

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4791**

BY DELEGATES FOSTER, WAXMAN AND PORTERFIELD

[Introduced February 11, 2020; Referred to the  
Committee on Government Organization]

1 A BILL to amend and reenact §21-11-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to the alteration of the definition of a specialty contractor under the West Virginia  
 3 Contractor Licensing Act in order to specify that only specialty contractors whose work  
 4 requires more than 10 percent of labor to fulfill their contracting services would be required  
 5 to obtain a contractor’s license.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.**

**§21-11-3. Definitions.**

1 (a) “Commissioner” means the Commissioner of the Division of Labor.

2 (b) “Board” means the West Virginia Contractor Licensing Board.

3 (c) “Contractor” means a person who in any capacity for compensation, other than as an  
 4 employee of another, undertakes, offers to undertake, purports to have the capacity to undertake  
 5 or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish  
 6 any building, highway, road, railroad, structure or excavation associated with a project,  
 7 development or improvement, or to do any part thereof, including the erection of scaffolding or  
 8 other structures or works in connection therewith, where the cost of the undertaking is \$2,500 or  
 9 more.

10 Contractor includes a construction manager who performs management and counseling  
 11 services for a construction project for a professional fee.

12 Contractor does not include:

13 (1) One who merely furnishes materials or supplies without fabricating or consuming them  
 14 in the construction project;

15 (2) A person who personally performs construction work on the site of real property which  
 16 the person owns or leases whether for commercial or residential purposes;

17 (3) A person who is licensed or registered as a professional and who functions under the  
 18 control of any other licensing or regulatory board, whose primary business is real estate sales,

19 appraisal, development, management and maintenance, who acting in his or her respective  
20 professional capacity and any employee of such professional, acting in the course of his or her  
21 employment, performs any work which may be considered to be performing contracting work;

22 (4) A pest control operator licensed under the provisions of §19-16A-7 of this code to  
23 engage in the application of pesticides for hire, unless the operator also performs structural  
24 repairs exceeding \$1,000 on property treated for insect pests; or

25 (5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare  
26 construction plans and specifications used by the contractors defined in this subsection and who  
27 employs full time a registered architect licensed to practice in this state or a registered  
28 professional engineer licensed to practice in this state. Employees of such corporation,  
29 partnership or sole proprietorship shall also be exempt from the requirements of this article.

30 (d) "Electrical contractor" means a person who engages in the business of contracting to  
31 install, erect, repair or alter electrical equipment for the generation, transmission or utilization of  
32 electrical energy.

33 (e) "General building contractor" means a person whose principal business is in  
34 connection with any structures built, being built or to be built for the support, shelter and enclosure  
35 of persons, animals, chattels or movable property of any kind, requiring in the construction the  
36 use of more than two contractor classifications, or a person who supervises the whole or any part  
37 of such construction.

38 (f) "General engineering contractor" means a person whose principal business is in  
39 connection with public or private works projects, including, but not limited to, one or more of the  
40 following: Irrigation, drainage and water supply projects; electrical generation projects; swimming  
41 pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and  
42 sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and  
43 other liquid or gaseous substances; refineries; chemical plants and other industrial plants  
44 requiring a specialized engineering knowledge and skill; piers and foundations; and structures or

45 work incidental thereto.

46 (g) "Heating, ventilating and cooling contractor" means a person who engages in the  
47 business of contracting to install, erect, repair, service or alter heating, ventilating and air  
48 conditioning equipment or systems to heat, cool or ventilate residential and commercial  
49 structures.

50 (h) "License" means a license to engage in business in this state as a contractor in one of  
51 the classifications set out in this article.

52 (i) "Multifamily contractor" means a person who is engaged in construction, repair or  
53 improvement of a multifamily residential structure.

54 (j) "Person" includes an individual, firm, sole proprietorship, partnership, corporation,  
55 association or other entity engaged in the undertaking of construction projects or any combination  
56 thereof.

57 (k) "Piping contractor" means a person whose principal business is the installation of  
58 process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure  
59 vessels using joining methods of thread, weld, solvent weld or mechanical methods.

60 (l) "Plumbing contractor" means a person whose principal business is the installation,  
61 maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and  
62 plumbing appurtenances, venting systems and public or private water supply systems within or  
63 adjacent to any building or structure; included in this definition is installation of gas piping, chilled  
64 water piping in connection with refrigeration processes and comfort cooling, hot water piping in  
65 connection with building heating and piping for stand pipes.

66 (m) "Residential contractor" means a person whose principal business is in connection  
67 with construction, repair or improvement of real property used as, or intended to be used for,  
68 residential occupancy.

69 (n) "Specialty contractor" means a person who engages in specialty contracting services  
70 which do not substantially fall within the scope of any contractor classification as set out herein or

71 whose contracting services require more than 10 percent in labor costs to fulfill.

72 (o) "Residential occupancy" means occupancy of a structure for residential purposes for  
73 periods greater than 30 consecutive calendar days.

74 (p) "Residential structure" means a building or structure used or intended to be used for  
75 residential occupancy, together with related facilities appurtenant to the premises as an adjunct  
76 of residential occupancy, which contains not more than three distinct floors which are above grade  
77 in any structural unit regardless of whether the building or structure is designed and constructed  
78 for one or more living units. Dormitories, hotels, motels or other transient lodging units are not  
79 residential structures.

80 (q) "Subcontractor" means a person who performs a portion of a project undertaken by a  
81 principal or general contractor or another subcontractor.

82 (r) "Division" means the Division of Labor.

83 (s) "Cease and desist order" means an order issued by the commissioner pursuant to the  
84 provisions of this article.

85 (t) The term "basic universal design" means the design of products and environments to  
86 be useable by all people, to the greatest extent possible, without the need for adaptation or  
87 specialization.

NOTE: The purpose of this bill is to create an exemption under the West Virginia Contractor Licensing Act that would allow for specialty contractors performing subcontracted work to not have to obtain a contractor's license if 10 percent or less of the value of the work performed on a singular project goes to the cost of labor.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.