ACT No. 2010 - 540

1 SB171

2 118986-4

3 By Senator Marsh

4 RFD: Governmental Affairs

5 First Read: 12-JAN-10

RECEIVED
APR 14 2010
GOVERNOR'S OFFICE

1 SB171

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4 ENROLLED, An Act,

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 34-36-1, 34-36-3, 34-36-4,
25 34-36-5, 34-36-6, 34-36-7, 34-36-8, 34-36-9, 34-36-13,

34-36-15, 34-36-16, and 34-36-17 of the Code of Alabama 1975, are amended to read as follows:

"§34-36-1.

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

"§34-36-3.

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

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

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

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

"(4) ELECTRICAL CONTRACTOR. Any person, firm, or corporation who is engaged in the business of soliciting and installing electrical power or control systems; maintaining, altering, or repairing electrical power or control systems, any electrical wiring devices, equipment, or any other

electrical apparatus. A person who possesses the necessary qualifications, training, and technical knowledge to 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 qualifications:

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

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

"(5) JOURNEYMAN ELECTRICIAN. A person who possesses necessary qualifications, training, and technical knowledge to install electrical wiring, apparatus, or equipment lighting, heating, or power or control covered by this chapter. He or she shall work under master or state certified electrical contractor and shall be capable of doing work according to plans and specifications furnished to him or her and in accordance with standard rules and regulations governing such work.

"(6) LICENSE. A valid and current certificate of registration issued by the 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.

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

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

1 "§34-36-4.

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

4 "(b) A person to be eligible for appointment to
5 serve on the board shall be a citizen and resident of Alabama.
6 Each person appointed to the board from each congressional
7 district shall be actively engaged in the electrical
8 construction business as a qualified person with electrical
9 construction background of not less than five consecutive
10 years, and shall hold certificates to validate his or her
11 competence as an electrical contractor in the electrical
12 construction field. The two persons shall be appointed to the
13 board as at-large members and shall be members of the Alabama
14 State Electrical Workers Association. The membership of the
15 board should be inclusive and should reflect the racial,
16 gender, geographic, urban/rural, and economic diversity of the
17 state.

18 "(c) The board shall consist of nine members to be
19 appointed by the Governor. One member shall be appointed from
20 each congressional district, and there shall be two at-large
21 members who shall be appointed from within the state. The
22 board members from the First, Second, and Third Congressional
23 Districts shall be appointed for terms of one year; the board
24 members from the Fourth, Fifth, and Sixth Congressional
25 Districts shall be appointed for terms of two years; and the

1 board member from the Seventh Congressional District as well
2 as the at-large members shall be appointed for terms of three
3 years. Thereafter, all board members shall be appointed for
4 terms of three years. Each term shall expire on June 30 of the
5 last year of the term, and no member shall serve more than two
6 consecutive three-year terms. Vacancies on the board for any
7 cause shall be filled by appointment by the Governor for the
8 remainder of the unexpired term. Members shall serve until
9 their successors are appointed.
10 "(d) The board shall meet at least semiannually and
11 as often as necessary. The board shall meet annually to elect
12 officers from its membership, whose initial terms shall expire
13 on June 30 next following their election. Special meetings of
14 the board may be held as the board provides in its rules and
15 regulations. The board shall meet at least once in the first
16 quarter and once in the third quarter of the year. Five
17 members of the board shall constitute a quorum.
18 "(e) The board may adopt rules and regulations to
19 carry out this chapter.
20 "(f) Any member of the board or duly appointed
21 hearing officer designated by the board may administer oaths
22 and take testimony concerning all matters within the
23 jurisdiction of the board.
24 "(g) The board may sue and be sued in its official
25 name. Absent negligence, wantonness, recklessness, or

1 deliberate misconduct, members of the board are immune from
2 liability for all good faith acts performed in the execution
3 of their duties of the board.
4 "(h) The board shall adopt a seal for its use
5 containing the words: "Alabama Electrical Contractors'
6 Licensing Board."
7 "(i) The board may employ, and at its pleasure
8 discharge, an executive director. The board may hire other
9 officers and administrative employees which may be necessary
10 to implement this chapter. The board may employ, on an as
11 needed basis, an investigator to investigate complaints. The
12 board shall not employ electrical inspectors nor provide for
13 any electrical inspections. The board shall outline the duties
14 and fix the compensation and expense allowances of all
15 employees pursuant to the Merit System Act of Alabama.
16 "(j) The board is subject to the Alabama Sunset Law
17 and is classified as an enumerated agency pursuant to Section
18 41-20-3. The board shall automatically terminate on October 1,
19 2012, and every four years thereafter, unless a bill is
20 enacted that the board be continued, modified, or
21 reestablished.
22 "(k) Each board member shall be accountable to the
23 Governor for the proper performance of his or her duties as a
24 member of the board. The Governor shall investigate any
25 complaints or unfavorable reports concerning the actions of

1 the board and shall take appropriate action thereon, including
2 removal of any board member for misfeasance, malfeasance,
3 neglect of duty, commission of a felony, incompetence, or
4 permanent inability to perform official duties. A board member
5 may be removed at the request of the board after failing to
6 attend three consecutive properly noticed meetings.
7 "§34-36-5.
8 "The members of the board shall receive up to three
9 hundred dollars ($300) per day with a limit of 15 days per
10 year while performing their official duties, in addition to
11 the same per diem and mileage as provided to state employees.
12 "§34-36-6.
13 " (a) By rule, the board shall make provisions to do
14 all of the following:
15 "(1) Prepare or approve all examinations of
16 applicants for licenses for electrical contractors and
17 journeyman electricians.
18 "(2) Determine the qualifications of electrical
19 contractors to engage in the business of electrical
20 contracting.
21 "(3) Determine the qualifications of journeyman
22 electricians to engage in electrical work.
23 "(4) Provide for the investigation of written
24 complaints filed with the board concerning alleged violations
25 of this chapter and any rules adopted by the board.

1 "(b) The board may suspend, revoke, or refuse to
2 issue or renew a license and impose a civil penalty in an
3 amount not to exceed five thousand dollars ($5,000), after
4 notice and opportunity for a hearing pursuant to the
5 Administrative Procedure Act, upon proof of any of the
6 following actions by a licensee or applicant:
7 "(1) Violation of any provision of Act 85-921.
8 "(2) Attempting to procure a license to practice
9 electrical contracting or to work as a master electrician or
10 journeyman electrician by bribery or fraudulent
11 misrepresentations.
12 "(3) Being convicted or found guilty, regardless of
13 adjudication, of a crime in any jurisdiction which directly
14 relates to the practice of electrical contracting, working as
15 a journeyman electrician, or the ability to practice
16 electrical contracting or to work as a master electrician or
17 journeyman electrician.
18 "(4) Making or filing a report or record which the
19 licensee knows to be false, willfully failing to file a report
20 or record required by state or federal law, willfully impeding
21 or obstructing such filing, or inducing another person to
22 impede or obstruct such filing. Such reports or records shall
23 include only those which are signed in the capacity of a
24 licensed electrical contractor, master electrician, or
25 journeyman electrician.

1 "(5) Being found guilty of fraud or deceit or of
2 negligence, incompetency, or misconduct in the practice of
3 electrical contracting or working as a master electrician or
4 journeyman electrician.
5 "(6) Practicing on a revoked, suspended, or inactive
6 license.
7 "(7) Aiding or abetting any person to evade any
8 provision of this chapter.
9 "(8) Knowingly combining or conspiring with any
10 person by allowing one's license to be used by any unlicensed
11 person with the intent to evade this chapter. When a licensee
12 allows his or her license to be used by any firm, partnership,
13 association, or corporation without having any active
14 participation in the operations or management of the firm,
15 partnership, association, or corporation, such act constitutes
16 prima facie evidence of an intent to evade this chapter.
17 "(9) Acting in the capacity of a contractor under
18 any license issued under this act except in the name of the
19 licensee as set forth on the issued license.
20 "(c) Upon finding a person, corporation, or business
21 entity, engaged in electrical contracting as defined in this
22 chapter, to be in violation of any of the provisions contained
23 herein, the board may investigate the activities of licensed
24 and unlicensed contractors. If the board finds that a person,
25 corporation, or business entity is engaged in performing

electrical contracting covered by this chapter without having obtained a proper license, the board may do any of the following:

"a. Deny an application for licensure with cause.

"b. Impose an administrative fine of not more than five thousand dollars ($5,000).

"c. Issue a cease and desist order.

"d. Petition the circuit court of the county where the act occurred to enforce the cease and desist order or collect the assessed fine, or both.

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

"§34-36-7.

"(a) All applicants for licensure must submit a completed application, application fee, and supportive documentation of qualifications before taking an examination approved by the board. The board shall examine applicants at least once every three months according to the method deemed by it to be the most appropriate to test the qualifications of applicants. Any national standardized or written examination proctored by an independent third party which the board shall approve as substantially similar to the examination required

1 to be licensed under this chapter may be administered to all
2 applicants in lieu of or in conjunction with any other
3 examination which the board shall give to test the
4 qualifications of applicants. The board shall also have the
5 right to establish such norms of achievement as shall be
6 required for a passing grade. The board may, by rule, adopt
7 the National Electrical Code for the purpose of examinations.
8 "(b) The board may recognize a license issued by any
9 other state that, in the opinion of the board, has standards
10 of practice or licensure equal to or higher than those
11 required by this state. The board shall actively seek to
12 reciprocate with those states meeting such standards. The
13 board shall actively seek to maintain those states currently
14 under agreement.
15 "(c) No license shall be issued except in compliance
16 with this chapter and none shall be issued except to a person
17 or a person in a firm, partnership, association, or
18 corporation. A firm, partnership, association, or corporation,
19 as such, shall not be licensed.
20 "(d) An individual who has successfully passed, on
21 or before January 1, 2010, with a minimum score of 70 percent,
22 or an individual who has successfully passed after January 1,
23 2010, with a minimum score of 75 percent, a nationally
24 standardized proctored electrical examination administered in
25 the State of Alabama, by Block and Associates, International

1 Code Council, Experior, Promissor, Thomson Prometric, PROV, or
2 any other exam approved by the board, shall be deemed to be in
3 compliance with the testing requirement set forth by the board
4 for licensure as an electrical contractor. Individuals meeting
5 this qualification shall also be required to complete all
6 other qualifications set forth by this chapter and the board
7 prior to issuance of an electrical contractor license.
8 Electrical contractor applicants affected by this provision
9 shall have one year after the effective date of the act adding
10 this subsection to apply for licensure without any further
11 examination requirements.
12 "§34-36-8.
13 "(a) All licenses shall expire annually or at other
14 times designated by the board. All applications for renewal of
15 licenses shall be filed with the director prior to the
16 expiration date, accompanied by the annual renewal fee
17 prescribed by the board.
18 "(b) The board is authorized to establish or adopt,
19 or both, education requirements and may approve the program or
20 programs providing education to fulfill the requirements. The
21 board shall set the minimum standards of education. All
22 persons holding an electrical contractor license shall be
23 required to complete 14 hours of continuing education every
24 two years.

1 "(c) The board may promulgate rules regarding the
2 approval of continuing education courses and the accounting
3 for continuing education hours.
4 "(d) Any person licensed by the board may elect an
5 inactive status certificate by notifying the board in writing.
6 The fee for the issuance and renewal of an inactive status
7 certificate shall be established by the board. The board shall
8 provide by rule those activities which an inactive status
9 certificate holder may engage in and for a procedure for the
10 reinstatement as an active status certificate holder.
11 "§34-36-9.
12 " An expired license for an electrical contractor
13 which has expired for failure to renew may only be restored
14 within five years from the date of expiration after
15 application and payment of the prescribed restoration fee and
16 satisfaction of all continuing education requirements. The
17 restoration fee shall be established by the board and shall be
18 due upon application for restoration. The restoration fee
19 shall be in addition to all accrued renewal fees. Any license
20 which has not been restored within two years following its
21 expiration may not be renewed, restored or reissued
22 thereafter. The holder of such a cancelled license may apply
23 for and obtain a valid license only upon compliance with all
24 relevant requirements as prescribed by this chapter or by rule
25 for issuance of a new license.

1 "§34-36-13.

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

8 "(1) To the installation, construction or
9 maintenance of power systems for the generation and secondary
10 distribution of electric current constructed under the
11 provisions of the National Electrical Safety Code which
12 regulates the safety requirements of utilities.

13 "(2) To the installation, construction, maintenance
14 or repair of telephone or signal systems by or for public
15 utilities or their corporate affiliates, when such work
16 pertains to the services furnished by such utilities.

17 "(3) To any technician employed by a municipal
18 franchised CATV system.

19 "(4) To any master or journeyman electrician
20 employed by a state licensee of the board or a licensee of a
21 county or municipality where the contract work is being
22 performed.

23 "(5) To the owner of any premises or an employee of
24 any such owner when performing electrical work or installing,

1 constructing, maintaining, altering or repairing electrical
2 wiring, equipment or apparatus on such premises.
3 "(6) To an employee of an electric utility when
4 installing or repairing electric appliances and equipment for
5 a customer.
6 "(7) To any retail merchant, or its employees making
7 the installation of or the repair or maintenance on any
8 appliance that the merchant has sold; or to any modular or
9 manufacturer of the housing industry within the state which is
10 regulated by state and federal governments.
11 "(8) To the installation, construction or
12 maintenance of systems that operate on 25 volts or less.
13 "(9) To the installation, construction, or
14 maintenance of direct broadcast satellite services.
15 "(b)(1) No license shall be issued by the board
16 without an examination of the applicant for the purpose of
17 ascertaining his or her qualifications for such work, but no
18 such examination shall be required for the annual renewal of
19 such license.
20 "(2) This section shall in no way prohibit the
21 governing authorities of each county and municipality in the
22 State of Alabama from exercising their authority to require
23 any person engaging in the electrical contracting business or
24 performing work as a master or journeyman electrician to stand
25 and attain a passing grade on an examination administered by

1 such county or municipality to evidence their ability and
2 proficiency to engage in the electrical contracting business
3 or to perform work as a master or journeyman electrician
4 within their jurisdiction; provided, however, that any person
5 who holds a valid statewide license issued by the board shall
6 be deemed qualified and, upon satisfactory proof of said
7 license, shall be allowed to perform forthwith electrical work
8 in any county or municipality under the terms and conditions
9 set forth in this chapter, if such person has the proper
10 county or municipal building permit and business license.
11 "(c) All persons performing work under a license
12 issued by the board must abide by all state and local laws and
13 ordinances.
14 "§34-36-15.
15 "Electrical contracting involves activities
16 affecting the public interest and the health, safety, and
17 welfare of the public. Such activities, when engaged in by a
18 person who is not licensed, are a public nuisance and harmful
19 to the public health, safety, and welfare. The board or the
20 district attorney of the circuit where such nuisance exists
21 may bring a petition to restrain and enjoin such unlicensed
22 practice in the district court of the county where such
23 unlicensed person resides. It shall not be necessary in order
24 to obtain the equitable relief provided herein to allege or
25 prove that there is no adequate remedy at law.

1 "§34-36-16.

2 "(a) It shall be unlawful for any person to violate
3 any provision of this chapter regulating electrical
4 contracting, and any person convicted of such violation shall
5 be punished as prescribed for a Class A misdemeanor.

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

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

20 "§34-36-17.

21 "There is hereby established a separate fund in the
22 State Treasury to be known as the "Alabama Board of Electrical
23 Contractors Fund." All money derived under the provisions of
24 this chapter shall be deposited in this fund and used only to
25 carry out the provisions of this chapter. Such fund shall be

1 paid out only by warrant of the Comptroller upon the
2 Treasurer, upon itemized vouchers, approved by the executive
3 director of the board; provided, that no funds shall be
4 withdrawn or expended except as budgeted and allotted
5 according to the provisions of Sections 41-4-80 through
6 41-4-96 and Sections 41-19-1 through 41-19-12, and only in
7 amounts as stipulated in the general appropriation or other
8 appropriation bills. Any funds unspent and unencumbered at the
9 end of any state fiscal year in excess of one hundred thousand
10 dollars ($100,000) shall be transferred into the State General
11 Fund on or before January 15 of the succeeding year. In
12 addition, there is hereby appropriated from the Alabama Board
13 of Electrical Contractors Fund to the Alabama Board of
14 Electrical Contractors the amount necessary to repay the State
15 General Fund for any and all amounts expended therefrom and
16 such repayment to the State General Fund shall be made as soon
17 as funds are available."
18 Section 2. The provisions of this chapter shall not
19 be construed as authorizing the employment of statewide
20 electrical inspectors.
21 Section 3. Section 34-36-14 of the Code of Alabama
22 1975, is hereby repealed.
23 Section 4. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB171

Senate 23-FEB-10

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Amended and passed 14-APR-10

Senate concurred in House amendment 14-APR-10

By: Senator Marsh

APPROVED April 21, 2010
TIME 8:47 a.m.
Bob Riley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2010-540
Bill Num...: S-171

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