

HOUSE OF REPRESENTATIVES
Monday, February 15, 1999

Committee Substitute for House Bill No. 1079

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1079 -- By MASS and FIELDS.

An Act relating to professions and occupations; enacting the State Licensing for General Contractors Act; providing short title; stating certain duties of the State Board of Health relating to such act; prohibiting certain rules; defining terms; creating the Examination Commission for General Contractors; providing for membership, appointment, terms, qualifications, vacancies, removal, service, reimbursement, meetings, officers and quorum count; requiring the State Board of Health to keep certain records and account for certain funds; requiring the deposit of certain funds in the General Contractors Revolving Fund; stating certain duties of the Commission; requiring the Board to keep a register of all applicants; specifying information to be kept; providing for prima facie evidence of certain facts; specifying roster as public record; providing for costs; requiring certain report; providing for powers and duties of the Board; providing for powers and duties of the Commission; providing requirements and qualification for licensure; requiring certain fees; specifying licenses; requiring the Commission to conduct certain examinations; stating purposes; authorizing the issuance of certain certificates of 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 certain conditions, and providing procedures related thereto; authorizing the district court to have certain jurisdiction; requiring certain architects and engineers to notify bidders of certain information; providing for reciprocity; creating the General Contractors Revolving Fund, and providing procedures related thereto; 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 1160 of Title 59, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

As used in the State Licensing for General Contractors Act:

1. "Board" means the State Board of Health;
2. "Building contractor" includes private, public, commercial, industrial and residential buildings of all types;
3. "Commission" means the Examination Commission for General Contractors;
4. "Commissioner" means the Commissioner of Health;
5. "Contractor" includes all prime and general contractors, subcontractors, independent contractors and persons engaged in contract labor who through negotiations or competitive bidding enter into contracts to furnish labor, materials or both and the required equipment to perform the contract for a fixed price and who in pursuit of independent business undertake a job in whole or in part retaining substantial control of the method and manner of accomplishing the desired result, and means any person, firm, joint venture, partnership, copartnership, association, corporation, or other organization engaged in the primary business of the construction, alteration, repairing, dismantling,

or demolition of roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks, towers, airports, buildings, dams, levees, canals, railways and rail facilities, oil and gas wells, water wells, pipelines, refineries, industrial or processing plants, chemical plants, power plants, electric or telephone or any other type of energy or message transmission lines or equipment, or any other type of construction excluding family farm operations. The term contractor shall not include the state or any agency, institution, or political subdivision of the state or any duly constituted authority of a political subdivision; and

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

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

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

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

A. The initial meeting of the Commission shall be at the call of the Board. At the meeting a chair and vice-chair shall be elected from and by the membership of the Commission. Meetings shall be held at least four times each year at the call of the chair. At the first meeting each year, the officers shall be elected. Three members of the Commission shall constitute a quorum.

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

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

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

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

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

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

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

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

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

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

2. Provide for examinations of applicants;

3. Provide for investigations and inspections;

4. Enforce the rules promulgated pursuant to the act;

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

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

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

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

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

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

A. Anyone seeking to be licensed as a general contractor in this state shall file an application for an examination on a form provided by the Commission, at least thirty (30) days before any

regular or special meeting of the Commission accompanied by an examination fee and a license fee in amounts set by the State Department of Health. No person contracting for service and labor of a value less than Twenty Thousand Dollars (\$20,000.00) shall be required to hold a contractors license pursuant to this act. Before being entitled to an examination an applicant must show to the satisfaction of the Commission from the application and proofs furnished that the applicant is possessed of a good character and is otherwise qualified as to competency, ability, integrity, and financial responsibility, and that the applicant has not committed or done any act, which, if committed or done by any licensed contractor would be grounds under the provisions set forth in the State Licensing for General Contractors Act for the suspension or revocation of contractor's license, or that the applicant has not been found guilty of violating the Home Repair Fraud Act or committed or done any act involving dishonesty, fraud, or deceit, or that the applicant has never been refused a license as a general contractor or had such license revoked, either in this state or in another state, for reasons that should preclude the granting of the license applied for, and that the applicant has never been convicted of a felony involving moral turpitude, relating to building or contracting, or involving embezzlement or misappropriation of funds or property entrusted to the applicant.

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

C. If an applicant is an individual, examination may be taken by the applicant's personal appearance for examination, or by the appearance for examination of one or more of the applicant's

responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the personnel of the applicant, and if the person so examined shall cease to be connected with the applicant, then in such event the license shall remain in full force and effect for a period of thirty (30) days thereafter and then be canceled, but the applicant shall then be entitled to a reexamination, all pursuant to the rules to be promulgated by the Board. Provided, that the holder of such license shall not bid on or undertake any additional contracts from the time such examined employee shall cease to be connected with the applicant until the applicant's license is reinstated as provided in the State Licensing for General Contractors Act.

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

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

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

A. The Board, upon recommendation of the Commission, shall have the power to revoke the certificate of license of any general contractor licensed pursuant to this act who is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency or misconduct in the practice of the profession, or willful violation of any provisions of the State Licensing of General Contractors Act. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any general contractor licensed pursuant to the State Licensing of General Contractors Act. The charges shall be in writing and sworn to by the complainant and submitted to the Commission. The charges, unless dismissed without hearing by the Commission as unfounded or trivial, shall be heard and determined by the Commission in accordance with the provisions of the Administrative Procedures Act.

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

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

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

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

No person shall be required to hold a license under this act prior to January 1, 2001. The issuance of a certificate of license or limited license by the Commission shall be evidence that the person, firm, or corporation named therein is entitled to all the rights and privileges of a licensed or limited licensed general contractor while the license remains unrevoked or unexpired. A licensed general contractor holding a license which qualifies the licensee for work as described in the State Licensing for General Contractors Act shall be authorized to perform the work without any additional

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

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

Beginning January 1, 2001, any person, firm, or corporation not being duly authorized who shall contract for or bid upon the construction of any of the projects or works without having first complied with the provisions hereof, or who shall attempt to practice general contracting in the state, except as provided for in the State Licensing for General Contractors Act, and any person, firm, or corporation presenting or attempting to file as the person's own the licensed certificate of another or who shall give false or forged evidence of any kind to the Commission or to any member thereof in maintaining a certificate of license or who falsely shall impersonate another or who shall use an expired or revoked certificate of license, and any architect or engineer who recommends to any project owner the award of a contract to anyone not properly licensed under the State Licensing for General Contractors Act, shall be deemed guilty of a misdemeanor. No architect or engineer shall be guilty of a violation of this section if the person's recommendation to award a contract is made in reliance upon current written information received by the person from the Board which information erroneously indicates that the contractor being recommended for contract award is properly licensed.

When it appears to the Board that any person, firm or corporation is violating any of the provisions of the State Licensing for General Contractors Act or of the rules of the Board promulgated under the State Licensing for General Contractors Act, the Commissioner may apply to the district court for a restraining order and injunction to restrain the violation, and the district

courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation.

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

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

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

To the extent that other states which provide for the licensing of general contractors provide for similar action, the Board in its discretion may grant licenses of the same or equivalent classification to general contractors licensed by other states, without written examination upon satisfactory proof furnished to the Commission that the qualifications of the applicants are equal to the qualifications of holders of similar licenses in this state and upon payment of the required fee.

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

There is hereby created in the State Treasury a revolving fund for the State Board of Health to be designated the "General Contractors Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Board from fees and administrative fines pursuant to the State Licensing for General Contractors Act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Commission for the purpose of implementing the provisions of the State Licensing for General Contractors Act. Expenditures from said fund shall be made upon warrants issued by the State

Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

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

SECTION 16. 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.

COMMITTEE REPORT BY: COMMITTEE ON COMMERCE, INDUSTRY AND LABOR, dated 2-15-99 -- DO PASS, As Coauthored.