constitute a quorum.

4 B. The Board shall keep a record of the proceedings of the
5 Commission and shall receive and account for all monies derived from
6 the operation of the State Licensing for General Contractors Act.
7 The funds required for the operation of the Commission shall be
8 deposited in the General Contractors Revolving Fund.

9 C. Duties of the Commission shall include, but not be limited
10 to, serving the Commissioner in an advisory capacity, assisting in
11 formulating rules pursuant to the State Licensing for General
12 Contractors Act, and assisting and advising the Board on the
13 examination of applicants for licenses as contractors, in accordance
14 with such rules and the terms and conditions as provided in this
15 act.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1165 of Title 59, unless there
18 is created a duplication in numbering, reads as follows:

19 The Board shall keep a record of the proceedings of the
20 Commission and a register of all applicants for license showing for
21 each the date of application, name, qualifications, place of
22 business, place of residence, and whether license was granted or
23 refused. The books and register of the Commission shall be prima
24 facie evidence of all matters recorded therein. A roster showing
25 the names and places of business and of residence of all licensed
26 general contractors shall be prepared by the Commission during the
27 month of March of each year. The roster shall be printed by the
28 Commission out of the General Contractors Revolving Fund of the
29 Board with copies being made available to contractors and members of
30 the public in accordance with the Oklahoma Open Records Act.

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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1166 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Board shall have the power and duty to:

5 1. Promulgate rules for the implementation of the State
6 Licensing for General Contractors Act; and

7 2. Provide for personnel for the physical and technical
8 issuance, renewal, suspension, revocation, modification, or denial
9 of licenses to engage in contractor work and provide for
10 investigations of licensees pursuant to the State Licensing for
11 General Contractors Act.

12 B. The Commission, with the assistance of staff provided for by
13 the Board, shall have the power and duty to:

14 1. Enter upon public and private property for the purpose of
15 inspecting licenses and contractor work for compliance with the
16 provisions of the act and the rules of the Board promulgated
17 thereto;

18 2. Provide for examinations of applicants;

19 3. Provide for investigations and inspections;

20 4. Enforce the rules promulgated pursuant to the act;

21 5. Investigate complaints and provide for the holding of
22 hearings in accordance with the Administrative Procedures Act;

23 6. Initiate disciplinary proceedings, requests of prosecution
24 of and initiation of injunctive proceedings against any person who
25 violates any of the provisions of the act or any rule promulgated
26 pursuant to the act;

27 7. Levy administrative fines, not to exceed One Thousand
28 Dollars (\$1,000.00) for each violation, against any person who
29 violates any of the provisions of the act or any rule promulgated
30 pursuant to the act;

31 8. Conduct investigations into the qualifications of applicants
32 for licensure; and

1 9. Exercise all incidental powers as necessary and proper to
2 implement and enforce the provisions of the act and the rules of the
3 Board promulgated thereto.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1167 of Title 59, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Anyone seeking to be licensed as a general contractor in
8 this state shall file an application for an examination on a form
9 provided by the Commission, at least thirty (30) days before any
10 regular or special meeting of the Commission accompanied by an
11 examination fee and a license fee in amounts set by the State
12 Department of Health. No person contracting for service and labor
13 of a value less than Twenty Thousand Dollars (\$20,000.00) shall be
14 required to hold a contractors license pursuant to this act. Before
15 being entitled to an examination an applicant must show to the
16 satisfaction of the Commission from the application and proofs
17 furnished that the applicant is possessed of a good character and is
18 otherwise qualified as to competency, ability, integrity, and
19 financial responsibility, and that the applicant has not committed
20 or done any act, which, if committed or done by any licensed
21 contractor would be grounds under the provisions set forth in the
22 State Licensing for General Contractors Act for the suspension or
23 revocation of contractor's license, or that the applicant has not
24 been found guilty of violating the Home Repair Fraud Act or
25 committed or done any act involving dishonesty, fraud, or deceit, or
26 that the applicant has never been refused a license as a general
27 contractor or had such license revoked, either in this state or in
28 another state, for reasons that should preclude the granting of the
29 license applied for, and that the applicant has never been convicted
30 of a felony involving moral turpitude, relating to building or
31 contracting, or involving embezzlement or misappropriation of funds
32 or property entrusted to the applicant.

1 B. The Commission shall conduct an examination, either oral or
2 written, of all applicants for licensure to ascertain the ability of
3 the applicant to make a practical application of the applicant's
4 knowledge of the profession of contracting, under the classification
5 contained in the application, and to ascertain the qualifications of
6 the applicant in reading plans and specifications, knowledge of
7 estimating costs, construction, ethics and other similar matters
8 pertaining to the contracting business and knowledge of the
9 applicant as to the responsibilities of a contractor to the public
10 and of the requirements of the laws of this state relating to
11 contractors, construction and liens. If the results of the
12 examination of the applicant shall be satisfactory to the
13 Commission, then the Commission shall issue to the applicant a
14 certificate to engage as a general contractor in this state, as
15 provided in the certificate.

16 C. If an applicant is an individual, examination may be taken
17 by the applicant's personal appearance for examination, or by the
18 appearance for examination of one or more of the applicant's
19 responsible managing employees, and if a copartnership or
20 corporation, or any other combination or organization, by the
21 examination of one or more of the responsible managing officers or
22 members of the personnel of the applicant, and if the person so
23 examined shall cease to be connected with the applicant, then in
24 such event the license shall remain in full force and effect for a
25 period of thirty (30) days thereafter and then be canceled, but the
26 applicant shall then be entitled to a reexamination, all pursuant to
27 the rules to be promulgated by the Board. Provided, that the holder
28 of such license shall not bid on or undertake any additional
29 contracts from the time such examined employee shall cease to be
30 connected with the applicant until the applicant's license is
31 reinstated as provided in the State Licensing for General
32 Contractors Act.

1 D. Anyone failing to pass this examination may be reexamined at
2 any regular meeting of the Commission upon payment of an examination
3 fee of Three Hundred Dollars (\$300.00). Anyone requesting to take
4 the examination a third or subsequent time shall submit a new
5 application with the appropriate examination and license fees.

6 E. A certificate of license shall expire on the thirty-first
7 day of December following its issuance or renewal and shall become
8 invalid sixty (60) days from that date unless renewed, subject to
9 the approval of the Commission. Renewals may be effected any time
10 during the month of January without reexamination, by the payment of
11 a fee to the Commission. The amount of the renewal fee shall be set
12 by the State Department of Health. No later than November 30 of
13 each year, the Commission shall mail written notice of the amount of
14 the renewal fees for the upcoming year to the last address of record
15 for each general contractor licensed pursuant to the State Licensing
16 for General Contractors Act. Renewal applications shall be
17 accompanied by evidence of continued financial responsibility
18 satisfactory to the Commission. Renewal applications received by
19 the Commission after January shall be accompanied by a late payment
20 of Ten Dollars (\$10.00) for each month or part after January. After
21 a lapse of two (2) years no renewal shall be effected and the
22 applicant shall fulfill all requirements of a new applicant as set
23 forth in this section.

24 SECTION 9. NEW LAW A new section of law to be codified
25 in the Oklahoma Statutes as Section 1168 of Title 59, unless there
26 is created a duplication in numbering, reads as follows:

27 A. The Board, upon recommendation of the Commission, shall have
28 the power to revoke the certificate of license of any general
29 contractor licensed pursuant to this act who is found guilty of any
30 fraud or deceit in obtaining a license, or gross negligence,
31 incompetency or misconduct in the practice of the profession, or
32 willful violation of any provisions of the State Licensing of

1 General Contractors Act. Any person may prefer charges of such
2 fraud, deceit, negligence or misconduct against any general
3 contractor licensed pursuant to the State Licensing of General
4 Contractors Act. The charges shall be in writing and sworn to by
5 the complainant and submitted to the Commission. The charges,
6 unless dismissed without hearing by the Commission as unfounded or
7 trivial, shall be heard and determined by the Commission in
8 accordance with the provisions of the Administrative Procedures Act.

9 B. The Board shall adopt rules consistent with the provisions
10 of the State Licensing of General Contractors Act, governing the
11 suspension and revocation of licenses.

12 C. The Board shall establish and maintain a system whereby
13 detailed records are kept regarding complaints against each
14 licensee. This record shall include, for each licensee, the date
15 and nature of each complaint, investigatory action taken by the
16 Commission, any findings by the Commission, and the disposition of
17 the matter.

18 D. The Board may reissue a license to any person, firm or
19 corporation whose license has been revoked, provided three or more
20 members of the Commission vote in favor of such reissuance and
21 recommend such action to the Board.

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1169 of Title 59, unless there
24 is created a duplication in numbering, reads as follows:

25 No person shall be required to hold a license under this act
26 prior to January 1, 2001. The issuance of a certificate of license
27 or limited license by the Commission shall be evidence that the
28 person, firm, or corporation named therein is entitled to all the
29 rights and privileges of a licensed or limited licensed general
30 contractor while the license remains unrevoked or unexpired. A
31 licensed general contractor holding a license which qualifies the
32 licensee for work as described in the State Licensing for General

1 Contractors Act shall be authorized to perform the work without any
2 additional occupational license notwithstanding the provisions of
3 any other occupational licensing statute. A license issued by any
4 other occupational licensing Board having jurisdiction over any work
5 described in the State Licensing for General Contractors Act shall
6 qualify such licensee to perform the work for which the license
7 qualifies the licensee without obtaining the license from the
8 Commission. Nothing contained herein shall operate to relieve any
9 general contractor from the necessity of compliance with other
10 provisions of the law requiring building permits and construction in
11 accordance with appropriate provisions of the B.O.C.A. Code.

12 SECTION 11. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1170 of Title 59, unless there
14 is created a duplication in numbering, reads as follows:

15 Beginning January 1, 2001, any person, firm, or corporation not
16 being duly authorized who shall contract for or bid upon the
17 construction of any of the projects or works without having first
18 complied with the provisions hereof, or who shall attempt to
19 practice general contracting in the state, except as provided for in
20 the State Licensing for General Contractors Act, and any person,
21 firm, or corporation presenting or attempting to file as the
22 person's own the licensed certificate of another or who shall give
23 false or forged evidence of any kind to the Commission or to any
24 member thereof in maintaining a certificate of license or who
25 falsely shall impersonate another or who shall use an expired or
26 revoked certificate of license, and any architect or engineer who
27 recommends to any project owner the award of a contract to anyone
28 not properly licensed under the State Licensing for General
29 Contractors Act, shall be deemed guilty of a misdemeanor. No
30 architect or engineer shall be guilty of a violation of this section
31 if the person's recommendation to award a contract is made in
32 reliance upon current written information received by the person

1 from the Board which information erroneously indicates that the
2 contractor being recommended for contract award is properly
3 licensed.

4 When it appears to the Board that any person, firm or
5 corporation is violating any of the provisions of the State
6 Licensing for General Contractors Act or of the rules of the Board
7 promulgated under the State Licensing for General Contractors Act,
8 the Commissioner may apply to the district court for a restraining
9 order and injunction to restrain the violation, and the district
10 courts have jurisdiction to grant the requested relief, irrespective
11 of whether or not criminal prosecution has been instituted or
12 administrative sanctions imposed by reason of the violation.

13 SECTION 12. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1171 of Title 59, unless there
15 is created a duplication in numbering, reads as follows:

16 All architects and engineers preparing plans and specification
17 for work to be contracted in this state shall include in their
18 invitations to bidders and in their specifications a copy of the
19 State Licensing for General Contractors Act or such portions thereof
20 as are deemed necessary to convey to the invited bidder, whether the
21 bidder be a resident or nonresident of this state and whether a
22 license has been issued to the person or not, the information that
23 it will be necessary for the person to show evidence of a license
24 before the person's bid is considered.

25 SECTION 13. NEW LAW A new section of law to be codified
26 in the Oklahoma Statutes as Section 1172 of Title 59, unless there
27 is created a duplication in numbering, reads as follows:

28 To the extent that other states which provide for the licensing
29 of general contractors provide for similar action, the Board in its
30 discretion may grant licenses of the same or equivalent
31 classification to general contractors licensed by other states,
32 without written examination upon satisfactory proof furnished to the

1 Commission that the qualifications of the applicants are equal to
2 the qualifications of holders of similar licenses in this state and
3 upon payment of the required fee.

4 SECTION 14. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1173 of Title 59, unless there
6 is created a duplication in numbering, reads as follows:

7 There is hereby created in the State Treasury a revolving fund
8 for the State Board of Health to be designated the "General
9 Contractors Revolving Fund". The fund shall be a continuing fund,
10 not subject to fiscal year limitations, and shall consist of all
11 monies received by the Board from fees and administrative fines
12 pursuant to the State Licensing for General Contractors Act. All
13 monies accruing to the credit of said fund are hereby appropriated
14 and may be budgeted and expended by the Commission for the purpose
15 of implementing the provisions of the State Licensing for General
16 Contractors Act. Expenditures from said fund shall be made upon
17 warrants issued by the State Treasurer against claims filed as
18 prescribed by law with the Director of State Finance for approval
19 and payment.

20 SECTION 15. This act shall become effective July 1, 1999.

21 SECTION 16. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby
23 declared to exist, by reason whereof this act shall take effect and
24 be in full force from and after its passage and approval.

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