



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

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MARINE CONTRACTORS LICENSING BOARD

Meeting Minutes – February 14, 2022

Location: Virtual Meeting via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
 Tammy Roberson, MDE Representative
 Douglas Suess, At Large Representative
 Chris McCabe, At Large Representative
 Josh Schlepner, Eastern Shore Rep

OTHERS PRESENT

Mike Eisner, Board Administrator
 Matt Standeven, Board Counsel

CALL TO ORDER

The meeting was called to order by Mr. Rehbein at 10:04 am using the virtual platform Google Meet. Five Board members were present, as well as the Board's administrator and legal counsel.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: update of licensing activities, update on finances, update training module development by Maryland Environmental Services (MES), review of the Maryland State Board attendance policy, discussion of Maryland House Bill HB 533, and review of a new 'Entity' application.

REVIEW OF PRIOR MEETING MINUTES

Board Members reviewed and approved by vote the draft meeting minutes from January 10, 2022.

Board Activities and Financial/Budget Report

The Board's Administrator 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. As of the date of this meeting, 65 licenses have been renewed for 2 years, 10 applications for renewal had been received that were not yet complete, 6 declared an intent to renew but no renewal documents have been submitted, and 8 licensees are either out of business, intend not to renew, or the licensee could not be contacted via email and telephone. Applications that are incomplete are mainly due to renewal license fees not having been received and/or continuing education not being completed or documented. In addition, not having the Marine Contractors Licensing Board as the 'Certificate Holder,' is a common mistake. The Board's Administrator stated that he has been proactive in contacting licensees via email and telephone, who have incomplete applications, or licensees who have yet to submit a renewal application.

The Board's Administrator gave an update of the Board's present income/expense situation through November 2021. The Maryland Department of Environment's (MDE) employee retired who was responsible for updating the Board on finances. Consequently, we have not received fiscal updates since the November 2021 report. However, the Board's Administrator stated 'with certainty,' that

the Marine Contractors Board financial status is in good shape. Revenue continued to be received for end of year 2021 license renewal fees.

An update was given on progress in development of training Module 1. This module's development by MES was approved by a unanimous vote at the January 7 working meeting. Module 1 is being developed with the oversight and coordination of the Board's Administrator and MDE's Board representative. A first draft outline provided by MES has been reviewed, and comments provided.

The Board was informed that FY2023 funding will be available to the Board for development of an additional training module, termed Module 2. This funding becomes available July 1, 2022. Approximately \$5000 dollars has been allocated. Module 1 is planned to be an overview of regulations and the permitting process, while Module 2 is envisioned as a natural progression into a detailed look at the permit and licensing process. A motion was made and seconded to fund the development of Module 2, once funding becomes available. The vote was held and unanimous in favor of funding Module 2.

New Business

The Board's Chairman and Counsel gave an overview of the Maryland State Board Attendance policy - which governs this Board. While Title 17-204 (Marine Contractors - Meetings; reimbursement for expenses; staff) only requires that the Board hold a minimum of two meetings a year, a separate Statute specifies the attendance policy for all Maryland Board members. The requirement is that Board members attend at minimum, 50% of all Board meetings. If the attendance falls below this threshold, then they are technically considered to have resigned. If there was a satisfactory reason for the absences, then the Board member may have the 'technical' resignation waived. Related, the Board Chairman requested that a Board member notify him before a meeting, if they know they are going to be absent.

There was a discussion of proposed Maryland House Bill HB 533. There was concern that this bill may require translation services for manuals, testing, and other documents. However, the Board's Counsel stated that this bill appears to be limited to saying that someone cannot be denied a license or certification, on the basis of their immigration status. He further stated that the bill as drafted is vague, and if it passes, there will be time to discuss any potential needed policy changes. The MDE representative essentially agreed and stated that at this time they don't see the bill impacting the functioning of the Marine Contractors licensing practices. There is no consideration of immigration status in any aspect of the processing of new or renewal marine contracting licenses.

Review of Current Pending License Applications

An application for a new 'Entity' license was discussed. Superior Decks and Fences submitted an application with Robert L. O'Neil as the applicant to be the licensed Representative. There was a quorum present, and the vote was unanimous that the applicant had not submitted enough detailed information in his application to demonstrate that he meets the required minimum qualifications required in Title 17 'Marine Contractors,' to be a licensed marine contractor. Mr. O'Neil has the option to acquire more marine contracting experience himself, or have Superior Decks and Fences reapply, with another applicant to be their 'Representative,' and one who will meet the required minimum marine contracting experience requirements. The Board's Counsel stated that the onus is on the applicant to provide information needed by the Board in their application review.

The review of this new application led to an extended discussion on the issue of new applicants for a Marine Contractor License, who have done marine contracting work in Maryland, but without a

License. The related issue discussed was if applicants for a license have done Marine Contractor services in Maryland Tidal Waters, without the appropriate State and Federal authorizations.

Below are comments on these and related issues.

Legal Counsel stated that the Board does have discretion on an applicant who has done marine contractor work, without a Marine Contractor License. The Board has the authority, if it chooses, to take a lenient approach on such an applicant, as well as the authority to deny an application. They can also impose a penalty. The Board therefore has the authority to deny or accept such an application, or accept it with possible conditions such as a penalty.

The MDE representation stated that we need to be careful about what we do. We do not want to set a precedent that may give the perception, that if you can get away with doing unlicensed work for 2 years without being caught, that you could then apply and be considered for a license.

A ‘middle road’ approach was suggested to acknowledge that work was done illegally, and allow the applicant the opportunity to get experience with a licensed Marine Contractor - and therefore not in violation. This person could then resubmit an application in the future. The applicant can also reapply with someone else, as the applicant for licensed Representative.

Legal Counsel stated that for the Board to take a lenient approach for work done without a license is one thing, but the Board cannot issue a license to an applicant who has not demonstrated through submitted information, that they meet the minimum licensing requirements of Title 17. In this there is no discretion.

It was stated that even if the Board would consider a lenient approach, if an applicant never got the required State and Federal tidal wetlands authorizations, there would be no way of knowing if they did a ‘good’ job, because there would not have been any inspections. The related issue raised was, What if work was done without a marine contractor’s license, but the applicant can prove that they got appropriate Tidal Wetland authorizations?

Legal Counsel reminded the Board that any penalties must be approved by MDE. In addition, the Board has no power over someone who has worked without a Marine Contractors License – but has not applied for one.

Discussion moved to the related issue of, how to define marine contractor services, and similar contractor experience. This has been stated as one of the important elements of any drafted regulations. It was suggested that what activities are accepted as marine contractor experience would be a ‘threshold,’ that could be defined in the regulations. For example, if an applicant has done 2 years of marine contracting work, but without a marine contractor license, and without the required Federal and State approvals – the regulations could define this as not ‘marine contractor or similar contractor experience.’

Legal Counsel followed up on this thought, and suggested that the regulations could also put meaning on the ‘trigger’ words - ‘gross negligence, incompetence and misconduct’ that are in Title 17.* It was then suggested that if these terms are defined, they could then be linked to how marine contractor services are defined, and to the Board’s authority for license denial and revocation.

** Title 17-310: “Denial, refusal to renew, suspension or revocation of license.” Title 17-310(a)(4) ‘Commits any gross negligence, incompetence, or misconduct while practicing marine contractor services;’*

Legal Counsel stated that there are two issues: what are the threshold requirements that define what qualifies as marine services, and what are the ramifications for actions by an applicant that do not comply with Statute 17.

The concern was raised about how to consider out-of-state applicants for a Maryland contractor license. What if such an applicant submits work experience, that may have been done without the appropriate authorizations of other states? If they are applying for license in Maryland when their experience was done illegally - is this fair to Maryland applicants?

With the regulations still on the horizon, it was suggested that a motion be made for a policy statement that work experience done without a license or permit, will not be accepted on a license application.

Several Board members including Legal Counsel agreed on the utility of having an internal policy in the short term, that can later be made formal in regulation. It was stated that it is important to be consistent, and that this is not a new issue.

It was suggested that since several Board members were absent today, this discussion be put on the agenda for the next Board meeting.

A question was asked about the progress of regulation drafting, and the Tiered system. Legal Counsel stated that he is still finalizing the comments from the January 7, 2022 work session and plans to have it done by end of Maryland's legislative session.

ADJOURNMENT

The Board voted and approved adjournment at 11:15 AM. The next monthly Board meeting is scheduled for March 14, 2022 at 10 AM. This planned meeting will be via Virtual via Google Meet.