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HOUSE BILL NO. 928

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws
on March 4, 1998)

(Patron Prior to Substitute—Delegate Nixon)

*A BILL to amend and reenact §§ 43-13, 54.1-1100, 54.1-1101, 54.1-1103, 54.1-1106, 54.1-1108.2, and 54.1-1111 of the Code of Virginia, relating to the Board for Contractors.***Be it enacted by the General Assembly of Virginia:****1. That §§ 43-13, 54.1-1100, 54.1-1101, 54.1-1103, 54.1-1106, 54.1-1108.2, and 54.1-1111 of the Code of Virginia are amended and reenacted as follows:**

§ 43-13. Funds paid to general contractor or subcontractor must be used to pay persons performing labor or furnishing material.

Any contractor, ~~or subcontractor or owner-developer~~, as defined in § 54.1-1100, or any officer, director or employee of such contractor, ~~or subcontractor or owner-developer~~ who shall, with intent to defraud, retain or use the funds, or any part thereof, paid by the owner or his agent, the contractor or lender to such contractor ~~or owner-developer~~ or by the owner or his agent, the contractor or lender to a subcontractor under any contract for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, for any other purpose than to pay persons performing labor upon or furnishing material for such construction, repair, removal or improvement, shall be guilty of larceny in appropriating such funds for any other use while any amount for which the contractor, ~~or subcontractor or owner-developer~~ may be liable or become liable under his contract for such labor or materials remains unpaid, and may be prosecuted upon complaint of any person or persons who have not been fully paid any amount due them.

The use by any such contractor, ~~or subcontractor or owner-developer~~ or any officer, director or employee of such contractor, ~~or subcontractor or owner-developer~~ of any moneys paid under the contract, before paying all amounts due or to become due for labor performed or material furnished for such building or structure, for any other purpose than paying such amounts, shall be prima facie evidence of intent to defraud.

§ 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 \$70,000 or more, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is \$500,000 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 \$7,500 or more, but less than \$70,000, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is \$150,000 or more, but less than \$500,000.

"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 ~~no more less~~ than \$7,500, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is ~~no more 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.

"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.

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

"Designated employee" means the contractor's full-time employee who is at least eighteen 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 performs ~~or supervises the construction, removal, repair or improvements of any building or structure permanently annexed to real property owned, controlled or leased by him or any other improvements to such property when either (i) the total value of all such improvements to or upon any single parcel of land is \$70,000 or more or (ii) the total value of all such~~

60 improvements to or upon all real property undertaken by him within any twelve-month period is
61 \$500,000 or more, but shall not include a person who performs or supervises the construction, removal,
62 repair or improvement of (i) not more than one building upon his own real property and for his own use
63 during any twenty-four-month period; (ii) a house upon his own real property as a bona fide gift to a
64 member of his immediate family provided such member lives in the house for at least twenty-four
65 months; (iii) industrial or manufacturing facilities for his own use; or (iv) any person who contracts with
66 a duly licensed Class A contractor classified as a building contractor to perform such construction,
67 removal, repair or improvements.

68 For purposes of this section, "immediate family" includes one's mother, father, son, daughter, brother,
69 sister, grandchild, grandparent, mother-in-law and father-in-law.

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

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

74 § 54.1-1101. Exemptions.

75 The provisions of this chapter shall not apply to:

76 1. Any governmental agency performing work with its own forces;

77 2. Work bid upon or undertaken for the armed services of the United States under the Armed
78 Services Procurement Act;

79 3. Work bid upon or undertaken for the United States government on land under the exclusive
80 jurisdiction of the federal government either by statute or deed of cession;

81 4. Work bid upon or undertaken for the Department of Transportation on the construction,
82 reconstruction, repair or improvement of any highway or bridge;

83 5. Any other persons who may be specifically excluded by other laws but only to such an extent as
84 such laws provide; and

85 6. Any material supplier who renders advice concerning use of products sold and who does not
86 provide construction or installation services;

87 7. Any person who performs or supervises the construction, removal, repair or improvement of no
88 more than one building for retail use, one building for commercial use and one residence upon his own
89 real property and for his own use during any twenty-four-month period;

90 8. Any person who performs or supervises the construction, removal, repair or improvement of a
91 house upon his own real property as a bona fide gift to a member of his immediate family provided
92 such member lives in the house. For purposes of this section, "immediate family" includes one's mother,
93 father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law and father-in-law; and

94 9. Any person who performs or supervises the construction, removal, repair or improvement of
95 industrial or manufacturing facilities for his own use.

96 All other contractors performing work for any government or for any governmental agency are
97 subject to the provisions of this chapter and are required to be licensed as provided herein.

98 § 54.1-1103. Necessity for license; requirements for water well drillers and landscape irrigation
99 contractors.

100 A. No person shall engage in, or offer to engage in, contracting work ~~or operate as an~~
101 ~~owner-developer~~ in the Commonwealth unless he has been licensed under the provisions of this chapter.
102 Prior to a joint venture engaging in, or offering to engage in, contracting work ~~or operating as an~~
103 ~~owner-developer~~ in the Commonwealth, (i) each contracting party of the joint venture shall be licensed
104 under the provisions of this chapter or (ii) a license shall be obtained in the name of the joint venture
105 under the provisions of this chapter.

106 B. Except as provided in § 54.1-1117, the issuance of a license under the provisions of this chapter
107 shall not entitle the holder to engage in any activity for which a special license is 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 § 62.1-255, 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 \$7,500, or the total value of all such water well or landscape irrigation contracts undertaken
113 within any twelve-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 \$7,500 or
115 more, but less than \$70,000, or the total value of all such water well or landscape irrigation contracts
116 undertaken within any twelve-month period is \$150,000 or more, but less than \$500,000; and

117 3. A Class A license is required when the total value referred to in a single contract or project is
118 \$70,000 or more, or when the total value of all such water well or landscape irrigation contracts
119 undertaken within any twelve-month period is \$500,000 or more.

120 § 54.1-1106. Application for Class A license; fees; examination; issuance.

121 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; information on the knowledge, skills, abilities, and financial position of the applicant; and an affidavit stating that the information on the application is correct. 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. 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. 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. 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, no additional examination shall be required of such designated employee, except in accordance with § 54.1-1110.1, and the contractor shall within ninety days of that departure provide to the Board the name of the new designated employee.

C. The Board may grant a Class A license in any of the following classifications: (i) building contractor, (ii) highway/heavy contractor, (iii) electrical contractor, (iv) plumbing contractor, (v) HVAC heating, ventilation, and air conditioning contractor, and (vi) specialty contractor; ~~and (vii) owner-developer.~~

§ 54.1-1108.2. Application for Class C license; fees; issuance.

A. Any person desiring to be licensed as a Class C 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 information concerning the name, location, nature, and operation of the business, as well as information demonstrating that the applicant possesses the character and minimum skills to properly engage in the occupation of contracting, and an affidavit stating that the information on the application is correct.

B. The Board may grant a Class C license in any of the following classifications: (i) building contractor, (ii) highway/heavy contractor, ~~and~~ (iii) *electrical contractor*, (iv) *plumbing contractor*, (v) *heating, ventilation, and air conditioning contractor*, and (vi) *specialty contractor*.

§ 54.1-1111. Prerequisites to obtaining building, etc., permit.

Any person applying to the building inspector or any other authority of a county, city, or town in this Commonwealth, charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, or structure, or any removal, grading or improvement shall furnish prior to the issuance of the permit, either (i) satisfactory proof to such inspector or authority that he is duly licensed or certified under the terms of this chapter to carry out or superintend the same, or (ii) file a written statement, supported by an affidavit, that he is not subject to licensure or certification as a contractor, ~~or subcontractor, or owner-developer~~ pursuant to this chapter. The applicant shall also furnish satisfactory proof that the taxes or license fees required by any county, city, or town have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.

It shall be unlawful for the building inspector or other authority to issue or allow the issuance of such permits unless the applicant has furnished his license or certificate number issued pursuant to this chapter or evidence of being exempt from the provisions of this chapter.

The building inspector, or other such authority, violating the terms of this section shall be guilty of a Class 3 misdemeanor.