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SENATE BILL NO. 1193

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 54.1-1100, 54.1-1102, 54.1-1103, 54.1-1109, and 54.1-1114 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-1108.3 and 54.1-1115.01, relating to the Board for Contractors; Class D registration; responsibility for contracting with unlicensed persons.

Patrons—Stuart, DeSteph and Mason

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1100, 54.1-1102, 54.1-1103, 54.1-1109, and 54.1-1114 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-1108.3 and 54.1-1115.01 as follows:

§ 54.1-1100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board for Contractors.

"Class A contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$120,000 or more, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is \$750,000 or more.

"Class B contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$10,000 or more, but less than \$120,000, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any 12-month period is \$150,000 or more, but less than \$750,000.

"Class C contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$10,000, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is less than \$150,000. The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors.

"Class D contractors" perform construction, removal, repair, or improvement projects (i) under the supervision or management of a licensed Class A, B, or C contractor and (ii) for compensation not to exceed \$1,000 for a single project.

"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property. For purposes of this chapter, "improvement" shall include (i) remediation, cleanup, or containment of premises to remove contaminants or (ii) site work necessary to make certain real property usable for human occupancy according to the guidelines established pursuant to § 32.1-11.7.

"Department" means the Department of Professional and Occupational Regulation.

"Designated employee" means the contractor's full-time employee, or a member of the contractor's responsible management, who is at least 18 years of age and who has successfully completed the oral or written examination required by the Board on behalf of the contractor.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Owner-developer" means any person who, for a third party purchaser, orders or supervises the construction, removal, repair, or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by the owner-developer, or any other improvement to such property and who contracts with a person licensed in accordance with this chapter for the work undertaken.

"Person" means any individual, firm, corporation, association, partnership, joint venture, or other legal entity.

"Value" means fair market value. When improvements are performed or supervised by a contractor, the contract price shall be prima facie evidence of value.

§ 54.1-1102. Board for Contractors membership; offices; meetings; seal; record.

A. The Board for Contractors shall be composed of 15 members as follows: one member shall be a

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59 licensed Class A general contractor; the larger part of the business of one member shall be the
60 construction of utilities; the larger part of the business of one member shall be the construction of
61 commercial and industrial buildings; the larger part of the business of one member shall be the
62 construction of single-family residences; the larger part of the business of one member shall be the
63 construction of home improvements; one member shall be a subcontractor as generally regarded in the
64 construction industry; one member shall be in the business of sales of construction materials and
65 supplies; one member shall be a local building official; one member shall be a licensed plumbing
66 contractor; one member shall be a licensed electrical contractor; one member shall be a licensed heating,
67 ventilation and air conditioning contractor; one member shall be a certified elevator mechanic or a
68 licensed elevator contractor; one member shall be a certified water well systems provider, and two
69 members shall be citizen members. The terms of the Board members shall be four years.

70 The Board shall meet at least once each year and at such other times as may be deemed necessary.
71 Annually, the Board shall elect from its membership a chairman and a vice-chairman to serve for a
72 one-year term. Eight members of the Board shall constitute a quorum.

73 The Board shall promulgate regulations not inconsistent with statute necessary for the licensure *or*
74 *registration* of contractors and tradesmen and the certification of backflow prevention device workers,
75 and for the relicensure *or registration* of contractors and tradesmen and for the recertification of
76 backflow prevention device workers, after license or certificate suspension or revocation. The Board
77 shall include in its regulations a requirement that as a condition for initial licensure as a contractor, the
78 designated employee or a member of the responsible management personnel of the contractor shall have
79 successfully completed a Board-approved basic business course, which shall not exceed eight hours of
80 classroom instruction.

81 The Board may adopt regulations requiring all Class A, B, ~~and C, and D~~ residential contractors,
82 excluding subcontractors to the contracting parties and those who engage in routine maintenance or
83 service contracts, to use legible written contracts including the following terms and conditions:

- 84 1. General description of the work to be performed;
- 85 2. Fixed price or an estimate of the total cost of the work, the amounts and schedule of progress
86 payments, a listing of specific materials requested by the consumer and the amount of down payment;
- 87 3. Estimates of time of commencement and completion of the work; and
- 88 4. Contractor's name, address, office telephone number and license or certification number and class.

89 In transactions involving door-to-door solicitations, the Board may require that a statement of
90 protections be provided by the contractor to the homeowner, consumer or buyer, as the case may be.

91 The Board shall adopt a seal with the words "Board for Contractors, Commonwealth of Virginia."
92 The Director shall have charge, care and custody of the seal.

93 B. The Director shall maintain a record of the proceedings of the Board.

94 **§ 54.1-1103. Necessity for license; requirements for water well drillers and landscape irrigation**
95 **contractors; exemption.**

96 A. No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless
97 he has been licensed *or registered* under the provisions of this chapter. The Board may waive any
98 provision of this chapter for Habitat for Humanity, its local affiliates or subsidiaries, and any other
99 nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code (26 U.S.C.
100 § 501(c)(3)) for the purpose of constructing or rehabilitating single-family dwellings that will be given to
101 or sold below the appraised value to low-income persons. Prior to a joint venture engaging in, or
102 offering to engage in, contracting work in the Commonwealth, (i) each contracting party of the joint
103 venture shall be licensed under the provisions of this chapter or (ii) a license shall be obtained in the
104 name of the joint venture under the provisions of this chapter.

105 B. Except as provided in § 54.1-1117, the issuance of a license *or registration* under the provisions
106 of this chapter shall not entitle the holder to engage in any activity for which a special license is
107 required by law.

108 C. When the contracting work is for the purpose of landscape irrigation or the construction of a
109 water well as defined in § 32.1-176.3, the contractor shall be licensed, regardless of the contract amount,
110 as follows:

111 1. A Class C license is required when the total value referred to in a single contract or project is no
112 more than \$10,000, or the total value of all such water well or landscape irrigation contracts undertaken
113 within any 12-month period is no more than \$150,000;

114 2. A Class B license is required when the total value referred to in a single contract is \$10,000 or
115 more, but less than \$120,000, or the total value of all such water well or landscape irrigation contracts
116 undertaken within any 12-month period is \$150,000 or more, but less than \$750,000; and

117 3. A Class A license is required when the total value referred to in a single contract or project is
118 \$120,000 or more, or when the total value of all such water well or landscape irrigation contracts
119 undertaken within any 12-month period is \$750,000 or more.

120 D. Notwithstanding the other provisions of this section, an architect or professional engineer who is

licensed pursuant to Chapter 4 (§ 54.1-400 et seq.) shall not be required to be licensed or certified to engage in, or offer to engage in, contracting work or operate as an owner-developer in the Commonwealth in accordance with this chapter when bidding upon or negotiating design-build contracts or performing services other than construction services under a design-build contract. However, the construction services offered or rendered in connection with such contracts shall only be rendered by a contractor licensed or certified in accordance with this chapter.

E. Notwithstanding the other provisions of this section, any person licensed under the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 as a private security services business shall not be required to be licensed or certified to engage in, or offer to engage in, contracting work in the Commonwealth in accordance with this chapter when bidding upon or performing services to install, service, maintain, design or consult in the design of any electronic security equipment as defined in § 9.1-138 including but not limited to, low voltage cabling, network cabling and computer or systems integration.

F. Notwithstanding any other provisions of this section, persons bidding upon or performing services to design or undertake public works of art commissioned by the Commonwealth; a political subdivision of the Commonwealth, including any county, city, or town; or a nonprofit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code shall not be required to be licensed or certified in accordance with this chapter. However, the installation of the artwork and related construction services offered or rendered in connection with such commission shall only be rendered by a contractor licensed or certified in accordance with this chapter.

§ 54.1-1108.3. Application for registration as a Class D contractor; fees; issuance.

A. Any person desiring to be registered as a Class D contractor shall file with the Department a written application on a form prescribed by the Board. The application shall contain the name and mailing address of the applicant and be accompanied by a reasonable fee set by the Board pursuant to § 54.1-201. Such fee shall not exceed \$100. If the application is complete, the Board shall issue a certificate of registration to the applicant.

B. The registration of a Class D contractor shall be valid and no other license, certification, or registration shall be required so long as the Class D contractor is performing work for which he (i) receives a Form 1099; (ii) uses his own tools and equipment; (iii) does not receive fringe benefits or reimbursements from a Class A, B, or C contractor; and (iv) is paid on a per project basis.

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

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

§ 54.1-1114. Filing and hearing of charges.

Any person may file complaints against any contractor licensed ~~or~~, certified, or registered pursuant to this chapter. The Director shall investigate complaints and the Board may take appropriate disciplinary action if warranted. Disciplinary proceedings shall be conducted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Board shall immediately notify the Director and the clerk and building official of each city, county or town in the Commonwealth of its findings in the case of the revocation of a license ~~or~~, certificate, or registration, or of the reissuance of a revoked license ~~or~~, certificate, or registration.

§ 54.1-1115.01. Responsibility for contracting with unlicensed or unregistered persons.

Any contractor who directly employs, or otherwise contracts with, a person who is not licensed or registered by the Board for work requiring a license or registration under the provisions of this chapter shall be solely responsible for any monetary penalty or other sanction resulting from the act of employing or contracting with an unlicensed or unregistered person based upon such person's failure to obtain or maintain the required license or registration.

2. That the Board for Contractors shall adopt regulations implementing the provision of this act on or before October 1, 2017. Initial regulations of the Board for Contractors shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia); however, any subsequent modification to such regulations shall comply with the Administrative Process Act.