An Act

ENROLLED SENATE
BILL NO. 1022

By: Newberry of the Senate

and

Echols of the House

An Act relating to the Construction Industries Board Act; amending 59 O.S. 2011, Sections 1000.1, 1000.2, 1000.3, 1000.4, as amended by Section 272, Chapter 304, O.S.L. 2012, 1000.5, 1000.5a, 1000.5b, and 1000.9 (59 O.S. Supp. 2012, Section 1000.4), which relate to the Construction Industries Board; updating references; modifying language; deleting language; requiring certain review and approval of rules; directing certain report be delivered to certain legislative members by certain time; requiring certain accounting and review of fine, penalties and fees by certain manner; providing procedure for automatic review of certain fines, penalties or fees; construing certain rights; establishing Board as certain appeal board; construing authority for appeals; allowing appeal to certain district court; authorizing attorney fees; requiring certain review and approval of fee changes; requiring certain compliance for issuance of temporary license; and modifying authority for penalties for noncompliance with law or rule.

SUBJECT: Construction Industries Board

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

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

Section 1000.1. Sections ~~1~~ 1000.1 through ~~8~~ 1000.9 of this ~~act~~ title shall be known and may be cited as the "Construction Industries Board Act".

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

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

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

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

b. two members shall have at least ten (10) years' experience in the electrical trade, of which one shall be an electrical contractor and one shall be a journeyman electrician,

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

d. one member shall have at least ten (10) years' experience as a building and construction inspector

~~and shall be from a list recommended by a statewide organization of municipal governments~~.

2. Members shall be appointed for staggered terms of four (4) years~~; provided, of those members initially appointed to the Board, five members shall be appointed for two-year terms, beginning September 1, 2001, and four members shall be appointed for four-year terms, beginning September 1, 2001~~, as designated by the Governor. Members shall continue in office until a successor is appointed by the Governor. The Governor shall fill all vacancies and unexpired terms in the same manner as the original appointment of the member whose position is to be filled. ~~Such members~~ A member may be removed by the Governor ~~for cause~~ at any time.

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

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

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

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

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

a. keep a record of all proceedings of the Board and certify to actions of the Board,

b. oversee the receipt and deposit of all monies received by the Board in the appropriate revolving funds,

c. submit, at the first regular meeting of the Board after the end of each fiscal year, a full itemized report of the receipts and disbursements for the prior fiscal year, showing the amount of funds on hand, and

d. perform such other duties as are prescribed in ~~this act~~ the Construction Industries Board Act or as may be prescribed by the Board or required by law.

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

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

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

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

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

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

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

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

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

B. The Board shall have the following powers:

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

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

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

4. Initiate disciplinary proceedings, request prosecution of and initiate injunctive proceedings against any person who violates

any of the provisions of the Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, the Mechanical Licensing Act, and the Home Inspection Licensing Act;

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

6. Establish and levy administrative fines for violations of law or rule in the trades and industries the Board licenses or regulates or against any person or entity denying the Board or its representatives access to a job site for purposes of enforcing any of the provisions of the Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, and the Mechanical Licensing Act, or the Roofing Contractor Registration Act; provided, however, the Board is not authorized to inspect or issue administrative violations or fines for public utilities, public service corporations, intrastate gas pipeline companies, gas gathering pipeline companies, gas processing companies, rural electric associations, municipal utilities or their subsidiaries, chemical plants, gas processing plants or petroleum refineries where the entity uses their employees or contractors to work on their own facilities or equipment;

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

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

C. The Board shall account for all receipts and expenditures of the monies of the Board, including annually preparing and publishing a statement of receipts and expenditures of the Board for each fiscal year. The Board's annual statement of receipts and expenditures shall be audited by the State Auditor and Inspector or an independent accounting firm in accordance with the provisions of subsection B of Section 212 of Title 74 of the Oklahoma Statutes,

and the audit report shall be certified to the Governor of this state to be true and correct, under oath, by the chair and vice-chair of the Board. A copy of such certified report shall be delivered to the chairs of the respective Senate and House of Representatives Committees having authority over matters relating to business, labor and construction industry licensing or regulation not later than February 1 each year.

D. ~~All powers, duties, responsibilities, employees, records, and equipment of the State Board of Health, the State Department of Health, and the State Commissioner of Health relating exclusively to the regulation of the plumbing, electrical and mechanical trades, building and construction inspectors and home inspectors shall be placed under the authority of the Construction Industries Board. To the extent practicable, this shall include all computer hardware and software used in regulating industries listed in this section. The Construction Industries Board may contract for additional legal and administrative services as necessary, pursuant to the Oklahoma Central Purchasing Act. Employees shall be under the direction of the Construction Industries Administrator and the Construction Industries Board~~ The Board shall account for all fines, penalties and fees assessed and collected pursuant to the Administrative Procedures Act or any rule promulgated for regulation of any industry and trade under the authority of the Construction Industries Board. All fines, penalties and fees assessed for any violation of law or rule shall be automatically reviewed and brought before the entire Board for consideration and vote not later than the last day of the monthly quarter in which it was imposed. The Construction Industries Administrator shall present to the Board a written recommendation and summary for each case in which an assessment of a fine, penalty or fee was imposed after administrative proceedings. The Board shall consider the recommendations for each case at the next meeting date and at such meeting shall either vote to affirm the recommendations or vote to deny the recommendations and remand the case for further administrative hearing, with or without instructions. No administrative case shall be delayed or continued by the Board after being placed on an agenda for final Board review, except with the consent of all parties. The licensee or persons affected by the imposition of an administrative fine, penalty or fee on final review by the Board shall have all rights of appeal preserved pursuant to the Administrative Procedures Act until final action by the Board.

E. The Construction Industries Board ~~and the State Board of Health may enter into an agreement for the transfer of personnel into the unclassified service under the direction of the Construction Industries Board effective January 1, 2002, and for personnel exclusively related to the regulation of home inspectors, effective November 1, 2008. No employee shall be transferred into the unclassified service under the direction of the Construction Industries Board except on the freely given written consent of the employee. All classified employees under the Merit System of Personnel Administration who are not transferred into the unclassified service as provided shall retain the status in the class occupied by the employee on July 1, 2001, and for personnel exclusively related to the regulation of home inspectors, occupied by the employee on November 1, 2008, as allocated by the Office of Management and Enterprise Services. The salary of such an employee shall not be reduced as a result of such position allocation. Employees who are transferred as provided shall not be required to accept a lesser grade or salary than that in effect on July 1, 2001, and for personnel exclusively related to the regulation of home inspectors, than that in effect on November 1, 2008. All employees shall retain leave, sick and annual time earned, and any retirement and longevity benefits which have accrued during their tenure in the classified service. The transfer of personnel shall be coordinated with the Office of Management and Enterprise Services~~ shall hear all appeals timely made from an administrative ruling relating to an industry and trade regulated by the Board; however, this appeal authority shall not be in addition to the appeal process authorized by the Administrative Procedures Act. Any ruling by the Board from an administrative hearing may be further appealed to the district court of Oklahoma County. The district court, upon conclusion of an appeal from a Board ruling, shall be authorized to award reasonable legal fees to the prevailing party.

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

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

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

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

2. The Board shall charge fees only within the following ranges, except as may be otherwise specified in this section <u>or another provision of law</u>.

For application for license	not to exceed $30.00
For administration of license examinations:	not to exceed $200.00
For license or permit issuance:	not to exceed $300.00
For license or permit renewal:	not to exceed $200.00
For formal project review for code conformance:	not to exceed $200.00
For permit issuance for the use of alternative materials or methods:	not to exceed $50.00
For dishonored checks:	not to exceed amount pursuant to the provisions of Section 1121 of Title 47 of the Oklahoma Statutes.

B. The Board shall base its schedule of fees upon the reasonable costs of review and inspection services rendered in connection with each license, permit, or review, but shall be within

the ranges specified in paragraph 2 of subsection A of this section, except as otherwise specified in this section or provided by law. The Board shall establish a system of training for all personnel who render review and inspection services in order to assure uniform statewide application of rules. The Board shall include the reasonable costs associated with such training in the fees provided for in this section.

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

D. All ~~statutory fees now in effect for the issuance and renewal of any license, permit, or review under the authority of the Construction Industries Board shall remain in effect until such time as the Board, by its rulemaking authority, acts to implement new fee schedules pursuant to the provisions of this section~~ fee changes adopted by the Board shall be reviewed and approved as provided in subsection F of Section 308 of Title 75 of the Oklahoma Statutes.

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

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

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

Section 1000.5a. A. ~~By~~ Except as otherwise provided by law, by way of reciprocity and without examination, an application for any

license issued by any committee or board under the authority of the Construction Industries Board to engage in any work or trade in this state subject to the Board's regulatory authority may be made to the Board in writing on a form and in a manner prescribed by the Board. The application shall be accompanied by a fee pursuant to Section 1000.5 of ~~Title 59 of the Oklahoma Statutes~~ this title, which shall not be refundable under any circumstances. If the application is disapproved by the Board, it shall be returned to the applicant with the reason for its disapproval stated thereon.

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

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

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

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

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

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

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

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

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

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

D. No temporary journeyman license shall be extended or renewed. Upon expiration of the temporary journeyman license, the license holder shall be ineligible to work as a journeyman in this state unless qualified under other provisions of law.

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

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

SECTION 8. AMENDATORY 59 O.S. 2011, Section 1000.9, is amended to read as follows:

Section 1000.9. A. In addition to any other remedies provided for by law, the Construction Industries Board~~, pursuant to rules promulgated by the Board,~~ may issue a written order to any person or entity whom the Board has reason to believe is ~~presently~~ in violation of, or has violated, any law which the Board has authority to enforce or the standards or rules promulgated by the ~~Construction Industries~~ Board, and to whom the Board has served, no less than

fifteen (15) days previously, a written notice of violation ~~of such standards or rules~~. The fifteen-day notice period may be reduced as, in the opinion of the Board, may be necessary to render the order reasonably effectual.

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

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

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

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

Passed the Senate the 20th day of May, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of May, 2013.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd

day of May, 20 13, at 5:26 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 24th

day of May, 20 13, at 1:24 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 24th

day of May, 20 13, at 1:55 o'clock P. M.

By: Chris Morrison