



MARINE CONTRACTORS LICENSING BOARD

c/o Maryland Department of the Environment

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MARINE CONTRACTORS LICENSING BOARD

Meeting Minutes –July 10, 2023

Location: Virtual via Google Meet

BOARD MEMBERS PRESENT

Milton Rehbein, Chairman, Northern MD Rep
Robert Murtha, SoMD Rep
Tammy Roberson, MDE Rep
Kelly Wright, DNR Rep
Doug Sues, At Large Rep
Dani Racine, At Large Rep
Daniel Lorian, Eastern Shore Rep.

OTHERS PRESENT

Matthew Standeven, Board Counsel
Mike Eisner, Board Administrator
Brandon Weems, Director/President of the
Maryland Marine Contractors Association
(MMCA)

CALL TO ORDER

The meeting was called to order by the Board's Chairman at 10:02 am. Seven Board members as well as the Board's Counsel and Administrator, and Brandon Weems, Director of the Maryland Marine Contractors Association were in attendance.

AGENDA REVIEW

The Board reviewed and approved the agenda for the meeting which included: review and approval of minutes from the Board's June 10, 2023 meeting, an introduction and welcome of the Board's new member Daniel Lorian, an acknowledgement of service of outgoing Board member Josh Schlepner, an update of licensing activities and finances, a discussion of license fees, finalizing draft regulations including license categories, next steps for regulation development, review and discussion of four new applications for licensure, and other new business requested by Board members.

REVIEW OF PRIOR MEETING MINUTES

Board Members approved the minutes from the June 10, 2023 Board meeting.

NEW BOARD MEMBER APPOINTMENT

The Board Chairman thanked outgoing Board member Josh Schlepner for his dedicated effort, time and energy serving the Board. Josh worked for many years and his expertise and good nature were always valued. Mr. Schlepner was the licensed Marine Contractor Representative for the Eastern Shore.

The Board Chairman introduced its newest Board member Daniel Larian. Mr. Larian has been appointed to serve as the licensed Marine Contractor Representative for the Eastern Shore. Mr. Larian expressed that he looks forward to being a part of the Board and having a voice in the marine contracting regulatory world. Mr. Larian has been located in Eastern Maryland since 1991 and has been in the marine contracting and related construction business for over 40 years.

OLD BUSINESS

Board Activities and Financial/Budget Report

The Board Administrator gave an overview of licensing activities. In 2023 there are 36 licenses, termed 'Periodic' that will renew throughout 2023. To date, applications have been mailed and/or emailed to 25 licensees. Of these 17 renewals have been issued. 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.

Board Finances: The Board's Administrator gave an update of the Board's financial status. An estimate of revenue received for FY2023 is \$71,950. The State 2023 fiscal year is from July 1, 2022 to June 30, 2023. Expenses incurred by the Board are primarily the Administrators salary, postage, legal fees and indirect costs to the Board of 15.4%. It was stated that this fiscal year legal fees have increased due to the significant work done by the Board's Counsel in support of the regulation drafting process along with litigation fees incurred by the Gene Benton/Encompass Enterprises challenge to the Board and MDEs determination that the minimum qualifications were not met by the applicant.

Discussion moved to license application and renewal fees. There is interest at MDE in increasing fees across all Department permits and licenses. The Board has been asked to consider if a license fee increase is appropriate. There are currently two fees. The two year license fee is \$550 and the fee for the Marine Contractor's Licensing Manual and testing for new applicants is \$75. Note that this \$75 fee is only billed if the Board determines that the applicant meets the minimum qualifications, and the Board approves the applicant for testing. License fees were \$600 but were decreased in 2019-2020 to \$550 based on the last administration's request to investigate the potential to lower fees. The new administration is requesting a review of current fees to determine if a fee increase is appropriate. It was noted that specific fees are not in the Statute so they can be changed by the Board. In addition, the draft regulations do not include specific fees for either new application issuance or license renewal.

The Board's Administrator gave an overview of the Board's finances from 2019 and a good faith effort to project finances to 2026.

Revenue as stated is primarily based on the two year license fee of \$550. Since the new license fee of \$75 is only accrued from an applicant who is eligible for testing, this revenue is not large relative to license fees. The number of new licenses per year from 2019 to 2023 has averaged 12 per year. However, there was an estimated 8 licensees that did not renew their license each year. With this, the number of active licenses has not changed dramatically since 2019. Revenue from renewal of licenses expiring at the end of the year along with licenses that expire periodically throughout the year was \$48,738 in FY2019, \$66,225 in FY2020, \$63,125 in FY2022, and \$68,200 in FY2023.

Expenses are classed as direct and indirect. Direct expenses are primarily salary for the 20 hour/week Board Administrator and legal fees. Tacked onto these amounts are an indirect expense currently at 15.4%. Salary for the Board's Administrator was \$35,989 in FY2019, \$54,012 in FY 2020, \$30,438 in FY 2022, and \$40,580 in FY2022. Note that FY2021 and part of FY2022 were unique due to COVID. The Board was without an Administrator through calendar year 2020 until September of calendar year 2021 when a new Administrator was hired.

Legal fees in were \$1385 in FY2019, \$7629 in FY2020, and \$6322 in FY2022. These fees jumped significantly in FY2023 to \$36,437. This is attributed to significant work by the Board's Counsel on regulation drafting and time spent on the litigation of an applicant challenging the Board's decision that they lacked the minimum work experience qualifications for license testing.

The Administrator salary was projected into years 2024 through 2026 with a modest salary increase up to \$42,500 in FY2026. The wild card in projecting expenses several years ahead is legal fees. as the amount of legal support needed for regulation promulgation and litigation is hard to project.

Given the apparent relative stability in the number of active licenses, combined with the number of new licensees issued versus attrition from those not renewing, projections of revenue was projected to increase slightly

Combining these various factors and assumptions, projections of bottom-line fund balances were projected to increase slightly from \$166,681 in FY2024 to \$172,678 in FY2026.

Discussion continued on licensing fees. It was reminded that collected fees must be enough to support the functioning of the Board. There was agreement that smaller increases over time is a better way to go. An opinion stated is that an appropriate reason to raise fees is to support continuing education training and to support increasing legal fees. There was support that if the Board has sufficient funds, these monies could be dedicated to creating additional training opportunities for licensed contractors, including potential in-person training. It was also stated that fees can be tied to the license Categories that are in the draft regulations.

Motion was made and seconded to raise fees in accordance with other State fee adjustments made for inflation - once these are determined. All present voted in favor of this Motion. The suggestion was made to look at potential changes in fees by using an inflation calculator. The Board's Administrator was tasked with this.

Regulation Development – License Categories/Tiers

Discussion proceeded on the draft regulations with a focus on finalizing the license Categories/Tiers.

There was discussion on suggestions by the Director/President of the MMCA that was shared with the Board this morning. One of these suggestions was to require an MHIC license for marine contractors who work in the residential market.

Board Counsel stated that the Board can request documentation, such as if the applicant has a MHIC license. Clarification was asked of if the Board is considering 'requesting' versus 'requiring' a MHIC license for an applicant for the Marine Contractors License. One Board member suggested an MHIC license should be required.

Discussion continued on this distinction. Counsel reminded that Statute only requires two years of experience as a full-time marine contractor or one who demonstrates similar contractor experience. A Board member stated that a MHIC license does not give one the requisite experience to do marine contracting work.

The MMCA Director stated that having a MHIC license is another ‘experience notch in one’s professional belt.’

But can or should it be a requirement?

Counsel projected that if MHIC is a requirement, and an applicant would be denied being able to take the exam, and if the applicant would contest a rejection of their application based on not having a MHIC in court - Counsel stated that he doesn’t believe the court would uphold the Board’s decision because a MHIC requirement is not in the Statute.

Counsel stated that an MHIC could be viewed by the Board as a proxy for experience and be information an applicant submits for consideration or demonstration of their work experience, but it cannot be a requirement in the regulations because it’s not a requirement in Statute. Further, if a MHIC license is identified in the application, it would have to be as part of a non-exclusive list of things an applicant can submit to document/support their experience. A MHIC can be supplemental information to be considered by the Board if included in an application.

One Board member stated that to work on a boathouse one also needs a MHIC license. Currently no reference is made in the application for a Marine Contractor License to a potential need for other licenses for certain activities. It was stated this may be useful to add to the application.

Other items for consideration in the draft regulations on the suggested list provided by MMCA were discussed. It was asked if these other items could affect small contractors. Several Board members stated that ‘yes’, they could impact small business marine contractors. It was stated that some skills are learned generationally in a small contractor business. The MMCA Director agreed with this assessment and stated that as with the MHIC, this list can be viewed also as supplemental information an applicant can provide, but not be requirements.

Counsel agreed and furthered that these other MMCA suggestions cannot be requirements. Supplemental information can be listed and suggested but not required. This can be fleshed out in revision of application forms.

The question was asked: How does a marine contractor move to a higher license Category – specifically from Category 2 (Residential and Commercial Marine Construction) to Category 1 (Heavy Marine). What is the path, what information will allow the Board to assess qualifications? One suggestion was that an application can be drafted and can have parts only required to be completed for a Category 1 License application.

Counsel stated this approach makes sense because the Statute gives the Board flexibility to create the application and requires the applicant to complete an application approved by the Board. Importantly, as long as an applicant for a lower Category license who meets the Statute’s two year work experience requirement - is not prohibited from getting a license – then the Board can add more sophisticated requirements for upper level Category licenses. Further, these requirements for upper Category licenses can be made explicit in the application. Counsel stated that if particular documents would serve as proof of experience for higher Category licenses, then requiring these documents can be stated explicitly in an application.

The question was raised if a lower Category license doesn't do dredging and they want to move into that area of business – how do they get that experience? The suggestion was made that they work for another contractor with the appropriate license. Concern was raised that if the business is 'theirs' - how do they make this experience jump. It was suggested in some cases this may be too high of a hurdle for a company to expand.

Counsel stated that another avenue for Category advancement is for the company to hire a representative that meets the requirements of the higher Category. A Board member stated that this may be difficult for a small business.

It was reminded by a Board member that the challenge has always been: How to protect the public so that they hire a marine contractor with the appropriate skillsets, and at the same time allow businesses opportunity for growth and advancement in reputation?

The goal has always been for an assurance of quality of skills to protect consumers, and at the same time not limit or make unreasonable hurdles for a business to grow. A goal of the Statute is to provide assurance to consumers of quality of work.

Question was raised regarding inspections a marine contractor may do of waterfront structures in connection with a real estate transaction. Specifically, do the regulations need to address this. Board Counsel stated 'no' – that Title 17 Marine Contractors and licensing requirements is about construction, dredging, filling, etc., not property inspection.

What if contractor wants to put a license on hold, for example because of impending health issue. Can this be done, or provided for in the regulations. It was stated that this is not done in MHIC. The opinion stated this would be an administrative nightmare. Counsel further stated that renewal is laid out in Title 17 -308 and because a 'pause' or 'hold' on a license is absent in the Statute, at this time a pause/hold is not legally viable. To enable this, the Statute would have to be amended.

NEW BUSINESS

Proposed Next Steps for Regulation Development.

Counsel will make several noted changes. A Motion was made and seconded for the Board to accept and approve the draft regulations with the minor changes needed which are:

- 1) addition of beach nourishment to Category 2 and correct any spelling errors, currently 'dunes.'
- 2) removal of any reference to one year licenses.

All Board members voted in favor of moving the regulations forward with MDE, with the above stated changes on the approved Motion.

Other New Business

New Applications

Individual application for Darren Bell. A majority of Board members approved this applicant for testing.

Entity application for Hopkins Construction, Inc., John Zittinger Representative. More information had been requested and was provided by Hopkins on their marine construction experience. A work example provided was installation of sophisticated sheeting and shoring along with necessary dewatering. One Board member stated putting in sheeting and shoring above mean high water close to tidal area can be considered similar experience. Another Board member agreed and stated that high ground water conditions combined with major sheeting and shoring in high ground water is not an easy construction task. Another Board member stated agreement that this work example provided of installing sophisticated sheeting and shoring, along with dewatering can be considered as similar experience. This is judged not an insignificant type of project. The applicant also provided two requested Non Tidal authorizations for this work. A majority of Board members approved this applicant for testing.

Entity application for Rivers Edge Boat Lift Services, James McSwain Representative. This company intends to focus on boat lifts. Mr. McSwain stated that while he has knowledge to provide on other aspects of marine contracting, his sole work activity is to be installation of boat lifts. Additional information had been submitted as requested. A majority of Board members approved this applicant for testing.

Entity application for JJID, Inc., Matthew Ruoff Representative. This company was originally 'registered' in Maryland as a Marine Contractor but they never got licensed when that was required in late 2016. The Board's Administrator was asked to request additional information regarding if the company had done any marine contracting work in Maryland after 2016. This application will be revisited after additional information has been received.

Counsel gave an update on Gene Benton of Encompass Enterprises' litigation. MDE had been served in May. Counsel filed a Motion in June to dismiss. The litigant's Counsel then amended their complaint and their request to treat our Motion as moot was granted. Board Counsel is preparing a Request Motion for Summary Judgement. This has the advantage of being able to introduce facts and affidavits to support the Board's argument and underlying facts of this case and the Board's determination that the applicant is not qualified to take the licensing exam.

No other new business brought up.

ADJOURNMENT

The Board voted and approved adjournment at 11:39 am. The next monthly Board meeting is scheduled for August 14, 2023 at 10 AM and will be Virtual.