

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2612

By: Liebmann

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 enacting the State Licensing for General Contractors
9 Act; providing short title; stating certain duties of
10 the Department of Labor relating to such act;
11 prohibiting certain rules; defining terms; creating
12 the Examination Commission for General Contractors;
13 providing for membership, appointment, terms,
14 qualifications, vacancies, removal, service,
15 reimbursement, meetings, officers and quorum count;
16 requiring the Department of Labor to keep certain
17 records and account for certain funds; requiring the
18 deposit of certain funds in the General Contractors
19 Revolving Fund; stating certain duties of the
20 Commission; requiring the Department to keep a
21 register of all applicants; specifying information to
22 be kept; providing for prima facie evidence of
23 certain facts; specifying roster as public record;
24 providing for costs; requiring certain report;
providing for powers and duties of the Department;
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

1 charges, and providing procedures related thereto;
2 requiring the Department to promulgate certain
3 disciplinary rules; requiring the Department to
4 provide a system of recordkeeping for disciplinary
5 actions; specifying records; providing for certain
6 reissuance under certain conditions; providing for
7 rights of the general contractor; limiting
8 professional acts of licensee which are not regulated
9 under this act; providing jurisdiction pursuant to
10 other occupational licenses; prohibiting relief from
11 other laws or codes; requiring compliance with act by
12 certain date; prohibiting certain acts; prohibiting
13 certain persons from being held criminally liable
14 under certain circumstances; authorizing certain
15 restraining orders and injunction relief under
16 certain conditions, and providing procedures related
17 thereto; authorizing the district court to have
18 certain jurisdiction; requiring certain architects
19 and engineers to notify bidders of certain
20 information; providing for reciprocity; creating the
21 General Contractors Revolving Fund, and providing
22 procedures related thereto; providing for
23 codification; providing an effective date; and
24 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:

1 The Department of Labor is hereby authorized, empowered and
2 directed, through the Commissioner of Labor, to make, prescribe,
3 enforce, amend and repeal rules governing the examination and
4 licensing of persons desiring or intending to engage in the business
5 trade of contracting, the establishment and levying of
6 administrative fines, the initiation of disciplinary proceedings,
7 the requesting of prosecution of and initiation of injunctive
8 proceedings against any person who violates any of the provisions of
9 the State Licensing for General Contractors Act or any rule
10 promulgated pursuant to this act, and to establish requirements for
11 the issuance of a license as a general contractor. Provided
12 however, the rules shall not be inconsistent with the terms and
13 conditions provided for in the State Licensing for General
14 Contractors Act.

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

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

19 1. "Building contractor" includes private, public, commercial,
20 industrial and residential buildings of all types;

21 2. "Commission" means the Examination Commission for General
22 Contractors;

23 3. "Commissioner" means the Commissioner of Labor;
24

1 4. "Contractor" includes all prime and general contractors,
2 subcontractors, independent contractors and persons engaged in
3 contract labor who through negotiations or competitive bidding enter
4 into contracts to furnish labor, materials or both and the required
5 equipment to perform the contract for a fixed price and who in
6 pursuit of independent business undertake a job in whole or in part
7 retaining substantial control of the method and manner of
8 accomplishing the desired result, and means any person, firm, joint
9 venture, partnership, copartnership, association, corporation, or
10 other organization engaged in the primary business of the
11 construction, alteration, repairing, dismantling, or demolition of
12 roads, bridges, viaducts, sewers, water and gas mains, streets,
13 disposal plants, water filters, tanks, towers, airports, buildings,
14 dams, levees, canals, railways and rail facilities, oil and gas
15 wells, water wells, pipelines, refineries, industrial or processing
16 plants, chemical plants, power plants, electric or telephone or any
17 other type of energy or message transmission lines or equipment, or
18 any other type of construction excluding family farm operations.
19 The term contractor shall not include the state or any agency,
20 institution, or political subdivision of the state or any duly
21 constituted authority of a political subdivision;

22 5. "Department" means the Department of Labor; and

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

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

4 There is hereby created until July 1, 2015, in accordance with
5 the Oklahoma Sunset Law, the Examination Commission for General
6 Contractors. The Commission shall be composed of five (5) members
7 appointed by the Department of Labor for staggered terms. The
8 Department of Labor shall select members only from lists of names
9 provided by the contracting industries of this state. After the
10 initial appointments, the terms shall each be for five (5) years.
11 Each of the members shall be a general contractor; one shall have as
12 the larger part of the member's business the construction of
13 buildings, two shall have as the larger part of their business the
14 construction of residences, and two shall be holders of unlimited
15 general contractor's license. Members shall serve until the
16 expiration of their respective terms and until their successors are
17 appointed and qualified. Vacancies occurring during a term shall be
18 filled by appointment of the Department for the remainder of the
19 unexpired term. The Department may remove any member of the
20 Commission for misconduct, incompetency, or neglect of duty. No
21 Commission member shall serve more than two complete consecutive
22 terms. Department members shall be reimbursed for expenses incurred
23 in the performance of their official duties in accordance with the
24 State Travel Reimbursement Act.

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

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

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

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

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

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

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

17 A. The Department of Labor shall have the power and duty to:

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

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

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

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

7 2. Provide for examinations of applicants;

8 3. Provide for investigations and inspections;

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

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

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

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

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

22 9. Exercise all incidental powers as necessary and proper to
23 implement and enforce the provisions of the act and the rules of the
24 Department promulgated pursuant thereto.

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

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

1 another state, for reasons that should preclude the granting of the
2 license applied for, and that the applicant has never been convicted
3 of a felony involving moral turpitude, relating to building or
4 contracting, or involving embezzlement or misappropriation of funds
5 or property entrusted to the applicant.

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

21 C. If an applicant is an individual, examination may be taken
22 by the applicant's personal appearance for examination, or by the
23 appearance for examination of one or more of the applicant's
24 responsible managing employees, and if a copartnership or

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

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

19 E. A certificate of license shall expire on the thirty-first
20 day of December following its issuance or renewal and shall become
21 invalid sixty (60) days from that date unless renewed, subject to
22 the approval of the Commission. Renewals may be effected any time
23 during the month of January without reexamination, by the payment of
24 a fee to the Commission. The amount of the renewal fee shall be set

1 by the State Department of Labor. No later than November 30 of each
2 year, the Commission shall mail written notice of the amount of the
3 renewal fees for the upcoming year to the last address of record for
4 each general contractor licensed pursuant to the State Licensing for
5 General Contractors Act. Renewal applications shall be accompanied
6 by evidence of continued financial responsibility satisfactory to
7 the Commission. Renewal applications received by the Commission
8 after January shall be accompanied by a late payment of Ten Dollars
9 (\$10.00) for each month or part after January. After a lapse of two
10 (2) years no renewal shall be effected and the applicant shall
11 fulfill all requirements of a new applicant as set forth in this
12 section.

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

16 A. The Department of Labor, upon recommendation of the
17 Commission, shall have the power to revoke the certificate of
18 license of any general contractor licensed pursuant to this act who
19 is found guilty of any fraud or deceit in obtaining a license, or
20 gross negligence, incompetency or misconduct in the practice of the
21 profession, or willful violation of any provisions of the State
22 Licensing of General Contractors Act. Any person may prefer charges
23 of such fraud, deceit, negligence or misconduct against any general
24 contractor licensed pursuant to the State Licensing of General

1 Contractors Act. The charges shall be in writing and sworn to by
2 the complainant and submitted to the Commission. The charges,
3 unless dismissed without hearing by the Commission as unfounded or
4 trivial, shall be heard and determined by the Commission in
5 accordance with the provisions of the Administrative Procedures Act.

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

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

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

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

22 No person shall be required to hold a license under this act
23 prior to January 1, 2011. The issuance of a certificate of license
24 or limited license by the Commission shall be evidence that the

1 person, firm, or corporation named therein is entitled to all the
2 rights and privileges of a licensed or limited licensed general
3 contractor while the license remains unrevoked or unexpired. A
4 licensed general contractor holding a license which qualifies the
5 licensee for work as described in the State Licensing for General
6 Contractors Act shall be authorized to perform the work without any
7 additional occupational license notwithstanding the provisions of
8 any other occupational licensing statute. A license issued by any
9 other occupational licensing board having jurisdiction over any work
10 described in the State Licensing for General Contractors Act shall
11 qualify such licensee to perform the work for which the license
12 qualifies the licensee without obtaining the license from the
13 Commission. Nothing contained herein shall operate to relieve any
14 general contractor from the necessity of compliance with other
15 provisions of the law requiring building permits and construction in
16 accordance with appropriate provisions of the B.O.C.A. Code.

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

20 Beginning January 1, 2011, any person, firm, or corporation not
21 being duly authorized who shall contract for or bid upon the
22 construction of any of the projects or works without having first
23 complied with the provisions hereof, or who shall attempt to
24 practice general contracting in the state, except as provided for in

1 the State Licensing for General Contractors Act, and any person,
2 firm, or corporation presenting or attempting to file as the
3 person's own the licensed certificate of another or who shall give
4 false or forged evidence of any kind to the Commission or to any
5 member thereof in maintaining a certificate of license or who
6 falsely shall impersonate another or who shall use an expired or
7 revoked certificate of license, and any architect or engineer who
8 recommends to any project owner the award of a contract to anyone
9 not properly licensed under the State Licensing for General
10 Contractors Act, shall be deemed guilty of a misdemeanor. No
11 architect or engineer shall be guilty of a violation of this section
12 if the person's recommendation to award a contract is made in
13 reliance upon current written information received by the person
14 from the Department of Labor which information erroneously indicates
15 that the contractor being recommended for contract award is properly
16 licensed.

17 When it appears to the Department that any person, firm or
18 corporation is violating any of the provisions of the State
19 Licensing for General Contractors Act or of the rules of the
20 Department promulgated under the State Licensing for General
21 Contractors Act, the Commissioner may apply to the district court
22 for a restraining order and injunction to restrain the violation,
23 and the district courts have jurisdiction to grant the requested
24 relief, irrespective of whether or not criminal prosecution has been

1 instituted or administrative sanctions imposed by reason of the
2 violation.

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

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

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

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

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

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

19 SECTION 15. This act shall become effective July 1, 2010.

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

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