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Preliminary Performance Review

West Virginia Contractors' Licensing Board

**Compared to Most States, West Virginia Provides a Low Level
of Consumer Protection Against Financial Loss from Contractors**

**Board is Required to Issue a "Grandfathered" License
Ten Years after the Effective Date of the Contractor Licensing Act**

**Board Allows a Licensed Contractor to Renew
a License up to Two Years After the License's Expiration Date**

**Current Annual License Fee Needs to be Increased
in Order to Adequately Handle the Expected Rise
in Consumer Complaints**

**Contractor Licensing Board Should Consider Adding
a Consumer Representative as part of its Membership**

**Board believes that it has the Authority to Control
the Division Of Labor's Budget as it Pertains to the
Contractor Licensing Operation**



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The West Virginia Contractor Licensing Board was created by the 1991 Acts of the Legislature (West Virginia *Code* §21-11-4). The Board is mandated to protect the public from unfair, unsafe and unscrupulous bidding and construction practices.

Issue 1: Compared to Most States, West Virginia Provides a Low Level of Consumer Protection Against Financial Loss from Contractors.

Issue 2: The Board is Required to Issue a “Grandfathered” License Ten Years after the Effective Date of the Contractor Licensing Act.

Issue 3: The Board Allows a Licensed Contractor to Renew a License up to Two Years after the License’s Expiration Date.

A licensed contractor must renew his or her license on or before the expiration date by submitting a renewal application and paying the \$90 annual license fee. This renewed license is contingent upon the contractor being in compliance with the Departments of Tax and Revenue, Workers Compensation, Employment Security, and the Secretary of State. If a licensed contractor fails to renew the license in a timely manner, he or she must pay a penalty fee of \$25, in addition to the \$90 annual renewal fee. However, language in West Virginia *Code* §21-11-12 is particularly lenient when it pertains to the length of time a licensed contractor is given to renew his or her license. The *Code* allows a two year grace period to renew a license. **This means that contractors who take the full two years to renew their license can get out of paying the annual license fee during the years that are encompassed by this grace period. More importantly, this long grace period increases the risk that consumers may hire unlicensed contractors.**

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Issue 4: The Current Annual License Fee Needs to be Increased in Order to Adequately Handle the Expected Rise in Consumer Complaints.

One of the main functions of the Contractor Licensing Board is the licensing of contractors. The Board issues a license that is valid for twelve months from the date of issuance. Anyone desiring to become a licensed contractor must pass the applicable written examination, along with being in compliance with the appropriate State agencies, and must pay the appropriate license fee. By statute, the Board has the authority to establish an annual license fee not to exceed \$150. However, the current fee of \$90 that the Board has in place is not high enough to support the new consumer complaint process, which is estimated to cost an additional \$350,000, that is supposed to go into effect on November 1, 2002. The new consumer complaint process was established by Senate Bill 429, which passed during the 2002 Regular Session.

Issue 5: The Contractor Licensing Board Should Consider Adding a Consumer Representative as Part of its Membership.

Proper representation is an important component in determining how effective and efficient a board is. According to statute, the Contractor Licensing Board has ten members who are appointed by the Governor; however, none of the ten members are citizen or consumer representatives. Although the Board is abiding by the West Virginia *Code*, the current composition of the Board could be enhanced in order to become more effective in representing consumers. Adding one to two consumer representative would enable the Board to become more balanced in having consumer input involved in Board decisions. This will become important when the Board's consumer complaint process is established during FY 2003.

Issue 6: The Board Believes that it has the Authority to Control the Division of Labor's Budget as it Pertains to the Contractor Licensing Operation.

The Contractor Licensing Board has the power and authority to discipline licensed contractors. In addition, the Board relies on the Division of Labor to perform specific administrative duties which are defined in statute. However, there has been some confusion as to where certain authority and responsibilities were placed within the Contractor Licensing Act. More specifically, the Board feels that it has the authority to control the funding the Division of Labor receives

from the Legislature for contractor licensing operations.

Recommendations:

1. The Legislature should consider amending the West Virginia *Code* to allow for some method of financial assurance, such as insurance, bonding, or a recovery fund, to the consumer in order to protect consumers from the unscrupulous and/or incompetent licensed contractors. If a recovery fund is to be used, the Legislature should consider allowing fines collected to be deposited into the recovery fund.

Level of Compliance: Legislative Action Required and Taken

The Legislature did address this recommendation during the 2002 Legislative Session. Senate Bill 429, which passed on March 9, 2002, and is in effect 90 days from passage, revised the West Virginia Contractor Licensing Act. West Virginia Code §21-11-7(b) now also addresses the issue of requiring certain contractors to provide some form of financial assistance.

2. The Legislature should consider eliminating the language in §21-11-7(b) of the West Virginia Code.

Level of Compliance: Legislative Action Required and Taken

The Legislature also addressed this recommendation during the 2002 Legislative Session. Senate Bill 429 dealt with the “grandfather clause” issue, and as a result, West Virginia Code §21-11-7(b) was amended to eliminate this clause.

3. The Board should follow through its actions to completion by assuring that the legislation be submitted for the reduction of the renewal period to 90 days and that legislative rules be submitted for the setting of a \$25 penalty for each month the renewal is late until the final expiration period of 90 days lapses.

4. The Contractor Licensing Board should consider increasing the annual license fee in order to adequately fund the Division of Labor’s Contractor’s Licensing Section due to the new consumer complaint process.

5. In anticipation of the expected increase in consumer complaints, the Legislature should consider adding a citizen member to the Contractor Licensing Board.

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6. The Legislature should consider compensating Contractor Licensing Board members an amount comparable to the Manufactured Housing Construction and Safety Board for meetings attended.

7. The Legislature should consider drafting legislation that clarifies or changes the relationship between the Contractors Licensing Board and the Division of Labor with regard to budgetary matters.

Review Objective, Scope and Methodology **DRAFT**

A Compliance Monitoring/Further Inquiry Update of the Contractor Licensing Board is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5a of the West Virginia *Code*, as amended. As stated in the *Code*, an update is performed to determine whether an agency has complied with recommendations contained in prior performance reviews and to research further issues relating to the initial evaluation.

Objective

The Legislative Auditor previously issued a report on the Board's low level of consumer protection against financial loss, and the Board's requirement to issue a "grandfathered" license ten years after the effective date of the Contractor Licensing Act. This review of the Contractor Licensing Board is conducted as a *compliance monitoring* of the previous issues, and as a *further inquiry* into various concerns brought to the Legislative Auditor's attention. The primary objectives of the review are to determine the status of the previous issues as well as to determine the following: 1) Whether the Board's renewal grace period is excessive; 2) If the annual license fee needs to be increased; 3) Whether the Board would benefit from having a consumer representative; and 4) If the Contractor Licensing Act needs further clarification regarding the Board's authority and the Division of Labor's authority.

Scope

The Contractor Licensing Board Update covers the period from July 2001 through August 2002.

Methodology

Information compiled in this report has been acquired through interviews, conversations, and correspondence with Division of Labor representatives and the chairman of the Contractor Licensing Board. The update also involved reviewing Board meeting minutes from December 2000 to February 2002; West Virginia *Code* §21-11-1; Legislative Rule, Title 28, Series 2; and Senate Bill 429. In addition, data was obtained from various states regarding renewal periods and board membership. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).

Compared to Most States, West Virginia Provides a Low Level of Consumer Protection Against Financial Loss from Contractors.

Recommendation 1:

The Legislature should consider amending the West Virginia *Code* to allow for some method of financial assurance, such as insurance, bonding, or a recovery fund, to the consumer in order to protect consumers from unscrupulous and/or incompetent licensed contractors. If a recovery fund is to be used, the Legislature should consider allowing fines collected to be deposited into the recovery fund.

Level of Compliance: Legislative Action Required and Taken

The Legislature did address this recommendation during the 2002 Legislative Session. Senate Bill 429, which passed on March 9, 2002, and is in effect 90 days from passage, revised the West Virginia Contractor Licensing Act. West Virginia *Code* §21-11-14 now also addresses the issue of requiring certain contractors to provide some form of financial assurance. West Virginia *Code* §21-11-14 states in part:

*The board has the power and authority to impose the following disciplinary actions: ... Order a contractor who has been found, after a hearing, to have violated any provisions of this article or the rules of the board to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance: Provided, That the amount of financial assurance required under this subdivision may not exceed the total of the aggregate amount of the judgments or liens levied against the contractor or the aggregate value of any corrective work ordered by the board or both: **Provided, however, That the board may remove this requirement for licensees against whom no complaints have been filed for a period of five continuous years. (Emphasis added.)***

This amendment should allow for the necessary protection that consumers need from unscrupulous or incompetent licensed contractors.

The Board is Required to Issue a “Grandfathered” License Ten Years after the Effective Date of the Contractor Licensing Act.

Recommendation 2:

The Legislature should consider eliminating the language in §21-11-7(b) of the West Virginia Code.

Level of Compliance: Legislative Action Required and Taken

The Legislature also addressed this recommendation during the 2002 Legislative Session. Senate Bill 429 dealt with the “grandfather clause” issue. West Virginia Code §21-11-7(b) was amended to read as follows:

*A person holding a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, one thousand nine hundred ninety-one, may register with the board, certify by affidavit the requirements of subsection (c), section fifteen of this article and pay such license fee not to exceed one hundred fifty dollars and shall be issued a contractor’s license without further examination: **Provided, That no license may be issued without examination pursuant to this subsection after the first day of April, two thousand two.** (Emphasis added.)*

The elimination of the “grandfather clause” will be beneficial to the Board in a couple of ways. First, it will help ease the work load of the Contractor Licensing staff. Secondly, most companies who requested to be “grandfathered” had been working illegally since the inception of the Contractor Licensing Board. Since the “grandfather clause” is no longer in effect, these companies who are working illegally will not be able to be “grandfathered” and will have to take an examination.

The Board Allows a Licensed Contractor to Renew a License up to Two Years after the License's Expiration Date.

“Contractors who take the full two years to renew their license can get out of paying the annual license fee during the years that are encompassed by this grace period...this long grace period increases the risk that consumers may hire unlicensed contractors.”

A licensed contractor must renew his or her license on or before the expiration date by submitting a renewal application and paying the \$90 annual license fee. This renewed license is contingent upon the contractor being in compliance with the Departments of Tax and Revenue, Workers Compensation, Employment Security, and the Secretary of State. If a licensed contractor fails to renew the license in a timely manner, he or she must pay a penalty fee of \$25, in addition to the \$90 annual renewal fee. However, language in West Virginia Code §21-11-12 is particularly lenient when it pertains to the length of time a licensed contractor is given to renew his or her license. The Code allows a two year grace period to renew a license. **This means that contractors who take the full two years to renew their license can get out of paying the annual license fee during the years that are encompassed by this grace period. More importantly, this long grace period increases the risk that consumers may hire unlicensed contractors.**

It should be noted that while the Legislative Auditor's Office was reviewing this issue, the Board, at its June 27, 2002 meeting, voted to reduce the renewal grace period from two years to 90 days after the expiration date of the license. Since this requires a statutory change, the Board will need to submit legislation for the 2003 Legislative Session. For late renewals, the Board also voted to amend its legislative rules by changing the late fee to \$25 for each month the renewal is late until its final expiration period of 90 days lapses. The Board is to be commended for these actions as these changes will improve the licensing of contractors. Before these changes to its legislative rules can take effect, the Board must submit them to the Legislature for approval during the 2003 Regular Session.

Renewal Periods Utilized by Other States

“West Virginia's renewal period of two years is rather long compared to those of the selected states.”

Renewal periods of surrounding states were reviewed. Of the bordering states, only Maryland, Virginia and Ohio have contractor licensing boards. South Carolina and New Mexico were added in place of Kentucky and Pennsylvania. As Table 1 shows, West Virginia's renewal period of two years is rather long compared to those of the selected states. All states had a 90 day period except for Virginia, which had a six month period.

Table 1
Renewal Periods For Selected States*

State	Time Frame Given To Renew
Maryland	90 Days
Virginia	6 months
Ohio	90 Days
South Carolina	90 Days
New Mexico	3 months
West Virginia	2 years

*Kentucky and Pennsylvania do not license contractors.

Conclusion

The West Virginia Contractor Licensing Board has a lenient time frame regarding license renewal. Allowing a licensee to renew a license up to two years beyond the expiration date is rather excessive compared to other states. Reducing the grace period will help prevent contractors from working for up to two years without a license before they decide to renew. In addition, not paying the \$90 annual renewal fee for each of the two years that a contractor does not renew will be eliminated. Finally, decreasing the two year renewal period will help keep licensed contractors in compliance with other State agencies and will help assure consumers that they are dealing with a licensed contractor. It should be noted that this issue was discussed during the June 27, 2002 Board meeting, in which the members voted to reduce the grace period from two years to 90 days beyond the expiration date, which will require legislation to be submitted during 2003 Legislative Session. In addition, the Board voted to amend its legislative rules changing the late fee to \$25 each month the renewal is late until the final expiration period of 90 days lapses.

Recommendation 3:

The Board should follow through its actions to completion by assuring that the legislation be submitted for the reduction of the renewal period to 90 days and that legislative rules be submitted for the setting of a \$25 penalty for each month the renewal is late until the final expiration period of 90 days lapses.

The Current Annual License Fee Needs to be Increased in Order to Adequately Handle the Expected Rise in Consumer Complaints.

“...the Board has the authority to establish an annual license fee not to exceed \$150...the current fee of \$90 that the Board has in place is not high enough to support the new consumer complaint process.”

One of the main functions of the Contractor Licensing Board is the licensing of contractors. The Board issues a license that is valid for 12 months from the date of issuance. Anyone desiring to become a licensed contractor must pass the applicable written examination, along with being in compliance with the appropriate State agencies, and must pay the appropriate license fee. By statute, the Board has the authority to establish an annual license fee not to exceed \$150. However, the current fee of \$90 that the Board has in place is not high enough to support the new consumer complaint process, which is estimated to cost an additional \$350,000, that is supposed to go into effect on November 1, 2002. The new consumer complaint process was established by Senate Bill 429, which passed during the 2002 Regular Session.

Statute Requirement and Legislative Rule

The Contractor Licensing Board is mandated by statute to establish application and annual license fees. *West Virginia Code* §21-11-8 states in part:

A license issued under the provisions of this article expires one year from the date on which it is issued. The board shall establish application and annual license fees not to exceed one hundred fifty dollars.

The Contractor Licensing Board is abiding by this statutory requirement. Legislative Rule, §28-2-5.3 states in part, “*Any person desiring a license shall, at the time of application, pay the annual fee of \$90.00, as established by the Board.*” The Board had originally established the fee at \$100 after the Contractor Licensing Act went into effect in 1991, and then lowered it to \$90 in 1993.

New Legislative Rule and Consumer Complaint Process

Under the authority of *West Virginia Code* §21-11-14, the Board was required to propose a legislative rule regarding the investigation and resolution of all consumer complaints made against licensed contractors. Legislative Rule, Title 28, Series 3 has been passed by the Legislature and will be in effect on November 1, 2002. This legislative rule establishes criteria for the receipt,

“...the current Board does not support increasing the license fee...”

investigation and resolution of complaints against licensed contractors. In addition, this rule will make it easier for consumers to file a complaint. For instance, instead of a consumer having to obtain either a magistrate or circuit court judgment against a licensed contractor, the consumer will be able to file a complaint directly with the Board, and the Board will be responsible for investigating and resolving those complaints. As a result, the amount of complaints should increase significantly. Since the number of consumer complaints is expected to increase, the Division of Labor will need to hire more compliance officers and administrative staff in order to adequately handle the influx. The Division has estimated that it will need an increase of approximately \$350,000 which will go towards the hiring of five new field officers, two new clerical positions, and related expenses.

The Board does not Intend to Increase the Annual License Fee

According to Division of Labor representatives, the present level of the Contractor Licensing Board Fund will not sufficiently support the Contractor Licensing Section when the new consumer complaint process goes into effect. As previously mentioned, the Division of Labor has requested approximately \$350,000 in additional funding from the Legislature. The funds needed could come from either the State’s general revenue appropriation or by way of an increase in the annual license fee. However, the Division of Labor was informed that general revenue funds simply are not available. Therefore, the only possible funding source is an increase in the annual license fee. Division of Labor representatives are in favor of a \$25 increase in the annual license fee, which would raise the fee from \$90 to \$115. Despite the need to fund the new consumer complaints process and the fact that WVC §21-11-8 stipulates that the Board has the authority to raise the annual license fee up to \$150, the current Board does not support increasing the license fee and feels that the \$90 fee should remain intact.

Conclusion

Due to the expected rise in the number of consumer complaints the Board will receive, an increase in staff is warranted to help compensate for this. The Division of Labor has requested additional funding, first from the Legislature and then from the Board, of approximately \$350,000 for the purpose of setting up the new consumer complaints process. The setup of this new process includes hiring five new field officers, two new clerical positions, and related expenses. Increasing the annual license fee is the only viable option that the Board has in order to meet these needs. However, the Board does not want to increase the

annual fee. On the other hand, Division of Labor representatives feel that a fee increase is necessary to adequately support the Contractor Licensing Section.

Recommendation 4:

The Contractor Licensing Board should consider increasing the annual license fee in order to adequately fund the Division of Labor's Contractor Licensing Section due to the new consumer complaint process.

The Contractor Licensing Board Should Consider Adding a Consumer Representative as part of its Membership.

“Adding one or two consumer representatives would enable the Board to become more balanced in having consumer input involved in Board decisions.”

Proper representation is an important component in determining how effective and efficient a board is. According to statute, the Contractor Licensing Board has ten members who are appointed by the Governor; however, none of the ten members are citizen or consumer representatives. Although the Board is abiding by the *West Virginia Code*, the current composition of the Board could be enhanced in order to become more effective in representing consumers. Adding one to two consumer representatives would enable the Board to become more balanced in having consumer input involved in Board decisions. This will become important when the Board’s consumer complaint process is established during FY 2003.

Statute Requirement and the Need for a Consumer Representative

“Since the Board consists of primarily representatives of the various contracting industries, it has the appearance of being biased towards the contractor.”

It is important that the Contractor Licensing Board be well-balanced and objective. **Since the Board consists of primarily representatives of the various contracting industries, it has the appearance of being biased towards the contractor.** However, the Board is adhering to statute. *West Virginia Code* §21-11-4 states in part:

The board shall consist of ten members appointed by the governor by and with the advice and consent of the Senate for terms of four years. Such members shall serve until their successors are appointed and have qualified. Eight of the appointed members shall be owners of businesses engaged in the various contracting industries, with at least one member appointed from each of the following contractor classes: One electrical contractor, one general building contractor, one general engineering contractor, one heating, ventilating and cooling contractor, one multifamily contractor, one piping contractor, one plumbing contractor and one residential contractor, as defined in section three hereof. Two of the appointed members shall be building code officials who are not members of any contracting industry...

“...the Board is not in favor of adding a consumer representative as part of its membership.”

Although the Board is abiding by this statutory requirement, it does not have a member who represents the consumer. When the new consumer complaint process goes into effect on November 1, 2002, it should have a significant impact on the amount of complaints that the Board receives. Since consumer complaints are expected to increase, not having a consumer or citizen member could give the appearance that the Board is not being as objective as it should towards consumers. Therefore, consumer representation on the Board should be considered. However, the Board is not in favor of adding a consumer representative as part of its membership. According to the Board’s Chairman, including a citizen or consumer representative “*would only complicate the procedures.*” On the other hand, Division of Labor representatives are in favor of adding a consumer or citizen representative to the Board’s membership.

Composition of Similar Boards in Other States

The Legislative Auditor obtained information regarding the membership of certain licensing boards throughout the country. Information was gathered for the states of Maryland, Virginia, Ohio, South Carolina, and New Mexico. The results are as follows: 1) Maryland’s Board of Heating, Ventilation, Air Conditioning and Refrigeration Contractors utilizes a seven member board; **two of whom are consumer members.** It is worth noting that the two consumer members serve as Chairman and Vice Chairman; 2) Virginia’s Board for Contractors is comprised of 13 members which includes seven licensed contractors, three tradesman, one building official, and **two citizen members;** 3) The Ohio Construction Industry Examination Board consists of 17 members, including **one member who is a representative of the public;** 4) The South Carolina Contractors’ Licensing Board consists of eight members, including **two consumer members** who must be appointed from the public at large; and 5) New Mexico’s Construction Industries Commission has nine members. One member must be a resident who is not a licensed contractor or certified journeyman and **represents the people of New Mexico.** Table 2 provides a summary of how West Virginia compares to these other states regarding consumer representation on their respective licensing boards.

**Table 2
Citizen Membership Status Of Select States**

State	Has Consumer/ Citizen Member(s)	Number Of Consumer/ Citizen Member(s)
Maryland	Yes	Two
Virginia	Yes	Two
Ohio	Yes	One
South Carolina	Yes	Two
New Mexico	Yes	One
West Virginia	No	None

Composition of Other Licensing Boards in West Virginia

“Not only do similar licensing boards in other states have citizen members, but other licensing boards within West Virginia do as well...”

Not only do similar licensing boards in other states have citizen members, but other licensing boards within West Virginia do as well, and every health professional licensing board within Chapter 30 is required to have consumer representation. West Virginia Code §30-1-4a states in part:

Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board which is referred to in this chapter.

The Legislative Auditor examined the composition of five other West Virginia boards. The results are as follows: 1) The Manufactured Housing Construction and Safety Board is comprised of six appointed members and the Commissioner of the Division of Labor, who serves as chairman. In addition, at least **two of the members must represent and be consumers**; 2) The Board of Architects is comprised of seven members, five of whom are architects, and **two should be lay members**; 3) The Board of Barbers and Cosmetologists consists of four professional members and **one lay member**; 4) The Board of Pharmacy consists of five practicing pharmacists and **two public members**; and 5) The Board of Osteopathy is composed of five members, **including two lay members**. Table 3 provides a summary of how the Contractor Licensing Board compares to other licensing boards within West Virginia regarding consumer representation on their respective licensing boards.

**Table 3
Citizen Membership Status Of Select West Virginia Licensing Boards**

Board	Has Citizen/Lay Members	Number Of Citizen/Lay Members
Manufactured Housing Construction & Safety	Yes	At Least Two
Architects	Yes	Two
Barbers & Cosmetologists	Yes	One
Pharmacy	Yes	Two
Osteopathy	Yes	Two
Contractor Licensing	No	None

Board Receives No Compensation for Its Services

“...Contractor Licensing Board members do not receive compensation for attending Board meetings.”

“Compensating Contractor Licensing Board members would allow them to be on more level terms with their fellow Manufactured Housing Board members and should provide an even greater incentive to attend Contractor Licensing Board meetings.”

Presently, Contractor Licensing Board members do not receive compensation for attending Board meetings. West Virginia Code §21-11-4 states in part, “Board members shall receive no remuneration for their service, but shall be reimbursed for their actual expenses incurred in the performance of their duties as such.” However, the Manufactured Housing Construction and Safety Board, which is administered by the Division of Labor as well, does receive compensation. West Virginia Code §21-9-3 states in part, “Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his duties as a member of the board.” It does not seem equitable that one of these boards receives compensation while the other one does not. Compensating Contractor Licensing Board members would allow them to be on more level terms with their fellow Manufactured Housing Board members and should provide an even greater incentive to attend Contractor Licensing Board meetings.

Conclusion

The Contractor Licensing Board is abiding by the statute regarding its composition. Although the Board is not mandated to have a consumer representative, it would benefit the Board and the public to have at least one member represent the consumer due to the expected increase in consumer

favor of consumer representation; however, Board members are not.

Recommendation 5:

In anticipation of the expected increase in consumer complaints, the Legislature should consider adding a citizen member to the Contractor Licensing Board.

Recommendation 6:

The Legislature should consider compensating Contractor Licensing Board members an amount comparable to the Manufactured Housing Construction and Safety Board for meetings attended.

The Board Believes that it has the Authority to Control the Division of Labor’s Budget as it Pertains to the Contractor Licensing Operation.

The Contractor Licensing Board has the power and authority to discipline licensed contractors. In addition, the Board relies on the Division of Labor to perform specific administrative duties which are defined in statute. However, there has been some confusion as to where certain authority and responsibilities were placed within the Contractor Licensing Act. More specifically, the Board feels that it has the authority to control the funding the Division of Labor receives from the Legislature for contractor licensing operations.

Confusion Within the Statute

“...the Contractor Licensing Board feels that it has the authority to tell the Division of Labor how much money should be spent regarding the contractor licensing budget. However, the Division of Labor believes that authority belongs to the Legislature.”

Division of Labor representatives feel that the Contractor Licensing Act does not provide a precise distinction between the authority of the Board and that of the Commissioner with respect to the Board’s funding. This has led to a difference of opinion between the Contractor Licensing Board and the Division of Labor regarding who has the authority to control the Division of Labor’s contractor licensing budget. Mainly, the confusion stems from West Virginia Code §21-11-17 which states in part:

The board shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the state treasury to be known as the “West Virginia Contractor Licensing Board Fund”. Expenditures from said fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code...

As a result of the aforementioned code site, the Contractor Licensing Board feels that it has the authority to tell the Division of Labor how much money should be spent regarding the contractor licensing budget. However, the Division of Labor believes that authority belongs to the Legislature. Therefore, the Legislative Auditor requested a legal opinion from Legislative Services in order to provide a distinction between the authority of the Board and that of the Division of Labor. Legal staff from Legislative Services responded by stating that:

Unfortunately, there is no clear answer as to whether the Board or the Division has the authority in this or similar situations. There is an absence of statutory guidance as to how these parties are to operate in the awkward arrangement they share... the problem should be addressed by additional legislation which clarifies or changes the relationship between these parties.

“...there is no clear answer as to whether the Board or the Division has the authority in this or similar situations.”

This problem is related to the issue of funding the consumer complaint process, mentioned in Issue 4 of this report. Other possible remedies for this problem include the Legislature statutorily mandating the Board to raise its contractor licensing fees, or the Legislature appropriating monies from another source to fund the implementation of the complaint process. However, this would not address the long-term problems that exist in the current arrangement between the Board and the Division.

Recommendation 7:

The Legislature should consider drafting legislation that clarifies or changes the relationship between the Contractors Licensing Board and the Division of Labor with regard to budgetary matters.

Appendix A: Transmittal Letter to Agency

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John Sylvia
Director

July 30, 2002

James Lewis, Commissioner
Division of Labor
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Charleston, WV 25305-0570

Dear Mr. Lewis:

This is to transmit a draft copy of the Compliance Monitoring/Further Inquiry Update of the Contractor Licensing Board. This report is scheduled to be presented at the Sunday, August 18, 2002 interim meeting of the Joint Committee on Government Operations in Wheeling. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have. If you would like to schedule an exit conference to discuss any concerns you may have with the report between July 31, 2002 and August 5, 2002, please notify us. We need your written response by noon on August 7, 2002 in order for it to be included in the final report.

We request that your personnel treat the draft report as confidential and request that it not be disclosed to anyone except those agency employees who will prepare the response to the report or who will participate in the exit conference. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/cn

c: Fran Cook, Deputy Commissioner, Division of Labor

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