



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

DRAFT Meeting Minutes – December 9, 2024

Location: Virtual via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
 Tammy Roberson, MDE Rep
 Dani Racine, At Large E. Shore
 Daniel Lerian, Eastern Shore Rep.
 Lester ‘Kelly’ Wright, DNR Rep.

OTHERS PRESENT

Matthew Standeven, Board Counsel
 Mike Eisner, Board Administrator
 Brandon Weems, Director/President of the
 MD Marine Contractors Ass. (MMCA)
 Dr. Philip DePalo, Licensed Marine
 Contractor

CALL TO ORDER

The meeting was called to order by the Board’s Chairman at 10:03 am. Five Board members as well as the Board Counsel, Board Administrator, Brandon Weems (MMCA), and Dr. Philip DePalo were in attendance.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: a review and approval of minutes from the Board’s September 9, 2024 meeting, an update by the Board’s Administrator of licensing activities including license Category activity, an update of finances, a discussion of budget and licensing fees, a discussion of license Category approval, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the September 9, 2024 Board meeting.

OLD BUSINESS

Board Activities and Financial/Budget Report

Licensing Activities: In 2024 there are 93 licenses up for renewal that have an expiration date of December 31, 2024. Statute and Regulations require licensees be notified 60 days prior to license expiration. Renewal application packages were sent out earlier this year because of the new Category selection and associated work submittal requirements. With this, the renewal information was sent to licensees by email and US Mail October 1, 2024 – one month early. This was done with the recognition that licensees will likely need more time to learn about the new license categories, select their appropriate category, and then gather and submit information to support their

selection. Once received, renewal applications are prepared by the Board's Administrator and sent to the Board via email for review.

To date, nineteen licenses of these 93 potential renewals have been renewed with categories. Nine of these have been approved for Category 1, twelve for Category 2, two for Category 3 and three for Category 4. In addition, four new licenses have been issued with a Category selection. The Administrator shared that to date the process of Category approval for renewals has proceeded 'smoothly' and without 'pushback' or complaints from licensed contractors. However, the Administrator emphasized that much work is still to be done to process licensees applying for renewal.

The Administrator shared that three online Category selection training sessions were held by the Boards Administrator and MDE Representative in September. Two of these were in the evening and one was at noon. Approximately 30 licensees took advantage of these online training courses and attending contractors were given 3 hours of continuing education credit for their participation.

We continue to receive about 1-2 new license applications per month. Testing for new license applicants continues to be virtual. The test is emailed to the applicant on the day and at the time requested. They then have 24 hours to email their exam back to the Board's Administrator.

At approximately 10:11 am, Dr. Philip DePalo, a licensed Maryland Marine Contractor, joined and was welcomed into this virtual meeting.

The question was raised by a Board member: What license Category is needed to build a golf course bridge? It was stated that this type of bridge is essentially more like a pier, than a bridge over a roadway. Based on this comparison, this type of bridge would likely be a Category 2 activity.

Board Finances:

At this point in time, we do not have an update on the Board's current fund balance. We will be requesting a first half of FY25 fund balance reconciliation report. This report will be from July 1, 2024 to December 31, 2024. Related, the Administrator was recently asked by MDEs Tidal Wetlands Division to work up MCLB fund balance projections. This was based on concern that the Board's funds have been decreasing significantly. These projections were worked up for FY25-2027. The Administrator had shared these projections with Board members via email and shared some of these projections today. These projections follow.

The beginning fund balance in FY24 was \$155,390 and in FY25 this beginning fund balance decreased to \$117,809. This decrease in the Board's fund balance in the last few years has primarily been tied to legal expenses. Board expenses via the Administrators salary and associated costs such as postage and overhead are projected to increase 7% each year. Legal expenses have been significant due to our Counsel's work on promulgating the first ever regulations for Marine Contractors, and ongoing/continuing legal expenses due to the Gene Benton/Encompass Enterprises litigation. As a background, legal expenses in 'earlier' years were significantly less. FY19 was \$1,598, FY20 - \$8,949, FY21 - \$0 (Covid), and FY 22 - \$7,295. It is FY23 legal expenses jumped to \$42,048 and FY24 to \$53,549. The Administrator stated that in his analysis/projection, legal expenses were projected to decrease in coming years by 35% in FY25, 20% in FY26 and 20% in FY27. The reason for this projected decrease is that the regulations are issued, and the litigation is further along on its legal journey. Estimates of revenue are based on the current \$600 for license renewal and was only projected to increase minimally. This is because in essence, every year we gain some and lose some licensed contractors. In summary - this analysis projected a beginning

fund balance decreasing in FY26 to \$97,196 and further decreasing in FY27 to \$79,288. The bottom line is that now more money is being spent on expenses than being brought in via revenue.

The question was raised: Should fees be increased? Board Counsel posed the question: What type of balance does the Board want to maintain? With this, would the fees need to be increased? It was shared that the Board was without an Administrator for almost 2 years, which helped build the balance up temporarily. The MDE Board Representative approached fiscal folks at MDE to see if there is guidance on this issue. There is none. The Administrator reminded the Board that Statute and Regulations state that “The Board shall set reasonable fees for the issuance and renewal of licenses and other services that the Board provides.” Other services that the Board has provided with its funds has been developing online marine contractor training courses and before Covid, in-person training. Board funding of such training supports the requirement that contractors renewing their license must complete 12 hours of continuing education.

The Board’s Counsel gave an update on the Gene Benton/Encompass Enterprises litigation. Counsel stated this information is not privileged so he can share this information in this public forum. At present the Maryland Appellate Court process is proceeding. Encompass’ attorney has filed their brief and contends the lower court Judge’s decision – was made improperly. Their argument is the lower court decision was wrongly decided based on a matter of ‘law.’ The lower Court decided that there was not a dispute of ‘fact’ because submitted documents from both parties were relying on identical documentation. Encompass contends it’s a matter of ‘fact’ whether a contractor is qualified, and not a matter of ‘law.’ The lower Court Judge agreed with MDE that the Statutory definition of ‘marine contractor services’ is a matter of Statutory interpretation. Currently, our Counsel’s brief is prepared and going through internal review. This brief is due to the Appellate Court early January. Counsel stated there shouldn’t be a significant amount of ongoing legal work needed in this process because our legal arguments are prepared. We will likely get placed on the Court’s docket for legal argument in Fall 2025. If they fail to win in the Appellate Court their last appeal would be to the Maryland State Supreme Court. However, while anyone is guaranteed the opportunity to appeal at the Appellate level – the State Supreme Court must agree to accept a case. A decision by the Appellate Court could take up to a year.

NEW BUSINESS

The Board’s Chairman asked Dr. DePalo if he wanted to ask any questions. Dr. DePalo asked in essence: How and will the categories matter?

Board Counsel stated that it does matter. If somebody is not qualified for a particular Category’s activity and is performing that type of work - then it absolutely does matter because the contractor would be in violation of marine contractor regulations. Counsel also shared that in the regulations, the ‘broad strokes’ of the Category are outlined. With this, the Board makes its Category determination on a case-by-case basis - based on the application and information provided by the marine contractor.

Dr. DePalo asked the question: Why isn’t the experience of an entity considered instead of the current process where the qualifications of the applicant for Representative is the determinant factor? A hypothetical was presented: If an entity which has been in business for a ‘significant’ amount of time ‘loses’ their Representative - Why isn’t the experience of the preexisting entity/business considered for licensing qualifications? Counsel stated that this is based on the language of the Statute as developed by the legislature. The laws of compliance for marine contractors are applied to the entity as a whole but work and experience qualifications for licensure were written in the law tied to an identified person, the so-called Representative.

The MDE Representative shared that when application for a Tidal Wetlands Authorizations is submitted to MDE, the contractor who submits the application is not required to have a particular Category. This is because a different marine contractor may perform the work. There is accountability for the necessary Category of contractor for the marine contractor service being performed, but not at time of application for tidal wetland authorization. Accountability occurs at the next phase of project development when a MDE Compliance inspector verifies that the contractor doing the work has the appropriate license Category.

No other new business was brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:02 am. The next monthly Board meeting is scheduled for January 13, 2025 at 10 AM and will be Virtual.