

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 1022

By: Newberry

4
5
6 AS INTRODUCED

7 An Act relating to the Construction Industries Board
8 Act; amending 59 O.S. 2011, Sections 1000.1, 1000.2,
9 1000.3, 1000.4, as amended by Section 272, Chapter
10 304, O.S.L. 2012, 1000.5, 1000.5a, 1000.5b, 1000.6
11 and 1000.9 (59 O.S. Supp. 2012, Section 1000.4),
12 which relate to the Construction Industries Board;
13 updating references; modifying language; deleting
14 language; modifying appointment and term of board
15 members; setting maximum term; expanding authority
16 for removal of members; setting terms for chair and
17 vice-chair of Board; requiring certain review and
18 approval of rules; directing certain report be
19 delivered to certain legislative members by certain
20 time; requiring certain accounting and review of
21 fine, penalties and fees by certain manner;
22 establishing Board as certain appeal board;
23 construing authority for appeals; allowing appeal to
24 certain district court; authorizing attorney fees;
requiring certain review and approval of fee changes;
requiring certain compliance for issuance of
temporary license; providing for Governor appointment
of administrator; stating responsibility of
administrator; authorizing Governor to set
administrator salary; modifying authority for
penalties for noncompliance with law or rule;
providing an effective date; and declaring an
emergency.

21
22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. AMENDATORY 59 O.S. 2011, Section 1000.1, is
24 amended to read as follows:

1 Section 1000.1. Sections ~~±~~ 1000.1 through ~~&~~ 1000.9 of this ~~act~~
2 title shall be known and may be cited as the "Construction
3 Industries Board Act".

4 SECTION 2. AMENDATORY 59 O.S. 2011, Section 1000.2, is
5 amended to read as follows:

6 Section 1000.2. A. The Construction Industries Board is hereby
7 created to continue until ~~July 1, 2013~~ July 1, 2016, in accordance
8 with the provisions of the Oklahoma Sunset Law. ~~Beginning January~~
9 ~~1, 2002, the~~ The Board shall regulate the plumbing, electrical and
10 mechanical trades, ~~and~~ the building and construction inspectors, and
11 the roofing contractors through the powers and duties set forth in
12 the Construction Industries Board Act and in the respective
13 licensing or registration acts for such trades, or as otherwise
14 provided by law.

15 B. 1. Beginning ~~July 1, 2008~~ July 1, 2013, the Board shall be
16 composed of seven (7) members appointed by the Governor with the
17 advice and consent of the Senate, as follows:

18 a. two members shall have at least ten (10) years'
19 experience in the plumbing trade, of which one shall
20 be a plumbing contractor and one shall be a journeyman
21 plumber,

22 b. two members shall have at least ten (10) years'
23 experience in the electrical trade, of which one shall
24

1 be an electrical contractor and one shall be a
2 journeyman electrician,

3 c. two members shall have at least ten (10) years'
4 experience in the mechanical trade, of which one shall
5 be a mechanical contractor and one shall be a
6 mechanical journeyman, and

7 d. one member shall have at least ten (10) years'
8 experience as a building and construction inspector
9 ~~and shall be from a list recommended by a statewide~~
10 ~~organization of municipal governments.~~

11 2. ~~Members~~ Beginning July 1, 2013, members shall be appointed
12 for staggered terms of ~~four (4) two (2) years; provided, of those,~~
13 as designated by the Governor. However, members initially appointed
14 and confirmed to the Board, ~~five members shall be appointed for two-~~
15 year terms, beginning September 1, 2001, and four members shall be
16 appointed for four-year terms, beginning September 1, 2001, as
17 designated by the Governor prior to July 1, 2013, may complete their
18 term of appointment. Members shall serve a lifetime maximum of four
19 two-year terms or eight (8) years which shall include any portion of
20 an unexpired term for which the member was appointed. Members shall
21 continue in office until a successor is appointed by the Governor.
22 No member appointed to a term prior to July 1, 2013, shall be
23 eligible for reappointment if the reappointment term would exceed
24 the lifetime maximum term. The Governor shall fill all vacancies

1 and unexpired terms in the same manner as the original appointment
2 of the member whose position is to be filled. ~~Such members~~ A member
3 may be removed by the Governor ~~for cause~~ at any time.

4 SECTION 3. AMENDATORY 59 O.S. 2011, Section 1000.3, is
5 amended to read as follows:

6 Section 1000.3. A. 1. The Construction Industries Board shall
7 organize ~~immediately after September 1, 2001, and annually~~
8 ~~thereafter~~ on September 1 each year, by electing from among its
9 members a chair and a vice-chair who shall each serve a one-year
10 term. The Board shall hold regularly scheduled meetings at least
11 once each quarter at a time and place determined by the Board and
12 may hold ~~such~~ special meetings, emergency meetings, or continued or
13 reconvened meetings as found by the Board to be necessary. A
14 majority of the members of the Board shall constitute a quorum for
15 the transaction of business.

16 2. The chair shall preside at meetings of the Board, set the
17 agenda, sign orders and other required documents, coordinate Board
18 activities, and perform such other duties as may be prescribed by
19 the Board or authorized by law.

20 3. The vice-chair shall perform the duties of the chair during
21 the absence or disability of the chair and shall perform such other
22 duties as may be prescribed by the Board or authorized by law.

23 4. The Construction Industries Administrator, ~~at the discretion~~
24 ~~of the Board~~ shall:

- 1 a. keep a record of all proceedings of the Board and
2 certify to actions of the Board,
3 b. oversee the receipt and deposit of all monies received
4 by the Board in the appropriate revolving funds,
5 c. submit, at the first regular meeting of the Board
6 after the end of each fiscal year, a full itemized
7 report of the receipts and disbursements for the prior
8 fiscal year, showing the amount of funds on hand, and
9 d. perform such other duties as are prescribed in ~~this~~
10 ~~act~~ the Construction Industries Board Act or as may be
11 prescribed by the Board or required by law.

12 B. The Board shall act in accordance with the provisions of the
13 Oklahoma Open Meeting Act, the Oklahoma Open Records Act, and the
14 Administrative Procedures Act.

15 C. All members of the Board and such employees as determined by
16 the Board shall be bonded as required by Sections 85.26 through
17 85.31 of Title 74 of the Oklahoma Statutes.

18 D. The liability of any member or employee of the Board acting
19 within the scope of Board duties or employment shall be governed by
20 The Governmental Tort Claims Act.

21 E. Members of the Board shall serve without compensation but
22 shall be reimbursed for all actual and necessary expenses incurred
23 in the performance of their duties in accordance with the State
24 Travel Reimbursement Act.

1 SECTION 4. AMENDATORY 59 O.S. 2011, Section 1000.4, as
2 amended by Section 272, Chapter 304, O.S.L. 2012 (59 O.S. Supp.
3 2012, Section 1000.4), is amended to read as follows:

4 Section 1000.4. A. 1. Pursuant to and in compliance with
5 Article I of the Administrative Procedures Act, the Construction
6 Industries Board shall have the power to adopt, amend, repeal, and
7 promulgate rules as may be necessary to regulate the plumbing,
8 electrical and mechanical trades, building and construction
9 inspectors and home inspectors. All rules promulgated by the Board
10 shall be reviewed and approved as provided in subsection F of
11 Section 308 of Title 75 of the Oklahoma Statutes.

12 2. The Board shall have the power to enforce the provisions of
13 the Construction Industries Board Act, The Plumbing License Law of
14 1955, the Oklahoma Inspectors Act, the Electrical License Act, the
15 Mechanical Licensing Act and, the Home Inspection Licensing Act, and
16 the Roofing Contractor Registration Act, as provided in the
17 respective acts.

18 ~~3. In addition to rules promulgated by the Construction~~
19 ~~Industries Board, rules promulgated by the State Board of Health~~
20 ~~prior to January 1, 2002, shall be the rules of the Construction~~
21 ~~Industries Board and shall continue in effect until such rules are~~
22 ~~amended or repealed by rules promulgated by the Construction~~
23 ~~Industries Board.~~

24

1 ~~4. Any order made or action taken prior to January 1, 2002, by~~
2 ~~the State Board of Health, the State Department of Health, or the~~
3 ~~State Commissioner of Health pursuant to the provisions of, or rules~~
4 ~~promulgated pursuant to, The Plumbing License Law of 1955, the~~
5 ~~Oklahoma Inspectors Act, the Electrical License Act, the Mechanical~~
6 ~~Licensing Act or, any order made or action taken prior to November~~
7 ~~1, 2008, pursuant to the Home Inspection Licensing Act, shall be~~
8 ~~considered valid and in effect unless rescinded by the Construction~~
9 ~~Industries Board.~~

10 B. The Board shall have the following powers:

11 1. Exercise all incidental powers and duties which are
12 necessary to effectuate the provisions of The Plumbing License Law
13 of 1955, the Oklahoma Inspectors Act, the Electrical License Act,
14 the Mechanical Licensing Act, and the Home Inspection Licensing Act;

15 2. Serve as a code variance and appeals board for the trades
16 and industries it regulates which do not have statutory code
17 variance and appeals boards;

18 3. Order or subpoena the attendance of witnesses, the
19 inspection of records and premises, and the production of relevant
20 books and papers for the investigation of matters that may come
21 before the Board;

22 4. Initiate disciplinary proceedings, request prosecution of
23 and initiate injunctive proceedings against any person who violates
24 any of the provisions of the Plumbing License Law of 1955, the

1 Oklahoma Inspectors Act, the Electrical License Act, the Mechanical
2 Licensing Act, and the Home Inspection Licensing Act;

3 5. Maintain an administrative staff ~~including, but not limited~~
4 ~~to, a Construction Industries Administrator whose appointment shall~~
5 ~~be made as provided in Section 1000.6 of this title;~~

6 6. Establish and levy administrative fines for violations of
7 law or rule in the trades and industries the Board licenses or
8 regulates or against any person or entity denying the Board or its
9 representatives access to a job site for purposes of enforcing any
10 of the provisions of the Plumbing License Law of 1955, the Oklahoma
11 Inspectors Act, the Electrical License Act, and the Mechanical
12 Licensing Act, or the Roofing Contractor Registration Act;

13 7. Direct such other expenditures as may be necessary in the
14 performance of its duties including, but not limited to,
15 expenditures for office space, equipment, furnishings and contracts
16 for legal services. All expenditures shall be made pursuant to the
17 Oklahoma Central Purchasing Act; and

18 8. Enforce provisions of the plumbing, electrical and
19 mechanical codes as adopted by the Oklahoma Uniform Building Code
20 Commission pursuant to the Oklahoma Uniform Building Code Commission
21 Act.

22 C. The Board shall account for all receipts and expenditures of
23 the monies of the Board, including annually preparing and publishing
24 a statement of receipts and expenditures of the Board for each

1 fiscal year. The Board's annual statement of receipts and
2 expenditures shall be audited by the State Auditor and Inspector or
3 an independent accounting firm in accordance with the provisions of
4 subsection B of Section 212 of Title 74 of the Oklahoma Statutes,
5 and the audit report shall be certified to the Governor of this
6 state to be true and correct, under oath, by the chair and vice-
7 chair of the Board. A copy of such certified report shall be
8 delivered to the chairs of the respective Senate and House of
9 Representatives Committees having authority over matters relating to
10 business, labor and construction industry licensing or regulation
11 not later than February 1 each year.

12 D. ~~All powers, duties, responsibilities, employees, records,~~
13 ~~and equipment of the State Board of Health, the State Department of~~
14 ~~Health, and the State Commissioner of Health relating exclusively to~~
15 ~~the regulation of the plumbing, electrical and mechanical trades,~~
16 ~~building and construction inspectors and home inspectors shall be~~
17 ~~placed under the authority of the Construction Industries Board. To~~
18 ~~the extent practicable, this shall include all computer hardware and~~
19 ~~software used in regulating industries listed in this section. The~~
20 ~~Construction Industries Board may contract for additional legal and~~
21 ~~administrative services as necessary, pursuant to the Oklahoma~~
22 ~~Central Purchasing Act. Employees shall be under the direction of~~
23 ~~the Construction Industries Administrator and the Construction~~
24 ~~Industries Board~~ The Board shall account for all fines, penalties

1 and fees assessed and collected pursuant to the Administrative
2 Procedures Act or any rule promulgated for regulation of any
3 industry and trade under the authority of the Construction
4 Industries Board. All fines, penalties and fees assessed for any
5 violation of law or rule shall be brought before the entire Board
6 for review not later than the last day of the monthly quarter in
7 which it was imposed. The Construction Industries Administrator
8 shall present to the Board a written recommendation on each case in
9 which an assessment of a fine, penalty or fee is brought before the
10 Board for review.

11 E. ~~The Construction Industries Board and the State Board of~~
12 ~~Health may enter into an agreement for the transfer of personnel~~
13 ~~into the unclassified service under the direction of the~~
14 ~~Construction Industries Board effective January 1, 2002, and for~~
15 ~~personnel exclusively related to the regulation of home inspectors,~~
16 ~~effective November 1, 2008. No employee shall be transferred into~~
17 ~~the unclassified service under the direction of the Construction~~
18 ~~Industries Board except on the freely given written consent of the~~
19 ~~employee. All classified employees under the Merit System of~~
20 ~~Personnel Administration who are not transferred into the~~
21 ~~unclassified service as provided shall retain the status in the~~
22 ~~class occupied by the employee on July 1, 2001, and for personnel~~
23 ~~exclusively related to the regulation of home inspectors, occupied~~
24 ~~by the employee on November 1, 2008, as allocated by the Office of~~

1 ~~Management and Enterprise Services. The salary of such an employee~~
2 ~~shall not be reduced as a result of such position allocation.~~
3 ~~Employees who are transferred as provided shall not be required to~~
4 ~~accept a lesser grade or salary than that in effect on July 1, 2001,~~
5 ~~and for personnel exclusively related to the regulation of home~~
6 ~~inspectors, than that in effect on November 1, 2008. All employees~~
7 ~~shall retain leave, sick and annual time earned, and any retirement~~
8 ~~and longevity benefits which have accrued during their tenure in the~~
9 ~~classified service. The transfer of personnel shall be coordinated~~
10 ~~with the Office of Management and Enterprise Services shall hear all~~
11 ~~appeals timely made from an administrative ruling relating to an~~
12 ~~industry and trade regulated by the Board; however, this appeal~~
13 ~~authority shall not be in addition to the appeal process authorized~~
14 ~~under the Administrative Procedures Act. Any ruling by the Board~~
15 ~~from an administrative hearing may be further appealed to the~~
16 ~~district court of Oklahoma County. The district court, upon~~
17 ~~conclusion of an appeal from a Board ruling, shall be authorized to~~
18 ~~award reasonable legal fees to the prevailing party.~~

19 SECTION 5. AMENDATORY 59 O.S. 2011, Section 1000.5, is
20 amended to read as follows:

21 Section 1000.5. A. The Construction Industries Board may
22 establish a system of fees by rule to be charged for the application
23 for licenses, for the issuance and renewal of licenses and permits,
24 for administration of examinations, for formal project reviews and

1 dishonored checks under the Board's authority. This provision is
2 subject to the following limitations:

3 1. No schedule of fees may be established or amended by the
4 Board except during such times as the Legislature is in session;
5 provided, the Board may establish or amend a schedule of fees at a
6 time when the Legislature is not in session if the fees or schedule
7 of fees has been specifically authorized by the Legislature pursuant
8 to paragraph 2 of this subsection. The Board must follow the
9 procedures required by Article I of the Administrative Procedures
10 Act for adoption of rules in establishing or amending any such
11 schedule of fees; and

12 2. The Board shall charge fees only within the following
13 ranges, except as may be otherwise specified in this section or
14 another provision of law.

15	For application for license	not to exceed \$30.00
16	For administration of license	
17	examinations:	not to exceed \$200.00
18	For license or permit issuance:	not to exceed \$300.00
19	For license or permit renewal:	not to exceed \$200.00
20	For formal project review for	
21	code conformance:	not to exceed \$200.00
22	For permit issuance for the use	
23	of alternative materials or	
24	methods:	not to exceed \$50.00

1 For dishonored checks: not to exceed amount
2 pursuant to the provisions
3 of Section 1121 of Title
4 47 of the Oklahoma
5 Statutes.

6 B. The Board shall base its schedule of fees upon the
7 reasonable costs of review and inspection services rendered in
8 connection with each license, permit, or review, but shall be within
9 the ranges specified in paragraph 2 of subsection A of this section,
10 except as otherwise specified in this section or provided by law.

11 The Board shall establish a system of training for all personnel who
12 render review and inspection services in order to assure uniform
13 statewide application of rules. The Board shall include the
14 reasonable costs associated with such training in the fees provided
15 for in this section.

16 C. The Board may exempt by rule any class of licensee or
17 permittee from the requirements of the fee schedule if the Board
18 determines that the creation of such a schedule for any such class
19 would create an unreasonable economic hardship.

20 D. ~~All statutory fees now in effect for the issuance and~~
21 ~~renewal of any license, permit, or review under the authority of the~~
22 ~~Construction Industries Board shall remain in effect until such time~~
23 ~~as the Board, by its rulemaking authority, acts to implement new fee~~
24 ~~schedules pursuant to the provisions of this section~~ fee changes

1 adopted by the Board shall be reviewed and approved as provided in
2 subsection F of Section 308 of Title 75 of the Oklahoma Statutes.

3 E. Unless otherwise provided, licenses and permits issued by
4 the Construction Industries Board shall be for a one-year period.

5 F. When, at the time of application or renewal of any license
6 or registration, payment is made by check for fees and the check is
7 not paid by the bank on which drawn for any reason, such license or
8 registration issued at that time shall be invalid. In all such
9 cases, the license or registration shall be subject to the license
10 or registration fees and penalties provided in subsection A of this
11 section and treated as though no attempt to apply for or renew a
12 license or registration had been made. The Board may charge and
13 collect from the licensee, registrant or other obligor of fees or
14 fines, a fee for each return by a bank or other depository
15 institution of a dishonored check, negotiable order of withdrawal or
16 share draft issued by the licensee, registrant or other obligor.

17 SECTION 6. AMENDATORY 59 O.S. 2011, Section 1000.5a, is
18 amended to read as follows:

19 Section 1000.5a. A. By Except as otherwise provided by law, by
20 way of reciprocity and without examination, an application for any
21 license issued by any committee or board under the authority of the
22 Construction Industries Board to engage in any work or trade in this
23 state subject to the Board's regulatory authority may be made to the
24 Board in writing on a form and in a manner prescribed by the Board.

1 The application shall be accompanied by a fee pursuant to Section
2 1000.5 of ~~Title 59 of the Oklahoma Statutes~~ this title, which shall
3 not be refundable under any circumstances. If the application is
4 disapproved by the Board, it shall be returned to the applicant with
5 the reason for its disapproval stated thereon.

6 B. The Board may, in its discretion, issue a license by
7 reciprocity to an applicant who is currently licensed to practice an
8 applicable trade in another state, country, territory, province or
9 city outside of the State of Oklahoma, upon a satisfactory showing
10 of the following:

11 1. That the requirements for licensure in the city, state,
12 country, territory or province in which the applicant is licensed
13 are deemed by the Board to be substantially the same or equivalent
14 to the requirements for obtaining an original license by examination
15 in force in this state at the date of such license;

16 2. That one (1) year immediately prior to the date of payment
17 of the required fee the applicant lawfully practiced an applicable
18 trade within and under the laws of city, state, country, territory
19 or province pursuant to a license issued thereby authorizing such
20 practice;

21 3. That no disciplinary matters are pending against the
22 applicant in any city, state, country, territory or province, and
23 relating to the applicable trade in which the applicant seeks
24 reciprocity;

1 4. That the license being reciprocated was obtained by
2 examination in the city, state, country, territory or province
3 wherein it was issued; and

4 5. That the applicant meets all other requirements of the
5 Construction Industries Board Act, including payment of the
6 applicable license fee.

7 SECTION 7. AMENDATORY 59 O.S. 2011, Section 1000.5b, is
8 amended to read as follows:

9 Section 1000.5b. A. The Construction Industries Board shall
10 offer examinations for temporary journeyman plumber, temporary
11 journeyman electrician, and temporary mechanical journeyman at least
12 once every thirty (30) days following a declaration by the Governor
13 of this state of a state of emergency in response to a disaster
14 involving the destruction of dwelling units and shall continue do so
15 for at least six (6) months following the declaration.

16 B. The temporary journeyman examinations shall be neither less
17 stringent nor more stringent than examinations for regular
18 journeyman licenses in this state.

19 C. No applicant for any temporary journeyman license shall be
20 allowed more than one opportunity to take the temporary journeyman
21 examination.

22 D. No temporary journeyman license shall be extended or
23 renewed. Upon expiration of the temporary journeyman license, the
24

1 license holder shall be ineligible to work as a journeyman in this
2 state unless qualified under other provisions of law.

3 E. The temporary license shall be distinguishable from the
4 regularly issued license.

5 F. The Construction Industries Board shall not issue a
6 temporary license until the person demonstrates compliance with the
7 requirements of Section 1701 et seq. of Title 68 of the Oklahoma
8 Statutes.

9 SECTION 8. AMENDATORY 59 O.S. 2011, Section 1000.6, is
10 amended to read as follows:

11 Section 1000.6. A. No later than January 1, ~~2002~~ 2013, and
12 thereafter, each time the position becomes vacant, the ~~Construction~~
13 ~~Industries Board~~ Governor shall ~~hire~~ appoint a Construction
14 Industries Administrator with the advice and consent of the Senate.
15 The ~~Construction Industries Board~~ Governor may, ~~upon a majority~~
16 ~~vote,~~ terminate the employment of the Construction Industries
17 Administrator at any time.

18 B. The Construction Industries Administrator shall direct and
19 assist the Construction Industries Board in the performance of its
20 duties and responsibilities and shall receive the Board's
21 recommendations and advice for administration. The Construction
22 Industries Administrator shall report directly to the ~~Board~~
23 Governor, who shall set his or her salary.

24

1 SECTION 9. AMENDATORY 59 O.S. 2011, Section 1000.9, is
2 amended to read as follows:

3 Section 1000.9. A. In addition to any other remedies provided
4 for by law, the Construction Industries Board, ~~pursuant to rules~~
5 ~~promulgated by the Board,~~ may issue a written order to any person or
6 entity whom the Board has reason to believe is ~~presently~~ in
7 violation of, or has violated, any law which the Board has authority
8 to enforce or the standards or rules promulgated by the ~~Construction~~
9 ~~Industries Board,~~ and to whom the Board has served, no less than
10 fifteen (15) days previously, a written notice of violation ~~of such~~
11 ~~standards or rules.~~ The fifteen-day notice period may be reduced
12 as, in the opinion of the Board, may be necessary to render the
13 order reasonably effectual.

14 B. The written order may require immediate compliance with ~~such~~
15 the law or the standards or rules ~~immediately~~ promulgated by the
16 Board, or within a specified time period, or both. The order may
17 also assess an administrative fine for each day or part of a day
18 that such person fails to comply with the order.

19 C. Any order issued pursuant to this section shall state with
20 specificity the nature of the violation. Any penalty assessed in
21 the order shall not exceed One Thousand Dollars (\$1,000.00) per day
22 of noncompliance with the order. In assessing such a penalty, the
23 Board shall consider the seriousness of the violation and any
24 efforts to comply with applicable requirements.

1 D. Any order issued pursuant to the provisions of this section
2 shall become a final order unless, no later than fifteen (15) days
3 after the order is served, the person or persons named therein
4 request an administrative hearing. Upon such request, the Board
5 shall promptly conduct a hearing. The Board ~~shall~~ may dismiss such
6 proceedings when compliance with the order is demonstrated and all
7 assessed fines, whether negotiated or not, are paid. A final order
8 following a hearing ~~may~~ determining a violation occurred shall
9 assess an administrative fine based upon consideration of the
10 evidence, ~~but not exceeding the amount stated in the written order~~
11 ~~provided for in subsections A through C of this section~~ and as
12 allowed by law or rule.

13 E. Such orders and hearings are subject to the Administrative
14 Procedures Act.

15 SECTION 10. This act shall become effective July 1, 2013.

16 SECTION 11. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

20

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