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SENATE BILL NO. 1113

Offered January 11, 2017

Prefiled January 9, 2017

A *BILL to amend and reenact §§ 54.1-1106, 54.1-1108, 54.1-1109, 54.1-1122, and 54.1-1123 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-1120.1, relating to the Board for Contractors; optional bonding for Class A and Class B contractors.*

Patron—McPike

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1106, 54.1-1108, 54.1-1109, 54.1-1122, and 54.1-1123 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-1120.1 as follows:

§ 54.1-1106. Application for Class A license; fees; examination; issuance.

A. Any person desiring to be licensed as a Class A contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain the name, place of employment, and business address of the proposed designated employee, and information on the knowledge, skills, abilities, and financial position of the applicant. The Board shall determine whether the past performance record of the applicant, including his reputation for paying material bills and carrying out other contractual obligations, satisfies the purposes and intent of this chapter. The Board shall also determine whether the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all other laws affecting those engaged in the practice of contracting as set forth in this chapter.

B. *As proof of financial responsibility, the applicant shall demonstrate compliance with the minimum net worth requirement fixed by the Board in regulation by providing either:*

¶ 1. A financial statement on a form prescribed by the Board, subject to additional verification if the Board determines that sufficient questions or ambiguities exist in an individual the applicant's presentation of his financial information; the Board may require the applicant to provide a; or

2. A balance sheet reviewed by a certified public accountant licensed in accordance with § 54.1-4409.1.

C. *In lieu of compliance with subsection B, an applicant may demonstrate financial responsibility by electing to obtain and maintain a bond in the amount of \$50,000. Proof of current bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General and shall be filed with the Department.*

D. In addition, if the applicant is a sole proprietor, he shall furnish to the Board his name and address. If the applicant is a member of a partnership, he shall furnish to the Board the names and addresses of all of the general partners of the partnership. If the applicant is a member of an association, he shall furnish to the Board the names and addresses of all of the members of the association. If the applicant is a corporation, it shall furnish to the Board the names and addresses of all officers of the corporation. If the applicant is a joint venture, it shall furnish to the Board the names and addresses of (i) each member of the joint venture and (ii) any sole proprietor, general partner of any partnership, member of any association, or officer of any corporation who is a member of the joint venture. The applicant shall thereafter keep the Board advised of any changes in the above information.

~~B.~~ E. If the application is satisfactory to the Board, the proposed designated employee shall be required by Board regulations to take an oral or written examination to determine his general knowledge of contracting, including the statutory and regulatory requirements governing contractors in the Commonwealth. If the proposed designated employee successfully completes the examination and the applicant meets or exceeds the other entry criteria established by Board regulations, a Class A contractor license shall be issued to the applicant. The license shall permit the applicant to engage in contracting only so long as the designated employee is in the full-time employment of the contractor or is a member of the contractor's responsible management. No examination shall be required where the licensed Class A contractor changes his form of business entity provided he is in good standing with the Board. In the event the designated employee leaves the full-time employ of the licensed contractor or is no longer a member of the contractor's responsible management, no additional examination shall be required of such designated employee, except in accordance with § 54.1-1110.1, and the contractor shall within 90 days of that departure provide to the Board the name of the new designated employee.

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59 C. F. The Board may grant a Class A license in any of the following classifications: (i) residential
60 building contractor, (ii) commercial building contractor, (iii) highway/heavy contractor, (iv) electrical
61 contractor, (v) plumbing contractor, (vi) heating, ventilation, and air conditioning contractor, and (vii)
62 specialty contractor.

63 **§ 54.1-1108. Application for Class B license; fees; examination; issuance.**

64 A. Any person desiring to be licensed as a Class B contractor shall file with the Department a
65 written application on a form prescribed by the Board. The application shall be accompanied by a fee
66 set by the Board pursuant to § 54.1-201. The application shall contain the name, place of employment,
67 and business address of the proposed designated employee; information on the knowledge, skills,
68 abilities, and financial position of the applicant; and evidence of holding a current local license pursuant
69 to local ordinances adopted pursuant to § 54.1-1117. The Board shall determine whether the past
70 performance record of the applicant, including his reputation for paying material bills and carrying out
71 other contractual obligations, satisfies the purpose and intent of this chapter. The Board shall also
72 determine whether the applicant has complied with the laws of the Commonwealth pertaining to the
73 domestication of foreign corporations and all other laws affecting those engaged in the practice of
74 contracting as set forth in this chapter.

75 B. *As proof of financial responsibility, the applicant shall demonstrate compliance with the minimum*
76 *net worth requirement fixed by the Board in regulation by providing either:*

77 1. *A financial statement on a form prescribed by the Board, subject to additional verification if the*
78 *Board determines that sufficient questions or ambiguities exist in the applicant's presentation of*
79 *financial information; or*

80 2. *A balance sheet reviewed by a certified public accountant licensed in accordance with*
81 *§ 54.1-4409.1.*

82 C. *In lieu of compliance with subsection B, an applicant may demonstrate financial responsibility by*
83 *electing to obtain and maintain a bond in the amount of \$50,000. Proof of current bond shall come*
84 *from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney*
85 *General and shall be filed with the Department.*

86 D. In addition, if the applicant is a sole proprietor, he shall furnish to the Board his name and
87 address. If the applicant is a member of a partnership, he shall furnish to the Board the names and
88 addresses of all of the general partners of that partnership. If the applicant is a member of an
89 association, he shall furnish to the Board the names and addresses of all of the members of the
90 association. If the applicant is a corporation, it shall furnish to the Board the name and address of all
91 officers of the corporation. If the applicant is a joint venture, it shall furnish to the Board the names and
92 addresses of (i) each member of the joint venture and (ii) any sole proprietor, general partner of any
93 partnership, member of any association, or officer of any corporation who is a member of the joint
94 venture. The applicant shall thereafter keep the Board advised of any changes in the above information.

95 B. E. If the application is satisfactory to the Board, the proposed designated employee shall be
96 required by Board regulations to take an oral or written examination to determine his general knowledge
97 of contracting, including the statutory and regulatory requirements governing contractors in the
98 Commonwealth. If the proposed designated employee successfully completes the examination and the
99 applicant meets or exceeds the other entry criteria established by Board regulations, a Class B contractor
100 license shall be issued to the applicant. The license shall permit the applicant to engage in contracting
101 only so long as the designated employee is in the full-time employment of the contractor and only in the
102 counties, cities, and towns where such person has complied with all local licensing requirements and for
103 the type of work to be performed. No examination shall be required where the licensed Class B
104 contractor changes his form of business entity provided he is in good standing with the Board. In the
105 event the designated employee leaves the full-time employ of the licensed contractor, no additional
106 examination shall be required of such designated employee, except in accordance with § 54.1-1110.1,
107 and the contractor shall within 90 days of that departure provide to the Board the name of the new
108 designated employee.

109 C. F. The Board may grant a Class B license in any of the following classifications: (i) residential
110 building contractor, (ii) commercial building contractor, (iii) highway/heavy contractor, (iv) electrical
111 contractor, (v) plumbing contractor, (vi) HVAC contractor, and (vii) specialty contractor.

112 **§ 54.1-1109. Expiration and renewal of license or certificate.**

113 A. A license or certificate issued pursuant to this chapter shall expire as provided in Board
114 regulations. Application for renewal of a license or certificate may be made as provided by Board
115 regulations. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

116 B. *With respect to a contractor electing continuous bonding under § 54.1-1106 or 54.1-1108, proof of*
117 *current bond is required in order to renew the license or certificate. The bond shall commence no later*
118 *than the effective date of the license and shall expire no sooner than the date of expiration of the*
119 *license or certificate.*

120 **§ 54.1-1120.1. Recovery on bond.**

A. If a contractor who elected continuous bonding under § 54.1-1106 or 54.1-1108 fails to satisfy a judgment awarded by a court of competent jurisdiction for improper or dishonest conduct, the judgment creditor shall have a claim against the surety bond for such damages. In order to recover the amount of any unpaid judgment, up to but not exceeding the maximum liability as set forth in § 54.1-1106 or 54.1-1108, the judgment creditor shall meet the eligibility requirements of subsection A of § 54.1-1120 and bring suit directly on the surety bond no later than 12 months after the judgment becomes final.

B. The liability of such surety shall be limited to actual monetary loss, court costs, and attorney fees assessed against the contractor as part of the underlying judgment. The liability of such surety shall not include any sums representing interest or punitive damages assessed against the contractor.

C. The surety company shall notify the Board when a claim is made against a contractor's bond, when a claim is paid, and when the bond is cancelled. Such notification shall include the amount of claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be cancelled as to future liability by the contractor's surety upon 30 days' notice to the Board.

§ 54.1-1122. Consideration of applications for payment.

A. The claimant shall submit the following supporting documentation with the claim:

1. Copies of the contract with the regulant and all written change orders to the contract. If no written contract between the regulant and the claimant is available, the claimant may submit an affidavit attesting to the terms of the agreement, promise, or other contractual obligation;

2. All pleadings or other documents filed with the court from which judgment was obtained;

3. All orders and opinions of the court from which judgment was obtained, including the final judgment order;

4. The transcript of the debtor's interrogatories, if conducted, or if no transcript is available, a sworn affidavit affirming that debtor's interrogatories were conducted, or evidence that debtor's interrogatories were attempted if not conducted; a description of assets of the judgment debtor disclosed in the debtor's interrogatories; and a description of all steps taken for the sale or application of those disclosed assets in whole or partial satisfaction of the judgment, or a statement why no means are legally available for the sale or application of those disclosed assets, or a statement that the value of the disclosed assets is less than the cost of levying upon and selling such assets including reasonable estimates of the fair market value of the disclosed assets and costs of levying upon selling such assets;

5. A statement of the balance of the judgment remaining unpaid at the time the claim is submitted to the Department, and a statement that the claimant agrees to notify the Department of any additional payment that may be received in whole or partial satisfaction of the judgment during the pendency of the claim before the Board; and

6. Any other documentary evidence or exhibits the claimant wishes the Board to consider with the claim.

B. The Department shall promptly consider the verified claim of the claimant administratively. If the claim form is incomplete or not properly notarized, or if all required supporting documentation is not included with the claim, then the Department may provide the claimant with notice of any deficiency and an additional opportunity to submit a corrected verified claim. The burden shall be on the claimant to comply with all claim requirements and to submit the necessary documentation within 12 months of the initial claim submission. Once the Department confirms that the verified claim is complete, it shall present such verified claim, along with a recommendation regarding payment, to the Board for the Board's consideration and shall notify the claimant of the Board's recommendation.

C. The Department's and Board's consideration of the claim shall be based solely on the contents of the verified claim. Neither an informal fact-finding conference pursuant to § 2.2-4019 nor a formal hearing pursuant to § 2.2-4020 shall be required, ~~but an informal fact-finding conference may be held at the discretion of the Department if~~ unless requested by the claimant within 15 days of the claimant's receipt of the Department's recommendation to the Board.

D. A claimant shall not be denied recovery from the Fund due to the fact that order for judgment filed with the verified claim does not contain a specific finding of "improper or dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant meets the definition of "improper or dishonest conduct" in § 54.1-1118 shall be used by the Board to determine eligibility for recovery from the Fund. To the extent the judgment order is silent as to the court's findings on the conduct of the regulant, the Board may determine whether the conduct of the regulant meets the definition of improper or dishonest conduct by substantial evidence in the verified claim.

E. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment from the fund to the claimant the amount remaining unpaid on the judgment, subject to the limitations set forth in § 54.1-1123. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of

182 these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et
183 seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of
184 any court which is contrary to any distribution recommended or authorized by it.

185 **§ 54.1-1123. Limitations upon recovery from Fund; certain actions not a bar to recovery.**

186 A. The maximum claim of one claimant against the Fund based upon an unpaid judgment arising out
187 of the improper or dishonest conduct of one regulant in connection with a single transaction involving
188 contracting is limited to \$20,000, *including any amount paid from a contractor's surety bond under*
189 *§ 54.1-1120.1*, regardless of the amount of the unpaid judgment of the claimant.

190 B. The aggregate of claims against the Fund based upon unpaid judgments arising out of the
191 improper or dishonest conduct of any one regulant involving contracting, is limited by the Board to
192 \$40,000 during any biennium. If a claim has been made against the Fund, and the Board has reason to
193 believe there may be additional claims against the Fund from other transactions involving the same
194 regulant, the Board may withhold any payment(s) from the Fund involving such regulant for a period of
195 not more than one year from the date on which the claimant is awarded in a court of competent
196 jurisdiction in the Commonwealth the final judgment on which his claim against the Fund is based.
197 After this one-year period, if the aggregate of claims against the regulant exceeds \$40,000, during a
198 biennium, \$40,000 shall be prorated by the Board among the claimants and paid from the Fund, *less the*
199 *amount of any applicable contractor's bond*, in proportion to the amounts of their judgments against the
200 regulant remaining unpaid. *Claims shall be prorated only after any applicable contractor's bond has*
201 *been exhausted.*

202 C. Excluded from the amount of any unpaid judgment upon which a claim against the Fund is based
203 shall be any sums representing interest, or punitive damages, or any amounts that do not constitute
204 actual monetary loss to the claimants. Such claim against the Fund may include court costs and attorney
205 fees.

206 D. If, at any time, the amount of the Fund is insufficient to fully satisfy any claims or claim filed
207 with the Board and authorized by this Act, the Board shall pay such claims, claim, or portion thereof to
208 the claimants in the order that the claims were filed with the Board.

209 E. Failure of a claimant to comply with the provisions of subdivisions B 1 and 2 and subsection C
210 of § 54.1-1120 and the provisions of § 54.1-1124 shall not be a bar to recovery under this Act if the
211 claimant is otherwise entitled to such recovery.

212 F. The Board shall have the authority to deny any claim which otherwise appears to meet the
213 requirements of the Act if it finds by clear and convincing evidence that the claimant has presented false
214 information or engaged in collusion to circumvent any of the requirements of the Act.