



MARINE CONTRACTORS LICENSING BOARD
c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD
Meeting Minutes – November 8, 2021

Location: Virtual Meeting via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman
 Robert Murtha, SoMD Contractor Rep
 Tammy Roberson, MDE Representative
 Lester Kelly Wright, DNR Representative
 Douglas Suess, At Large Representative
 Chris McCabe, At Large Representative

OTHERS PRESENT

Mike Eisner, Board Administrator

CALL TO ORDER

The meeting was called to order by Mr. Rehbein at 10:00 am using the virtual platform Google Meet. Six Board members were present, as well as the recently hired (September 15, 2021) Board's administrator.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which includes: update of licensing activities, update on finances, resumed discussion of the tiered licensing system and associated regulations, review and discussion of pending license applications received and discussion of complaints received regarding marine contractors.

REVIEW OF PRIOR MEETING MINUTES

Board Members reviewed and approved by vote the draft meeting minutes from February 8, 2021 and August 9, 2021.

Board Activities and Financial/Budget Report

Discussion was renewed on the new license application for Chesapeake Turf. A hold on this application had been placed by legal counsel. However, the potential violation(s) have been determined to be outside of legal authority of the law governing Tidal Wetlands. This application review led to the Board discussing the challenges of maintaining an equity of standards, a consistency, in reviewing applicants. The intent is to determine if applicants meet the minimum qualifications for previous work in marine contracting, or meet the minimum standards via the 'similar work experience' criteria. The Board voted to approve the application and allow the applicant to proceed with taking the licensing exam. This discussion included comments, that these challenges further validate the need to proceed with the planned 'Tiered System' and the needed supporting regulations.

Mr. Eisner gave an overview of the present income/expense situation for the first quarter (July 1, 2021 – September 30, 2021) of State Fiscal Year 2022. The Licensing Board is well funded at this point.

Discussion continued on the need for a ‘Tiered System’ for licenses and supportive regulations. A proposal was made to plan a dedicated working meeting in December for the ‘Tiered System’ and supportive regulations. It was proposed that this working meeting be an in person, three hour work session. An offsite participatory option would also be provided. The Critical Area Commission, if available, was suggested for this proposed in person meeting. Mr. Murtha suggested prior to this meeting, to work with legal counsel to have draft (strawman) documents to use as a starting point.

Mr. Eisner gave an overview of licensing activities. Eighty-nine license renewal application packages were mailed on October 28, 2021 for those licenses expiring December 31, 2021. There are 245 active licenses as of this date. Given the governor’s emergency order in response to Covid, which was from March 5, 2020 to June 30, 2021, the decision was made to proactively reach out to licensees to allow them a chance to renew their license. Efforts to contact licensees were via email, telephone, and letter. The response has been good and several licensees expressed appreciation for this effort. There are eleven licensees that expired December 31, 2020. Of these, five are either out of business or will not renew, and six are proceeding with renewal. There were five ‘periodic’ licenses that expired during 2020, and they are renewing their license. Finally, there are fifteen ‘periodic’ licenses that expired in 2021. Of these, fourteen are anticipated to renew. Mr. Eisner is receiving 1-2 new applications per month. There are ten applications for new licenses that have not been forwarded to the Board because they haven’t documented in their application that they meet the minimum qualifications for a license.

Review of Current Pending License Applications

The Board discussed one recent application, Encompass Enterprise. The Board concluded that more specifics were needed on the applicant’s projects. It was also suggested that he could submit recommendations on his behalf.

There was an update on Board appointments and reappointment. Several Board members have not yet completed the process for Board appointment or reappointment. Mr. Eisner will send out information on how to complete this task.

There was an extended discussion of the Board’s ability to respond to complaints of licensed and unlicensed marine contractors. This was prompted by an inquiry of a MDE Compliance Inspector of unauthorized work done by a Marine Contractor licensee. The core question is: What can the Board do? Long serving Board members agreed that this is not a new issue. It was stated that this has been a challenge since the Board’s inception. It was stated that a license has never been rescinded. Given that the Marine Contractor’s Licensing Board is now a unit of MDE, the Secretary of MDE would have to sign off on any such action. Elements to consider for a potential response would include whether or not they are a repeat offender. There was agreement that it would not be appropriate to recommend rescinding a license for a one-time offender. It was suggested that a penalty could be assessed, but it would have to be through MDE’s Compliance Program. However a challenge is, this discussion was initiated by a question that came from MDE’s Compliance Program.

Input from the Board’s legal counsel was recognized as being essential. The issue was raised that since some Board members are licensed marine contractors, is there potential Board legal vulnerability, i.e. are there anti-trust issues? A suggestion was made to send out a letter of warning of impending legal action or fines to those not following the rules. One Board member stated in summary – that there is ambiguity on what the board can and cannot do. The discussion moved back to the planned “Tiered System.” The question was asked: Will the ‘Tiered System’ have a violation protocol? The suggestion was made that within each ‘Tier’ could be different levels of potential consequences, i.e. fines appropriate to scale of violation. It was stated that the goal should

be a clean administrative framework, in which people know what is expected of them, and what can be expected if they don't follow the rules. The discussion then moved to MDE's protocol for non-compliance. MDE's representative stated that there are thresholds the Department has identified when considering whether a violation/non-compliance rises to the level of 'significant non compliance,' - which can then lead to an enforcement action. There is agreement on the need to be 'fair' and 'reasonable.'

The issue was raised of, What action to take for people doing work without a license who get caught and then apply for one? Could there/should there be some delay in issuing a license to such an offender. It was restated that the Board has been dealing with this question since its start, and does not have protocols for this. It was stated that over the Board's history, there have been three legal counsels, and there have been differing opinions on some of these challenging issues. The suggestion was made to have another level of internal review in MDE; before issuing any license, send it to a MDE Division Chief to see if there are any violations.

The conclusion of this discussion on 'complaints,' is that this is more reason for the Board to dedicate time to a working session on Tier's and associated regulation. A doodle poll will be sent by DNR's representative to try to find a time in December for this proposed in-person, working session.

There was no 'new' business.

ADJOURNMENT

The Board voted and approved adjournment at 11:10 AM. The next meeting is scheduled for December 13, 2021 at 10 AM. This planned meeting will be Virtual via Google Meet.