

1 SB171
2 118986-2
3 By Senator Marsh
4 RFD: Governmental Affairs
5 First Read: 12-JAN-10

4 ENGROSSED
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6

7 A BILL
8

9 TO BE ENTITLED
10

11 AN ACT
12

13 To amend Sections 34-36-1, 34-36-3, 34-36-4,
14 34-36-5, 34-36-6, 34-36-7, 34-36-8, 34-36-9, 34-36-13,
15 34-36-15, 34-36-16, and 34-36-17 of the Code of Alabama 1975,
16 relating to the Alabama Board of Electrical Contractors; to
17 provide additional definitions; to increase the compensation
18 of the board; to allow the board to impose a restoration fee
19 for the issuance of licenses to those electrical contractors
20 whose licenses have expired; to allow the board to hire
21 investigators; to allow the board to investigate the
22 activities of unlicensed contractors; to allow appeal to the
23 Circuit Court of Montgomery County by any person aggrieved by
24 the actions of the board; to require electrical contractors to
25 earn continuing education hours; to allow the board to
26 promulgate rules in regulating electrical contractors and to
provide for penalties; to subject the board to the Alabama
Sunset Law; and to repeal Section 34-36-14 of the Code of

1 Alabama 1975, relating to the Electrical Appeals and Advisory
2 Board.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 34-36-1, 34-36-3, 34-36-4,
5 34-36-5, 34-36-6, 34-36-7, 34-36-8, 34-36-9, 34-36-13,
6 34-36-15, 34-36-16, and 34-36-17 of the Code of Alabama 1975,
7 are amended to read as follows:

8 "§34-36-1.

9 "This chapter shall be known and may be cited as the
10 "Alabama Electrical Contractors Act." and shall be construed
11 and implemented to promote the purposes and policies set forth
12 in this chapter.

13 "§34-36-3.

14 "The following terms shall have the meanings
15 respectively ascribed to them used in this chapter, for the
16 purposes of this chapter, unless the context clearly requires
17 a different meaning:

18 "(1) BOARD. The Alabama Board of Electrical
19 Contractors.

20 "(2) DIRECTOR. The Executive Director of the State
21 Board of Electrical Contractors.

22 "~~(2)~~(3) ELECTRICAL CONTRACTING. Any job or project
23 in the State of Alabama wherein the electrical contractor
24 proposes to bid, install, maintain, alter, or repair any
25 electric wiring devices, or equipment.

26 "~~(3)~~(4) ELECTRICAL CONTRACTOR. Any person, firm, or
27 corporation who is engaged in the business of soliciting and

1 installing electrical power or control systems; maintaining,
2 altering, or repairing electrical power or control systems,
3 any electrical wiring devices, equipment, or any other
4 electrical apparatus. A person who possesses the necessary
5 qualifications, training, and technical knowledge to plan, lay
6 out, and supervise the installation of electrical wiring,
7 apparatus, or equipment for lighting, heating, power, or
8 controls and who possesses any of the following
9 qualifications:

10 "a. Four years of practical experience as a
11 journeyman electrician in charge of jobs.

12 "b. Four years of experience in the design and
13 construction of electrical systems.

14 "~~(4)~~(5) JOURNEYMAN ELECTRICIAN. A person who

15 possesses necessary qualifications, training, and technical

16 knowledge to install electrical wiring, apparatus, or

17 equipment ~~light, heat~~ lighting, heating, or power or control,

18 ~~as covered by the terms and provisions of this chapter, must.~~

19 He or she shall work under master or state certified

20 ~~electrical contractor, also he~~ and shall be capable of doing

21 ~~said~~ work according to plans and specifications furnished to

22 him or her and in accordance with standard rules and

23 regulations governing such work.

24 "~~(5)~~ MASTER ELECTRICIAN. A person who possesses the

25 ~~necessary qualifications, training and technical knowledge to~~

26 ~~plan, lay out and supervise the installation of electrical~~

wiring, apparatus or equipment for lighting, heating, power or controls, and who possesses any of the following:

"a. Has obtained four years of practical experience as a journeyman electrician in charge of jobs;

"b. Has a professional electrical engineering degree, or

"c. Has five years experience in the design and construction of electrical systems.

"(6) SECRETARY. The Executive Secretary of the State Board of Electrical Contractors.

"(7) (6) LICENSE. A valid and current certificate of registration issued by the ~~secretary~~ director on behalf of the board which shall give the named person to whom it is issued authority to engage in the activity prescribed thereon.

"(8) (7) LICENSEE. Any person holding a license.

"~~(9)~~(8) PERSON. A human person, not a legal entity.

"§34-36-4.

"(a) The Alabama Board of Electrical Contractors is created.

"(b) A person to be eligible for appointment to serve on the board shall be a citizen and resident of Alabama. Each person appointed to the board from each congressional district, shall be actively engaged in the electrical construction business as a qualified person with electrical construction background of not less than five consecutive years, and shall hold certificates to validate his or her competence as a ~~master electrician~~ an electrical contractor in

1 the electrical construction field. The two persons shall be
2 appointed to the board as at-large members and shall be
3 members of the Alabama State Electrical Workers Association.
4 The membership of the board should be inclusive and should
5 reflect the racial, gender, geographic, urban/rural, and
6 economic diversity of the state.

7 "(c) The board shall consist of nine members to be
8 appointed by the Governor. One member shall be appointed from
9 each congressional district, and there shall be two at-large
10 members who shall be appointed from within the state. The
11 board members from the First, Second, and Third Congressional
12 Districts shall be appointed for terms of one year; the board
13 members from the Fourth, Fifth, and Sixth Congressional
14 Districts shall be appointed for terms of two years; and the
15 board member from the Seventh Congressional District as well
16 as the at-large members shall be appointed for terms of three
17 years. Thereafter, all board members shall be appointed for
18 terms of three years. Each term shall expire on June 30 of the
19 last year of the term, and no member shall ~~succeed himself or~~
20 ~~himself serve more than two consecutive three-year terms.~~
21 Vacancies on the board for any cause shall be filled by
22 appointment by the Governor for the remainder of the unexpired
23 term. Members shall serve until their successors are
24 appointed.

25 "(d) The board shall meet at least semiannually and
26 as often as necessary. The board shall meet annually to elect
27 officers from its membership, whose initial terms shall expire

1 on June 30 next following their election. Special meetings of
2 the board may be held as the board provides in its rules and
3 regulations. The board shall meet at least once in the first
4 quarter and once in the third quarter of the year. Five
5 members of the board shall constitute a quorum.

6 "(e) The board may adopt rules and regulations to
7 carry out this chapter.

8 "(f) Any member of the board or duly appointed
9 hearing officer designated by the board may administer oaths
10 and take testimony concerning all matters within the
11 jurisdiction of the board.

12 "(g) The board may sue and be sued in its official
13 name. Absent negligence, wantonness, recklessness, or
14 deliberate misconduct, members of the board are immune from
15 liability for all good faith acts performed in the execution
16 of their duties of the board.

17 "(h) The board shall adopt a seal for its use
18 containing the words: "Alabama Electrical Contractors'
19 Licensing Board."

20 "(i) ~~The board shall employ or contract for an~~
21 ~~executive secretary whose pay shall be determined by the~~
22 ~~board. The board may employ, and at its pleasure discharge, an~~
23 ~~executive director. The board may hire other officers and~~
24 ~~administrative employees which may be necessary to implement~~
25 ~~this chapter. The board may employ, on an as needed basis, an~~
26 ~~investigator to investigate complaints. The board shall not~~
27 ~~employ electrical inspectors nor provide for any electrical~~

1 inspections. The board shall outline the duties and fix the
2 compensation and expense allowances of all employees pursuant
3 to the Merit System Act of Alabama.

4 "(j) The board is subject to the Alabama Sunset Law
5 and is classified as an enumerated agency pursuant to Section
6 41-20-3. The board shall automatically terminate on October 1,
7 2012, and every four years thereafter, unless a bill is
8 enacted that the board be continued, modified, or
9 reestablished.

10 "(k) Each board member shall be accountable to the
11 Governor for the proper performance of his or her duties as a
12 member of the board. The Governor shall investigate any
13 complaints or unfavorable reports concerning the actions of
14 the board and shall take appropriate action thereon, including
15 removal of any board member for misfeasance, malfeasance,
16 neglect of duty, commission of a felony, incompetence, or
17 permanent inability to perform official duties. A board member
18 may be removed at the request of the board after failing to
19 attend three consecutive properly noticed meetings.

20 "§34-36-5.

21 "The members of the board shall receive \$25.00 up to
22 three hundred dollars (\$300) per day with a limit of 15 days
23 per year while performing their official duties, in addition
24 to other expenses which may be provided by law the same per
25 diem and mileage as provided to state employees.

26 "§34-36-6.

"The (a) By rule, the board shall make provisions to do all of the following:

"(1) Prepare or approve all examinations of applicants for licenses for electrical contractors, ~~master electricians~~ and journeymen journeyman electricians;—

"(2) Determine the qualifications of electrical contractors to engage in the business of electrical contracting; 1

"(3) Determine the qualifications of ~~master and~~ journeymen journeyman electricians to engage in electrical work;—

"(4) Investigate Provide for the investigation of written complaints filed with the board concerning alleged violations of the provisions of this chapter and any other law of this state pertaining to electrical contracting and any rules and regulations adopted by the board.

"(b) The board may suspend, revoke, or refuse to issue or renew a license and impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000), after notice and opportunity for a hearing pursuant to the Administrative Procedure Act, upon proof of any of the following actions by a licensee or applicant:

"(1) Violation of any provision of Act 85-921.

"(2) Attempting to procure a license to practice electrical contracting or to work as a master electrician or journeyman electrician by bribery or fraudulent misrepresentations.

"(3) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of electrical contracting, working as a journeyman electrician, or the ability to practice electrical contracting or to work as a master electrician or journeyman electrician.

"(4) Making or filing a report or record which the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed electrical contractor, master electrician, or journeyman electrician.

"(5) Being found guilty of fraud or deceit or of negligence, incompetency, or misconduct in the practice of electrical contracting or working as a master electrician or journeyman electrician.

"(6) Practicing on a revoked, suspended, or inactive license.

"(7) Aiding or abetting any person to evade any provision of this chapter.

"(8) Knowingly combining or conspiring with any person by allowing one's license to be used by any unlicensed person with the intent to evade this chapter. When a licensee allows his or her license to be used by any firm, partnership, association, or corporation without having any active

1 participation in the operations or management of the firm,
2 partnership, association, or corporation, such act constitutes
3 prima facie evidence of an intent to evade this chapter.

4 "(9) Acting in the capacity of a contractor under
5 any license issued under this act except in the name of the
6 licensee as set forth on the issued license.

7 "(c) Upon finding a person, corporation, or business
8 entity, engaged in electrical contracting as defined in this
9 chapter, to be in violation of any of the provisions contained
10 herein, the board may investigate the activities of licensed
11 and unlicensed contractors. If the board finds that a person,
12 corporation, or business entity is engaged in performing
13 electrical contracting covered by this chapter without having
14 obtained a proper license, the board may do any of the
15 following:

16 "a. Deny an application for licensure with cause.
17 "b. Impose an administrative fine of not more than
18 five thousand dollars (\$5,000).

19 "c. Issue a cease and desist order.
20 "d. Petition the circuit court of the county where
21 the act occurred to enforce the cease and desist order or
22 collect the assessed fine, or both.

23 "(d) Any person aggrieved by any adverse action
24 taken by the board may appeal the adverse action to the
25 circuit court of the county in which the adverse action
26 occurred in accordance with the Alabama Administrative
27 Procedure Act.

1 "§34-36-7.

2 "(a) All applicants for licensure must submit a
3 completed application, application fee, and supportive
4 documentation of qualifications before taking an examination
5 approved by the board. The board shall examine applicants at
6 least once every three months according to the method deemed
7 by it to be the most appropriate to test the qualifications of
8 applicants. Any national standardized or written examination
9 proctored by an independent third party which the board shall
10 approve as substantially similar to the examination required
11 to be licensed under this chapter may be administered to all
12 applicants in lieu of or in conjunction with any other
13 examination which the board shall give to test the
14 qualifications of applicants. The board shall also have the
15 right to establish such norms of achievement as shall be
16 required for a passing grade. The board may, by rule, adopt
17 the National Electrical Code for the purpose of examinations.

18 "(b) The board may recognize a license issued by any
19 other state that, in the opinion of the board, has standards
20 of practice or licensure equal to or higher than those
21 required by ~~the board~~ this state. The board shall actively
22 seek to reciprocate with those states meeting such standards.
23 The board shall actively seek to maintain those states
24 currently under agreement.

25 "(c) No license shall be issued except in compliance
26 with this chapter and none shall be issued except to a person
27 or a person in a firm, partnership, association, or

1 corporation. A firm, partnership, association, or corporation,
2 as such, shall not be licensed.

3 "(d) An individual who has successfully passed, on
4 or before January 1, 2010, with a minimum score of 70 percent,
5 or an individual who has successfully passed after January 1,
6 2010, with a minimum score of 75 percent, a nationally
7 standardized proctored electrical examination administered in
8 the State of Alabama, by Block and Associates, International
9 Code Council, Experior, Promissor, Thomson Prometric, PROV, or
10 any other exam approved by the board, shall be deemed to be in
11 compliance with the testing requirement set forth by the board
12 for licensure as an electrical contractor. Individuals meeting
13 this qualification shall also be required to complete all
14 other qualifications set forth by this chapter and the board
15 prior to issuance of an electrical contractor license.
16 Electrical contractor applicants affected by this provision
17 shall have one year after the effective date of the act adding
18 this subsection to apply for licensure without any further
19 examination requirements.

20 "§34-36-8.

21 "(a) All licenses shall expire annually or at such
22 other times ~~as may be~~ designated by the board. All
23 applications for renewal of licenses shall be filed with the
24 ~~secretary director~~ prior to the expiration date, accompanied
25 by the annual renewal fee prescribed by the board.

26 "(b) The board is authorized to establish or adopt,
27 or both, education requirements and may approve the program or

1 programs providing education to fulfill the requirements. The
2 board shall set the minimum standards of education. All
3 persons holding an electrical contractor license shall be
4 required to complete 14 hours of continuing education every
5 two years.

6 "(c) The board may promulgate rules regarding the
7 approval of continuing education courses and the accounting
8 for continuing education hours.

9 "(d) Any person licensed by the board may elect an
10 inactive status certificate by notifying the board in writing.
11 The fee for the issuance and renewal of an inactive status
12 certificate shall be established by the board. The board shall
13 provide by rule those activities which an inactive status
14 certificate holder may engage in and for a procedure for the
15 reinstatement as an active status certificate holder.

16 "§34-36-9.

17 "* An expired license for an electrical contractor
18 which has expired for failure to renew may only be restored
19 within two years from the date of expiration after application
20 and payment of the prescribed restoration fee and satisfaction
21 of all continuing education requirements. The restoration fee
22 shall be established by the board and shall be due upon
23 application for restoration. The restoration fee shall be in
24 addition to all accrued renewal fees. Any license which has
25 not been restored within two years following its expiration
26 may not be renewed, restored or reissued thereafter. The
27 holder of such a cancelled license may apply for and obtain a

1 valid license only upon compliance with all relevant
2 requirements as prescribed by this chapter or by rule for
3 issuance of a new license.

4 "§34-36-13.

5 "(a) No person shall engage in the electrical
6 contracting business or perform work as a master or journeyman
7 electrician unless such person shall have received a license
8 from the board or from the county or municipality where the
9 ~~contract~~ electrical contracting work is being performed;
10 provided, however, the provisions of this chapter shall not
11 apply:

12 "(1) To the installation, construction or
13 maintenance of power systems for the generation and secondary
14 distribution of electric current constructed under the
15 provisions of the ~~national electrical safety code~~ National
16 Electrical Safety Code which regulates the safety requirements
17 of utilities.

18 "(2) To the installation, construction, maintenance
19 or repair of telephone or signal systems by or for public
20 utilities or their corporate affiliates, when such work
21 pertains to the services furnished by such utilities.

22 "(3) To any technician employed by a municipal
23 franchised CATV system.

24 "(4) To any master or journeyman electrician
25 employed by a state licensee of the board or a licensee of a
26 county or municipality where the contract work is being
27 performed.

1 "(5) To persons engaging in the electrical
2 contracting business or performing work as a master or
3 journeyman electrician where there is no governing ordinance
4 or laws requiring a license;

5 "(6) To the owner of any premises or an employee
6 of any such owner when performing electrical work or
7 installing, constructing, maintaining, altering or repairing
8 electrical wiring, equipment or apparatus on such premises;

9 "(7) To an employee of an electric utility when
10 installing or repairing electric appliances and equipment for
11 a customer;

12 "(8) To any retail merchant, or its employees
13 making the installation of or the repair or maintenance on any
14 appliance that the merchant has sold; or to any modular or
15 manufacturer of the housing industry within the state which is
16 regulated by state and federal governments;

17 "(9) To the installation, construction or
18 maintenance of systems that operate on 25 volts or less.

19 "(9) To the installation, construction, or
20 maintenance of direct broadcast satellite services.

21 "(b) (1) No license shall be issued by the board
22 without an examination of the applicant for the purpose of
23 ascertaining his or her qualifications for such work, but no
24 such examination shall be required for the annual renewal of
25 such license.

26 "(2) This ~~provision~~ section shall in no way prohibit
27 the governing authorities of each county and municipality in

1 the State of Alabama from exercising ~~the~~ their authority to
2 require any person engaging in the electrical contracting
3 business or performing work as a master or journeyman
4 electrician to stand and attain a passing grade on an
5 examination administered by such county or municipality to
6 evidence their ability and proficiency to engage in the
7 electrical contracting business or to perform work as a master
8 or journeyman electrician within their jurisdiction; provided,
9 however, that any person who holds a valid statewide license
10 issued by the board shall be deemed qualified and, upon
11 satisfactory proof of said license, shall be allowed to
12 perform forthwith electrical work in any county or
13 municipality under the terms and conditions set forth in this
14 chapter, if such person has the proper county or municipal
15 building permit and business license.

16 "(c) All persons performing work under a license
17 issued by the board must abide by all state and local laws and
18 ordinances.

19 "§34-36-15.

20 "Electrical contracting is hereby declared to
21 involve involves activities affecting the public interest and
22 involving the health, and safety, and welfare of the public.
23 Such activities, when engaged in by a person who is not
24 licensed, are ~~declared to be~~ a public nuisance, and harmful to
25 the public health, safety, and welfare. The board or the
26 district attorney of the circuit where such nuisance exists
27 may bring a petition to restrain and enjoin such unlicensed

1 practice in the district court of the county where such
2 unlicensed person resides. It shall not be necessary in order
3 to obtain the equitable relief provided herein to allege or
4 prove that there is no adequate remedy at law.

5 "§34-36-16.

6 " (a) It shall be unlawful for any person to violate
7 any provision of this chapter regulating electrical
8 contracting, and any person convicted of such violation shall
9 be punished as prescribed for a Class ~~B~~ A misdemeanor.

10 " (b) It shall be unlawful, except as otherwise
11 provided, on or after December 31, 2011, for a person not
12 licensed as an electrical contractor to solicit, represent,
13 seek to perform, or perform those tasks and functions that can
14 only be performed by a licensed electrical contractor in
15 accordance with this chapter.

16 " (c) Subsection (b) shall not apply to an electrical
17 contractor who has taken an examination offered by the board
18 within the preceding 12 months, who holds a license or permit
19 issued by a county or municipal government to perform the
20 tasks and functions that can only be performed by a licensed
21 electrical contractor, and who performs those tasks and
22 functions within the boundaries of the county or municipality
23 that issued the license or permit.

24 "§34-36-17.

25 "There is hereby established a separate fund in the
26 State Treasury to be known as the "Alabama Board of Electrical
27 Contractors Fund." All money derived under the provisions of

1 this chapter shall be deposited in this fund and used only to
2 carry out the provisions of this chapter. Such fund shall be
3 paid out only by warrant of the Comptroller upon the
4 Treasurer, upon itemized vouchers, approved by the executive
5 ~~secretary director~~ of the board; provided, that no funds shall
6 be withdrawn or expended except as budgeted and allotted
7 according to the provisions of Sections 41-4-80 through
8 41-4-96 and Sections 41-19-1 through 41-19-12, and only in
9 amounts as stipulated in the general appropriation or other
10 appropriation bills. ~~Notwithstanding the foregoing provisions~~
11 ~~of this section, there is hereby appropriated from the State~~
12 ~~General Fund to the Alabama Board of Electrical Contractors~~
13 ~~for the fiscal year ending September 30, 1986, the sum of~~
14 ~~\$100,000.00 or so much thereof as may be necessary to~~
15 ~~implement the provisions of this chapter. Provided further,~~
16 ~~that any~~ Any funds unspent and unencumbered at the end of any
17 state fiscal year in excess of ~~\$50,000.00~~ one hundred thousand
18 dollars (\$100,000) shall be transferred into the State General
19 Fund on or before January 15 of the succeeding year. In
20 addition, there is hereby appropriated from the Alabama Board
21 of Electrical Contractors Fund to the Alabama Board of
22 Electrical Contractors the amount necessary to repay the State
23 General Fund for any and all amounts expended therefrom and
24 such repayment to the State General Fund shall be made as soon
25 as funds are available."

1 Section 2. The provisions of this chapter shall not
2 be construed as authorizing the employment of statewide
3 electrical inspectors.

4 Section 3. Section 34-36-14 of the Code of Alabama
5 1975, is hereby repealed.

6 Section 4. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.

1

2

3 Senate

4 Read for the first time and referred to the Senate
5 committee on Governmental Affairs

12-JAN-10

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7 Read for the second time and placed on the calen-
8 dar 2 amendments

02-FEB-10

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10 Read for the third time and passed as amended ...

11 Yeas 20
12 Nays 1

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McDowell Lee
Secretary