

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1776 Session of
2008

INTRODUCED BY BELFANTI, GERGELY, EACHUS, GOODMAN, SURRA, MUSTIO,
GIBBONS, BRENNAN, CARROLL, CASORIO, FABRIZIO, GRUCELA,
HARKINS, JOSEPHS, MAHONEY, MELIO, SANTONI, SIPTROTH, WALKO,
J. WHITE AND YUDICHAK, JANUARY 28, 2008

REFERRED TO COMMITTEE ON LABOR RELATIONS, JANUARY 28, 2008

AN ACT

1 Providing for the licensing of contractors; establishing the
2 Fair Contracting Board; providing for powers and duties of
3 the Fair Contracting Board; establishing the Fair Contracting
4 Fund; and making an appropriation.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 CHAPTER 1

8 PRELIMINARY PROVISIONS

9 Section 101. Short title.

10 This act shall be known and may be cited as the Fair
11 Contracting Act.

12 Section 102. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Board." The Fair Contracting Board established in section
17 301.

18 "Contractor." A person who, in any capacity for

1 compensation, other than as an employee of another, undertakes,
2 offers to undertake, purports to have the capacity to undertake
3 or submits a bid to construct, alter, repair, add to, subtract
4 from, improve, move, wreck or demolish any nonresidential
5 building, highway, road, railroad, structure or excavation
6 associated with a project, development or improvement, or to do
7 any part thereof, including the erection of scaffolding or other
8 structures or works in connection therewith. The term includes a
9 construction manager who performs management and counseling
10 services for a construction project for a professional fee.

11 "Department." The Department of Labor and Industry of the
12 Commonwealth.

13 "Electrical contractor." A person who engages in the
14 business of contracting to install, erect, repair or alter
15 electrical equipment for the generation, transmission or
16 utilization of electrical energy.

17 "General building contractor." A person whose principal
18 business is in connection with any structures built, being built
19 or to be built for the support, shelter and enclosure of
20 persons, animals or movable property of any kind, requiring in
21 the construction the use of more than two contractor
22 classifications, or a person who supervises the whole or any
23 part of such construction.

24 "General engineering contractor." A person whose principal
25 business is in connection with public or private works projects,
26 including, but not limited to, one or more of the following:

27 (1) Irrigation, drainage and water supply projects.

28 (2) Electrical generation projects.

29 (3) Swimming pools.

30 (4) Flood control.

- 1 (5) Harbors.
- 2 (6) Railroads.
- 3 (7) Highways.
- 4 (8) Tunnels.
- 5 (9) Airports and airways.
- 6 (10) Sewers and sewage disposal systems.
- 7 (11) Bridges.
- 8 (12) Inland waterways.
- 9 (13) Pipelines for transmission of petroleum and other
- 10 liquid or gaseous substances.
- 11 (14) Refineries.
- 12 (15) Chemical plants and other industrial plants
- 13 requiring a specialized engineering knowledge and skill.
- 14 (16) Piers and foundations.
- 15 (17) Structures or work incidental to any of the
- 16 projects listed.

17 "Heating, ventilating and cooling contractor." A person who
18 engages in the business of contracting to install, erect,
19 repair, service or alter heating, ventilating and air
20 conditioning equipment or systems to heat, cool or ventilate
21 residential and commercial structures.

22 "License." A license to engage in business in this
23 Commonwealth as a contractor in one of the classifications set
24 forth in this act.

25 "Person." An individual, firm, sole proprietorship,
26 partnership, corporation, association or other entity engaged in
27 the undertaking of construction projects or any combination
28 thereof.

29 "Piping contractor." A person whose principal business is
30 the installation of process, power plant, air, oil, gasoline,

1 chemical or other kinds of piping and boilers and pressure
2 vessels using joining methods of thread, weld, solvent weld or
3 mechanical methods.

4 "Plumbing contractor." A person whose principal business is
5 the installation, maintenance, extension and alteration of
6 piping, plumbing fixtures, plumbing appliances and plumbing
7 appurtenances, venting systems and public or private water
8 supply systems within or adjacent to any building or structure.
9 The term includes installation of gas piping, chilled water
10 piping in connection with refrigeration processes and comfort
11 cooling, hot water piping in connection with building heating
12 and piping for stand pipes.

13 "Secretary." The Secretary of Labor and Industry of the
14 Commonwealth.

15 "Specialty contractor." A person who engages in specialty
16 contracting services which do not substantially fall within the
17 scope of any contractor classification as set out under this
18 act.

19 "Subcontractor." A person who performs a portion of a
20 project undertaken by a principal or general contractor or
21 another subcontractor.

22 CHAPTER 3

23 BOARD

24 Section 301. Fair Contracting Board.

25 (a) Establishment.--The Fair Contracting Board is
26 established within the Department of Labor and Industry.

27 (b) Composition.--The board shall consist of the following:

28 (1) The secretary.

29 (2) The Director of the Bureau of Consumer Protection in
30 the Office of the Attorney General or his designee.

1 (3) An electrical contractor.

2 (4) A general building contractor.

3 (5) A general engineering contractor.

4 (6) A heating, ventilating and cooling contractor.

5 (7) A piping contractor.

6 (8) A plumbing contractor.

7 (9) A specialty contractor.

8 (10) Two public members.

9 (c) Qualifications.--The professional members of the board
10 shall have been actively engaged in this Commonwealth for at
11 least five years immediately preceding appointment in the area
12 of contracting for which the member is being appointed. Except
13 as set forth in subsection (g), professional members shall be
14 licensed under this act.

15 (d) Meeting.--The board shall meet within 30 days after the
16 appointment of its first members and shall set up operating
17 procedures and develop application forms for licensure.

18 (e) Appointment and term of membership.--

19 (1) The Governor shall appoint professional and public
20 members with the advice and consent of the Senate.

21 Professional and public members must be citizens of the
22 United States and residents of this Commonwealth.

23 (2) Except as provided in subsection (f), professional
24 and public members shall serve a term of four years or until
25 a successor has been appointed and qualified but in no event
26 longer than six months beyond the four-year period.

27 (3) In the event that a members dies or resigns or
28 otherwise is disqualified during the term of office, a
29 successor shall be appointed in the same way and with the
30 same qualifications and shall hold office for the unexpired

term. A professional or public member shall not be eligible to serve more than two consecutive terms.

(f) First appointments.--For public and professional members first appointed to the board pursuant to this act, the term of office shall be as follows:

(1) Three members shall serve for a term of four years.

(2) Three members shall serve for a term of three years.

(3) Three members shall serve for a term of two years.

(g) Professional members and initial appointments.--A professional member initially appointed to the board pursuant to this act need not be licensed at the time of appointment but, at the time of appointment, must satisfy eligibility requirements for licensure.

(h) Quorum.--A majority of the members of the board shall constitute a quorum. A member shall not be counted as part of a quorum or vote on any issue unless the member is physically in attendance at the meeting.

(i) Chairman.--The board shall select annually a chairman from among its members. The board, with the approval of the secretary, shall select and fix the compensation of an individual, who shall conduct the daily operations of the board and provide for the administration of the board's activities.

(j) Expenses.--Each professional and public member of the board shall be eligible for reimbursement of mileage and actual expenses when attending a board meeting.

(k) Forfeiture.--A public or professional member who fails to attend three consecutive meetings shall forfeit the member's seat unless the secretary, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.

(l) Training seminars.--A public member who fails to attend two consecutive statutorily mandated training seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, shall forfeit the member's seat unless the secretary, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

(m) Frequency of meetings.--The board shall meet at least quarterly and at such additional times as called by the chairman or a majority of the board.

Section 302. Powers and duties of board.

The board shall have the following powers and duties:

(1) To provide for and regulate the licensing of individuals covered by this act.

(2) To establish the minimum qualifications for applicants for examination and licensing in each of the following specified classes of contractor:

(i) Electrical contractor.

(ii) General building contractor.

(iii) General engineering contractor.

(iv) Heating, ventilating and cooling contractor.

(v) Piping contractor.

(vi) Plumbing contractor.

(vii) Specialty contractor.

(3) To issue licenses, renew licenses, reinstate licenses, fail to renew, suspend and revoke licenses as provided in this act.

(4) To administer and enforce the provisions of this act.

1 (5) To investigate applications for licensure and to
2 determine the eligibility of an individual applying for
3 licensure.

4 (6) To promulgate and enforce regulations, not
5 inconsistent with this act, as necessary only to carry into
6 effect the provisions of this act. Regulations shall be
7 adopted in conformity with the provisions of the act of July
8 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
9 Documents Law, and the act of June 25, 1982 (P.L.633,
10 No.181), known as the Regulatory Review Act.

11 (7) To keep and maintain minutes and records of all its
12 transactions, proceedings and meetings and to ensure such
13 records are available to the public consistent with
14 applicable State law.

15 (8) To submit annually to the department and to the
16 Appropriations Committee of the Senate and the Appropriations
17 Committee of the House of Representatives an estimate of
18 financial requirements of the board for its administrative,
19 legal and other expenses which shall be included in the
20 department's proposed budget each fiscal year.

21 (9) To work with the department to establish and
22 maintain a database with appropriate information concerning
23 licensees that shall be available on the department's
24 Internet website for public use.

25 (10) To hold at least one examination in each calendar
26 quarter for each specific classification of contractor,
27 designate the time and place of such examinations and notify
28 applicants thereof. The board may engage a testing service
29 that is qualified to administer any required examinations
30 under this act.

1 (11) To request the department to conduct an
2 investigation of any alleged violation of this act.

3 (12) To notify the secretary and board members of
4 meeting dates and agenda items at least five days prior to
5 the meeting.

6 (13) To circulate the forms and educate the public
7 regarding the requirements of being licensed as a contractor.

8 (14) To establish procedures to investigate and
9 undertake disciplinary action against a licensee.

10 CHAPTER 5

11 LICENSES

12 Section 501. License required and display of license.

13 (a) General rule.--No person in this Commonwealth shall
14 engage in any act as a contractor unless the person shall first
15 have obtained a license. No firm, partnership, corporation,
16 association or other entity shall engage in contracting in this
17 Commonwealth unless an officer thereof holds a license.

18 (b) Display of license.--A contractor to whom a license has
19 been issued shall keep the license or a copy posted in a
20 conspicuous position at every construction site where work is
21 being done by the contractor. The license number shall be
22 included in all contracting advertisements and all fully
23 executed and binding contracts. In addition, the contractor's
24 business name and the number of the license issued by the board
25 shall be displayed on each vehicle owned by the contractor in a
26 manner that contrasts with the color of the background surface
27 and is printed at least two inches high.

28 (c) Permit issuance.--Any person making application to the
29 department, the building inspector or other authority of any
30 incorporated municipality or other political subdivision of this

1 Commonwealth charged with the duty of issuing building or other
2 permits for the construction of any building, highway, sewer or
3 structure or for any removal of materials or earth, grading or
4 improvement shall, before issuance of the permit, either furnish
5 satisfactory proof to the inspector or authority that the person
6 is licensed under this act to carry out or superintend the same,
7 or file a written affidavit that the person is not subject to
8 licensure as a contractor or subcontractor. The inspector or
9 authority may not issue a building permit to any person who does
10 not possess a valid license when required by this act.

11 Section 502. Exemptions.

12 Except as otherwise provided in this act, the following are
13 exempt from licensure:

14 (1) One who merely furnishes materials or supplies
15 without fabricating or consuming them in the construction
16 project.

17 (2) A person who personally performs construction work
18 on the site of real property which the person owns or leases,
19 whether for commercial or residential purposes.

20 (3) A person who is licensed or registered as a
21 professional and who functions under the control of any other
22 licensing or regulatory board, whose primary business is real
23 estate sales, appraisal, development, management and
24 maintenance, who, acting in the person's respective
25 professional capacity and any employee of the professional
26 acting in the course of the employee's employment, performs
27 any work which may be considered to be performing contracting
28 work.

29 (4) A corporation, partnership or sole proprietorship
30 whose primary purpose is to prepare construction plans and

1 specifications used by a contractor who employs full time a
2 registered architect licensed to practice in this
3 Commonwealth or a registered professional engineer licensed
4 to practice in this Commonwealth. Employees of the
5 corporation, partnership or sole proprietorship shall also be
6 exempt from the requirements of this act.

7 (5) A residential contractor whose principal business is
8 in connection with construction, repair or improvement of
9 real property used as, or intended to be used for,
10 residential occupancy.

11 (6) Work done by an employee of the Commonwealth, a
12 county, municipality or municipal corporation and any
13 governmental subdivision or agency thereof.

14 (7) The sale or installation of a finished product,
15 material or article or merchandise which is not actually
16 fabricated into and does not become a permanent fixed part of
17 the structure.

18 (8) Work performed personally by an owner or lessee of
19 real property on property the primary use of which is for
20 agricultural or farming enterprise.

21 (9) A material supplier who renders advice concerning
22 use of products sold and who does not provide construction or
23 installation services.

24 (10) Work performed by a public utility company
25 regulated by the Pennsylvania Public Utility Commission and
26 its employees.

27 (11) Repair work contracted for by the owner of the
28 equipment on an emergency basis in order to maintain or
29 restore the operation of the equipment.

30 (12) Work performed by a contractor's regular employees,

1 for which the employees are paid regular wages and not a
2 contract price, on property owned or leased by the employer
3 which is not intended for speculative sale or lease.

4 (13) Work personally performed on a structure by the
5 owner or occupant thereof.

6 Section 503. Qualifications required for licensure.

7 (a) Applicant requirements.--An applicant for a license
8 shall:

9 (1) Submit to the board a completed application on a
10 form prescribed by the board and pay an initial license
11 application fee not to exceed \$200.

12 (2) Submit to the board any other information required
13 by board regulation.

14 (3) Demonstrate to the satisfaction of the board the
15 appropriate amount of work experience, honesty,
16 trustworthiness and integrity as required for the license.

17 (4) Pay the application and examination fees.

18 (5) Establish proof of financial responsibility in the
19 manner prescribed by the board.

20 (6) Maintain workers' compensation coverage for the
21 contractor's employees through an insurance company
22 authorized to engage in the business of insurance in this
23 Commonwealth or through self-insurance.

24 (7) Be a citizen of the United States or has declared
25 the applicant's intention to become a citizen.

26 (b) Application regulations.--The board shall promulgate
27 regulations to establish a process by which it shall evaluate
28 the experience required of applicants for a license under this
29 act.

30 (c) Background examination.--The board may conduct an

1 examination of any civil judgments and criminal convictions of
2 an applicant, including obtaining any criminal history record
3 information permitted by law.

4 Section 504. Emergency license.

5 (a) Emergency licenses.--Subject to subsection (b), the
6 board may issue an emergency license to an applicant, provided
7 that the emergency license shall expire on the 90th day after
8 the date of issuance.

9 (b) Regulations.--The board may promulgate regulations
10 providing for the extension of an emergency license issued under
11 this section.

12 Section 505. Examinations.

13 (a) Statewide administration.--Examinations required by this
14 act shall be conducted throughout this Commonwealth.

15 (b) Development and content.--The board shall accept,
16 develop or contract for the examination required by this act,
17 including the administration of the examinations. Each
18 examination shall test the knowledge of the applicant about
19 materials and methods used in and related to the activities that
20 may be performed within each class of license under this act and
21 the standards prescribed by the electrical code.

22 (c) Passing standard.--The board shall determine uniform
23 standards for acceptable performance on an examination.

24 Section 506. Examination results and notification.

25 (a) Notification.--

26 (1) Not later than the 30th day after the date on which
27 an examination is administered under this act, the board
28 shall notify each examinee of the results of the examination.

29 (2) If an examination is graded or reviewed by a
30 national testing service, the board shall notify examinees of

1 the result of the examination not later than the 14th day
2 after the date on which the board receives the results from
3 the testing service.

4 (b) Delay for notification.--If the notice of the
5 examination results will be delayed for more than 60 days after
6 the examination date, the board shall notify each examinee of
7 the reason for the delay before the 60th day.

8 (c) Request for analysis.--If requested in writing by a
9 person who fails an examination administered under this act, the
10 board shall provide to the person an analysis of the person's
11 performance on the examination.

12 Section 507. Examination exemption.

13 For a period of one year following the effective date of this
14 section, the board may grant licenses without examination to an
15 individual who submits an application for licensure, accompanied
16 by the required fee, with proof that the applicant has satisfied
17 the required number of hours of on-the-job training for the type
18 of license sought.

19 Section 508. Nonresident license applicant.

20 The board may issue a license under this act to an applicant
21 who holds a license in another state and who submits a proper
22 application and pays the required fees if the board determines
23 that the applicant is licensed in a state which has standards of
24 licensure substantially similar to those provisions of this act.

25 Section 509. Licenses.

26 (a) Issuance.--Not later than the 30th day after the date on
27 which the board determines that an applicant has passed the
28 examination required under this act, the board shall issue a
29 license to the applicant if the applicant has complied with the
30 application requirements and paid the fees required by this act.

(b) Nontransferability.--No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof. Any person who violates this section is subject to the penalties imposed in Chapter 7.

Section 510. License renewal.

(a) Expiration.--Except as provided in subsection (b), a license shall expire annually on December 31 of each year. It may be renewed annually on payment of the required renewal fee.

(b) Fees.--By regulation, the board may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, renewal fees payable on or before December 31 shall be prorated on a monthly basis so that each license holder pays only that portion of the renewal fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee shall be due.

(c) Pending expiration.--

(1) Not later than the 30th day preceding the expiration date of a person's license, the board shall notify the person in writing, at the person's last known mailing address, of the impending license expiration.

(2) A person may renew an unexpired license by paying to the board, before the license expiration date, the required renewal fee.

Section 511. Continuing education.

(a) Number of hours.--To renew a license, the license holder must complete four hours of continuing education annually.

(b) Course content.--Continuing education courses that

1 satisfy the requirements of this section shall address the
2 applicable national code and Commonwealth laws and regulations
3 that regulate the conduct of license holders under this act.

4 (c) Fee and courses.--By regulation, the board shall approve
5 continuing education courses, online continuing education
6 courses, course content and course providers. The board may
7 promulgate regulations instituting a fee for the administration
8 of the board's duties regarding continuing education.

9 CHAPTER 7

10 ADMINISTRATION AND ENFORCEMENT

11 Section 701. Violations.

12 (a) Criminal penalty.--

13 (1) An individual or the responsible officers or
14 employees of a corporation, partnership, firm or other entity
15 violating a provision of this act or a regulation of the
16 board commits a misdemeanor and shall, upon conviction, be
17 sentenced to pay a fine of not more than \$1,000, or to
18 imprisonment for not more than six months for the first
19 violation.

20 (2) For a second and each subsequent conviction, an
21 individual shall be sentenced to pay a fine of not more than
22 \$2,000, or to imprisonment for not less than six months nor
23 more than one year, or both.

24 (b) Civil penalty.--In addition to any other civil remedy or
25 criminal penalty provided for in this act, the board, by a vote
26 of the majority of the maximum number of the authorized
27 membership of the board as provided by law or by a vote of the
28 majority of the duly qualified and confirmed membership or a
29 minimum of five members, whichever is greater, may levy a civil
30 penalty of up to \$1,000 on any of the following:

1 (1) A contractor who violates a provision of this act.

2 (2) An individual who holds himself out as a contractor
3 without being properly licensed as provided in this act.

4 (3) The responsible officers or employees of a
5 corporation, partnership, firm or other entity violating a
6 provision of this act.

7 (c) Procedure.--The board may levy the civil penalty under
8 subsection (b) only after affording the accused the opportunity
9 for a hearing as provided in 2 Pa.C.S. (relating to
10 administrative law and procedure).

11 Section 702. Refusal, suspension or revocation of license.

12 (a) General rule.--The board may refuse, suspend or revoke a
13 license in a case where the board finds:

14 (1) The licensee is negligent or incompetent in the area
15 of contracting for which a license was issued.

16 (2) The licensee has willfully or repeatedly violated
17 any of the provisions of this act or a regulation of the
18 board.

19 (3) The licensee has committed fraud or deceit in
20 securing licensure.

21 (4) The licensee has had a license suspended or revoked
22 or has received other disciplinary action by the proper
23 licensing authority in another state, territory, possession
24 of the United States or country.

25 (5) With respect to the practice of contracting, the
26 licensee has acted in such a manner as to present an
27 immediate and clear danger to health or safety or property.

28 (6) The licensee possessed, used, acquired or
29 distributed a controlled substance.

30 (b) Authorized acts.--When the board finds that the license

1 of an electrical contractor may be refused, revoked or suspended
2 pursuant to subsection (a), the board may:

3 (1) Deny the application for a license.

4 (2) Revoke, suspend, limit or otherwise restrict a
5 license.

6 (3) Restore or reissue, at its discretion, a suspended
7 license and impose any disciplinary or corrective measure
8 which it might originally have imposed.

9 Section 703. Suspensions and revocations.

10 A suspension or revocation shall be made only in accordance
11 with the regulations of the board and only by majority vote of
12 the members of the board after a full and fair hearing. An
13 action of the board shall be taken subject to the right of
14 notice, hearing and adjudication and the right of appeal, in
15 accordance with the provisions of 2 Pa.C.S. (relating to
16 administrative law and procedure). The board, by majority action
17 and in accordance with its regulations, may reissue a license
18 which has been suspended.

19 Section 704. Collection of fees.

20 All fees collected pursuant to the provisions of this act by
21 the board and the department shall be deposited into the Fair
22 Contracting Fund, a restricted account hereby established to be
23 held within the department.

24 CHAPTER 21

25 MISCELLANEOUS PROVISIONS

26 Section 2101. Appropriation and repayment.

27 The sum of \$125,000, or as much as may be necessary, is
28 hereby appropriated from the Department of Labor and Industry
29 for the payment of costs associated with processing licenses and
30 renewing licenses, for the operation of the board and for other

1 costs associated with this act. The appropriation shall be
2 repaid by the board within three years of the beginning of
3 issuance of licenses by the board.

4 Section 2102. Regulations.

5 Within 18 months of the effective date of this section, the
6 board shall promulgate regulations to carry out this act.

7 Section 2103. Effective date.

8 This act shall take effect July 1, 2008, or immediately,
9 whichever is later.