



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3779

Introduced 2/25/2005, by Rep. Robert W. Churchill

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 80/4.26 new

Creates the General Contractor Licensing Act. Provides for the licensure of general contractors by the Department of Financial and Professional Regulation. Provides civil and criminal penalties for violations of the Act. Preempts home rule. Amends the Regulatory Sunset Act to repeal the new Act on January 1, 2016. Effective immediately.

LRB094 09447 AMC 39695 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 General Contractor Licensing Act.

6 Section 5. Definitions. As used in this Act:

7 "Board" means the General Contractor Licensing Board.

8 "Department" means the Department of Financial and
9 Professional Regulation.

10 "Designated agent" means a person who is designated by a
11 general contracting firm, corporation, partnership, or
12 association that will be responsible for overseeing the
13 performance of general contractor services for that firm,
14 corporation, partnership, or association.

15 "General contractor" means a person who builds, designs,
16 assembles, or otherwise develops structures, buildings, or
17 other places of dwelling, business, or employment for another
18 person.

19 "Governmental unit" means a city, village, incorporated
20 town, county, or sanitary or water district.

21 "Person" means any natural person, firm, corporation,
22 partnership, or association.

23 "Secretary" means the Secretary of Financial and
24 Professional Regulation.

25 "Telecommunications carrier" means a telecommunications
26 carrier as defined in the Public Utilities Act.

27 Section 10. Licensure requirement. On or after January 1,
28 2006, no person may act as a general contractor on a project in
29 this State without a license issued by the Department under
30 this Act.

1 Section 15. Exemptions.

2 (a) This Act does not prohibit a person licensed in this
3 State under any other Act from engaging in the practice for
4 which that person is licensed.

5 (b) This Act does not apply to a not-for-profit
6 organization that is exempt from taxation under 501(c)(3) of
7 the Internal Revenue Code.

8 Section 20. General contractor services by municipal
9 corporations or political subdivisions. No governmental unit
10 shall perform general contractor services, unless such
11 services are performed by one or more licensed general
12 contractors, provided that any such governmental unit may
13 contract for general contractor services with any person
14 authorized to perform general contractor services in this
15 State.

16 Section 25. General Contractors Licensing Board.

17 (a) There is created an General Contractor Licensing Board,
18 which shall exercise its duties provided in this Act under the
19 supervision of the Department. The Board shall consist of 9
20 licensed general contractors designated from time to time by
21 the Secretary. In making the appointments to the Board, the
22 Secretary shall consider the recommendations of individuals,
23 firms, or organizations involved in general contracting in this
24 State.

25 (b) The Board shall aid the Secretary and the Department
26 by:

27 (1) Preparing subject matter for examinations as
28 provided in this Act.

29 (2) Suggesting rules to govern examinations and
30 hearings for suspension, revocation, or reinstatement of
31 licenses.

32 (3) Submitting recommendations to the Secretary from
33 time to time for the efficient administration of this Act.

34 (4) Grading all tests and examinations for licenses and

1 promptly reporting the results to the Secretary.

2 (5) Performing such other duties from time to time
3 prescribed by the Secretary.

4 (c) Each Board member shall be compensated the sum of \$50
5 for each day or part thereof on which he serves on business of
6 the Board and in addition thereto shall be reimbursed for per
7 diem expenses as authorized for State employees.

8 Section 30. Powers and duties of the Secretary. The
9 Secretary shall have all the following powers and duties:

10 (1) To prepare forms for application for examination
11 for a general contractor license.

12 (2) To prepare and issue licenses as provided in this
13 Act.

14 (3) With the aid of the Board, to adopt rules for
15 examination of applicants for general contractor licenses.

16 (4) With the aid of the Board, to prepare and give
17 uniform and comprehensive examinations to applicants for a
18 license.

19 (5) To issue a general contractor license and license
20 renewal to every applicant who has passed the examination
21 and who has paid the required license and renewal fee.

22 (6) To adopt rules for hearings to deny, suspend,
23 revoke, and reinstate licenses as provided in this Act.

24 (7) To maintain a current record showing (A) the names
25 and addresses of licensees, (B) the dates of issuance of
26 licenses, (C) the date and substance of the charges set
27 forth in any hearing for denial, suspension, or revocation
28 of any license, (D) the date and substance of the final
29 order issued upon each such hearing, and (E) the date and
30 substance of all petitions for reinstatement of licenses
31 and final orders on such petitions.

32 Section 35. Examination. The Department shall hold
33 examinations for applicants for general contractor licenses at
34 least once every 3 months in some place in this State.

1 Section 40. Application for examination.

2 (a) An applicant for a general contractor license shall
3 file a written application for examination with the Department
4 on a form designated by the Department at least 30 days before
5 the date set by the Department for the examination. In the case
6 of a firm, corporation, partnership, or association, the
7 application must specify the name of a designated agent who
8 will take the examination on behalf of the firm, corporation,
9 partnership, or association.

10 (b) The application shall be accompanied by the required
11 fee and shall contain the following:

12 (1) The name, address, and telephone number of the
13 business and (i) the individual, if a sole proprietorship;
14 (ii) the partners, if a firm or partnership; or (iii)
15 officers, if a corporation or association.

16 (2) An original certificate of insurance documenting
17 that the contractor carries general liability insurance
18 with a minimum of \$100,000 per occurrence, bodily injury
19 insurance with a minimum of \$300,000 per occurrence,
20 property damage insurance with a minimum of \$50,000, and
21 worker's compensation insurance with a minimum \$500,000.
22 No registration may be issued in the absence of this
23 certificate. Certificates must be in force at all times for
24 registration to remain valid.

25 (3) An indemnification bond in the amount of \$20,000 or
26 a letter of credit in the same amount for work performed in
27 accordance with this Act and the rules adopted under this
28 Act.

29 (4) In the case of a firm, corporation, partnership, or
30 association, the name of its designated agent.

31 (5) Any other information the Department may deem
32 necessary to determine the applicant's qualifications for
33 licensure.

34 (c) If the application for examination is approved, the
35 Department shall promptly notify the applicant in writing of

1 such approval and of the place and time of the examination. If
2 the application is disapproved, the Department shall promptly
3 notify the applicant in writing of such disapproval, stating
4 the reasons for disapproval.

5 (d) If an applicant neglects, fails, or refuses to take an
6 examination for license under this Act, the application is
7 denied. However, such applicant may submit a new application
8 for examination, accompanied by the required application fee.
9 Application fees for examination for a general contractor
10 license are not refundable.

11 Section 45. Issuance of license. The Secretary shall issue
12 a general contractor license to each applicant who successfully
13 passes the examination, or whose designated agent successfully
14 passes the examination, and has paid to the Department the
15 required license fee. Each general contractor license shall be
16 issued in the name of the Department with the seal thereof
17 attached.

18 Section 50. Licensure by endorsement.

19 (a) Upon the payment of the required fee, an applicant who
20 is registered or licensed as a general contractor in another
21 state may, without examination, be granted a license by the
22 Department, provided that the Board finds that the requirements
23 for the registration or licensing of general contractors in
24 such other state were, at the date of the registration or
25 license, substantially equal to the requirements then in force
26 in this State, and provided that the same privilege of
27 licensure or registration is accorded by that state to licensed
28 general contractors in the State of Illinois.

29 (b) A general contractor licensed or registered as a
30 general contractor by another state whose license requirements
31 are substantially equal to the requirements for a general
32 contractor license in Illinois, and that state does not have a
33 reciprocal agreement with the State of Illinois, may apply for
34 and be issued an license under this Act if the applicant

1 successfully passes the examination and pays the required fees.

2 Section 55. Change in business information. A licensee must
3 notify the Department in advance of any changes in the business
4 structure, name, or location or of the termination of the
5 designated agent listed on the application. Failure to notify
6 the Department of this information is grounds for suspension or
7 revocation of the general contractor license.

8 Section 60. Duration of license; continuing education;
9 license renewal, reinstatement, or restoration.

10 (a) All licenses issued under this Act shall expire on
11 April 30 next following date of issuance.

12 (b) Upon the recommendation of the Board, the Department
13 may require by rule that each general contractor or its
14 designated agents annually complete a minimum number of hours
15 of classroom instruction and provide evidence of attending the
16 classes before receiving a renewal license. A continuing
17 education requirement established by the Department shall not
18 exceed 15 hours per year. In support of these requirements, the
19 Department shall by rule establish curricula for continuing
20 education and requirements for instructors and may certify
21 instructors and training programs and schools for continuing
22 education.

23 (c) A general contractor license may be renewed for a
24 period of one year upon payment of the required renewal fee and
25 submission of required evidence of successful completion of any
26 required continuing education courses. Application for renewal
27 shall be on forms provided by the Department.

28 (d) A licensee whose license has been expired for a period
29 of less than 5 years may apply to the Department for
30 reinstatement of his or her license. The Department shall issue
31 the license renewal provided the applicant pays to the
32 Department all lapsed renewal fees, plus the reinstatement fee.

33 (e) A licensee who has permitted his or her license to
34 expire for more than 5 years may apply, in writing, to the

1 Department for restoration of his or her license. The
2 Department shall restore his or her license provided he or she
3 pays to the Department the required restoration fee and shall
4 successfully pass the examination for a license. The
5 restoration fee includes the applicant's examination fee.
6 Failure by the applicant to successfully pass the examination
7 shall be sufficient grounds for the Department to withhold
8 issuance of the requested restoration of the applicant's
9 license. The applicant may retake the examination in accordance
10 with the provisions of this Act.

11 (f) The Department shall reinstate a license that expires
12 while a licensee is in the active military service of the
13 United States upon application to the Department by the former
14 licensee within 2 years after termination of such military
15 service, payment of the annual license fee, and submission of
16 evidence of such military service. The license shall be
17 reinstated without examination and without payment of the
18 lapsed renewal fee.

19 Section 65. Denial, suspension, or revocation of a license.
20 The Secretary, after notice and opportunity for hearing to the
21 applicant, license holder, or registrant, may deny, suspend, or
22 revoke a license or registration in any case in which he or she
23 finds that there has been a substantial failure to comply with
24 the provisions of this Act or the rules adopted pursuant to
25 this Act.

26 Notice shall be provided by certified mail or by personal
27 service setting forth the particular reasons for the proposed
28 action and fixing a date, not less than 20 days from the date
29 of the mailing or service, within which time the applicant or
30 license holder must request in writing a hearing. Failure to
31 serve upon the Department a request for hearing in writing
32 within the time provided in the notice shall constitute a
33 waiver of the person's right to an administrative hearing.

34 The hearing shall be conducted by the Secretary or by an
35 individual designated in writing by the Secretary as a hearing

1 officer to conduct the hearing. The Secretary or hearing
2 officer shall give written notice of the time and place of the
3 hearing, by certified mail or personal service, to the
4 applicant, license holder, or registrant at least 10 days prior
5 to the hearing. On the basis of the hearing, or upon default of
6 the applicant, license holder, or registrant, the Secretary
7 shall make a determination specifying his or her findings and
8 conclusions. A copy of the determination shall be sent by
9 certified mail or served personally upon the applicant, license
10 holder, or registrant. The decision of the Secretary shall be
11 final on issues of fact and final in all respects unless
12 judicial review is sought as provided in this Act.

13 The procedure governing hearings authorized by this
14 Section shall be in accordance with rules promulgated by the
15 Department. A full and complete record shall be kept of all
16 proceedings, including the notice of hearing, complaint, and
17 all other documents in the nature of pleadings, written motions
18 filed in the proceedings, and the report and orders of the
19 Secretary and hearing officer.

20 The Department at its expense shall provide a court
21 reporter to take testimony. Technical error in the proceedings
22 before the Department or hearing officer or their failure to
23 observe the technical rules of evidence shall not be grounds
24 for the reversal of any administrative decision unless it
25 appears to the court that such error or failure materially
26 affects the rights of any party and results in substantial
27 injustice to them.

28 The Department or hearing officer, or any parties in an
29 investigation or hearing before the Department, may cause the
30 depositions of witnesses within the State to be taken in the
31 manner prescribed by law for depositions in civil actions in
32 courts of this State, and compel the attendance of witnesses
33 and the production of books, papers, records, or memoranda.

34 The Department shall not be required to certify any record
35 to the court or file any answer in court or otherwise appear in
36 any court in a judicial review proceeding, unless there is

1 filed in the court with the complaint a receipt from the
2 Department acknowledging payment of the costs of furnishing and
3 certifying the record. Such cost shall be paid by the party
4 requesting a copy of the record. Failure on the part of the
5 person requesting a copy of the record to pay the cost shall be
6 grounds for dismissal of the action.

7 Section 70. Grounds for discipline.

8 (a) The Secretary may deny, revoke, or suspend a license
9 when findings show one or more of the following:

10 (1) That the licensee or registrant obtained or
11 conspired with others to obtain a license or registration
12 by inducing the issuance thereof in consideration of the
13 payment of money or delivery of any other thing of value or
14 by and through misrepresentation of facts.

15 (2) That the licensee willfully violated any law of
16 this State or any rule adopted thereunder regulating
17 general contractors.

18 (3) That the licensee has been guilty of negligence or
19 incompetence in the performance of general contractor
20 services.

21 (4) That the licensee has loaned or in any manner
22 transferred his or her license to another person.

23 (b) If a license is suspended or revoked, then the license
24 shall be surrendered to the Department but, if suspended, it
25 shall be returned to the licensee upon the termination of the
26 suspension period.

27 (c) The Department may refuse to issue or may suspend the
28 license of any person who fails to file a return, or to pay the
29 tax, penalty, or interest shown in a filed return, or to pay
30 any final assessment of tax, penalty, or interest as required
31 by any tax Act administered by the Illinois Department of
32 Revenue, until such time as the requirements of the tax Act are
33 satisfied.

34 Section 75. Subpoena power. The Secretary or hearing

1 officer shall have power to subpoena to any hearing authorized
2 by this Act any person in this State to give testimony and
3 evidence either orally or by deposition or both. The Secretary
4 or hearing officer may also issue subpoena duces tecum for
5 production of any books and records and other documents for
6 evidence at any authorized hearing under this Act. Witnesses
7 subpoenaed as provided herein shall be paid the same witness
8 fees and mileage as provided for witnesses who are subpoenaed
9 to give testimony in any civil case in a court of this State.
10 The Secretary or hearing officer is hereby empowered to
11 administer oaths or affirmations to witnesses at any hearing
12 authorized by this Act.

13 Section 80. Attendance of any witness and production of
14 books, papers or documents. Any circuit court upon the
15 application of the Secretary or any party of record to a
16 hearing authorized by this Act may order the attendance of any
17 witness and the production of any books, papers, or documents
18 in this State at any hearing authorized by this Act for the
19 purpose of giving testimony or evidence. Any court thereof as
20 provided in this Section may compel obedience to such order for
21 appearance or production of records by proceedings for
22 contempt.

23 Section 85. Order or certified copy; prima facie proof. An
24 order of suspension, revocation, or reinstatement of a license,
25 or of dismissal of a complaint or petition, or a certified copy
26 of such an order, over the seal of the Department and
27 purporting to be signed by the Secretary, shall be prima facie
28 proof that:

29 (1) the signature is the genuine signature of the
30 Secretary; and

31 (2) the Secretary is duly appointed and qualified.

32 Section 90. Administrative Review Law. All final
33 administrative decisions of the Secretary hereunder shall be

1 subject to judicial review pursuant to the provisions of the
2 Administrative Review Law, and all amendments and
3 modifications thereof, and the rules adopted pursuant thereto.
4 The term "administrative decision" is defined as in Section
5 3-101 of the Code of Civil Procedure.

6 Section 95. Illinois Administrative Procedure Act. The
7 provisions of the Illinois Administrative Procedure Act are
8 hereby expressly adopted and shall apply to all administrative
9 rules and procedures of the Department under this Act, except
10 that Section 5-35 of the Illinois Administrative Procedure Act
11 relating to procedures for rulemaking does not apply to the
12 adoption of any rule required by federal law in connection with
13 which the Department is precluded by law from exercising any
14 discretion.

15 Section 100. Criminal penalties; injunction.

16 (1) Except as otherwise provided in subsection (c) of
17 Section 125 of this Act, any person violating any provision of
18 this Act or its rules shall be guilty of a Class B misdemeanor
19 with a fine of \$500 for the first offense; and a second or
20 subsequent violation of this Act or its rules shall be guilty
21 of a Class A misdemeanor with a fine of \$1,000. Each day of
22 violation constitutes a separate offense. The State's Attorney
23 of the county in which the violation occurred or the Attorney
24 General shall bring such actions in the name of the People of
25 the State of Illinois.

26 (2) If it is established that the defendant contrary to
27 this Act has been or is performing general contractor services
28 without having been issued a license or under a suspended,
29 revoked, or nonrenewed license, then the court may enter a
30 judgment perpetually enjoining the defendant from further
31 performing general contractor services contrary to this Act. In
32 case of violation of any injunction entered under this Section,
33 the court may summarily try and punish the offender for
34 contempt of court. Such injunction proceedings shall be in

1 addition to, and not in lieu of, all penalties and other
2 remedies provided in this Act.

3 Section 105. Unlicensed and unregistered practice;
4 violation; civil penalty.

5 (a) A person who practices, offers to practice, attempts to
6 practice, or holds himself or herself out to practice as a
7 general contractor without being licensed under this Act shall,
8 in addition to any other penalty provided by law, pay a civil
9 penalty to the Department in an amount not to exceed \$5,000 for
10 each offense as determined by the Department. The civil penalty
11 shall be assessed by the Department after a hearing is held in
12 accordance with the provisions of this Act regarding the
13 provision of a hearing for the discipline of a licensee.

14 (b) The Department has the authority and power to
15 investigate any person who practices, offers to practice,
16 attempts to practice, or holds himself or herself out to
17 practice as a general contractor without being licensed
18 under this Act.

19 (c) The civil penalty shall be paid within 60 days after
20 the effective date of the order imposing the civil penalty. The
21 order shall constitute a judgment and may be filed and
22 execution had on the judgment in the same manner as a judgment
23 from a court of record.

24 Section 110. Fees; deposit of moneys.

25 (a) The Department shall, by rule, establish a schedule of
26 fees for examination, registration, and licensure sufficient
27 to offset the costs of administration and enforcement of this
28 Act.

29 (b) All fees and fines collected pursuant to this Act shall
30 be deposited into the General Professions Dedicated Fund for
31 use by the Department in administering and enforcing this Act.

32 Section 115. Inspections. The Department is authorized and
33 directed to make inspections necessary to determine compliance

1 with this Act and its rules.

2 Subject to constitutional limitations, the Department, by
3 its representatives, after proper identification, is
4 authorized and shall have the power to enter at reasonable
5 times, upon private and public property for the purpose of
6 inspecting and investigating conditions relating to the
7 enforcement of this Act and its rules.

8 Section 120. Advertising.

9 (a) Persons who advertise general contractor services must
10 display a license issued under this Act at their place of
11 business. The number of the license so displayed must also be
12 included on all their vehicles.

13 (b) No person who provides general contractor services may
14 advertise those services, unless that person includes in the
15 advertisement the license number that is required to be
16 displayed under subsection (a) of this Section. Nothing
17 contained in this subsection (b) requires the publisher of
18 advertising for general contractor services to investigate or
19 verify the accuracy of the license number provided by the
20 advertiser.

21 (c) Any person who advertises general contractor services
22 (i) who fails to display the license number required by
23 subsection (a) of this Section in all manners required by that
24 subsection, (ii) who fails to provide a publisher with the
25 correct number under subsection (b) of this Section, or (iii)
26 who provides a publisher with a false license number, or any
27 person who allows his or her license number to be displayed or
28 used in order to allow any other person to circumvent any
29 provisions of this Section is guilty of a Class A misdemeanor
30 with a fine of \$1,000. Each day that a person fails to display
31 the required license under subsection (a) of this Section and
32 each day that an advertisement runs or each day that a person
33 allows his or her license to be displayed or used in violation
34 of this Section constitutes a separate offense.

35 In addition to, and not in lieu of, the penalties and

1 remedies provided for in this Section and other provisions of
2 this Act, any person licensed under this Act who violates any
3 provision of this Section shall be subject to suspension or
4 revocation of his or her license under the provisions of this
5 Act.

6 (c) In addition to, and not in lieu of, the penalties and
7 remedies provided for in this Section and other provisions of
8 this Act, and after notice and an opportunity for hearing, the
9 Department may issue an Order Of Correction to the
10 telecommunications carrier furnishing service to any telephone
11 number contained in a printed advertisement for general
12 contractor services that is found to be in violation of the
13 provisions of this subsection (c). The Order of Correction
14 shall be limited to the telephone number contained in the
15 unlawful advertisement. The Order of Correction shall notify
16 the telecommunications carrier to disconnect the telephone
17 service furnished to any telephone number contained in the
18 unlawful advertisement and that subsequent calls to that number
19 shall not be referred by the telecommunications carrier to any
20 new telephone number obtained by or any existing number
21 registered to the person.

22 If, upon investigation, the Department has probable cause
23 to believe that a person has placed an advertisement with a
24 telecommunications carrier that contains a false license
25 number or is placed or circulated by a person who is not
26 properly licensed under this Act, the Department shall provide
27 notice to the person of the Department's intent to issue an
28 Order of Correction to the telecommunications carrier to
29 disconnect the telephone service furnished to any telephone
30 number contained in the unlawful advertisement, and that
31 subsequent calls to that number shall not be referred by the
32 telecommunications carrier to any new telephone number
33 obtained by or any existing number registered to the person.

34 Notice shall be provided by certified mail or by personal
35 service setting forth the particular reasons for the proposed
36 action and fixing a date, not less than 20 days from the date

1 of the mailing or service, within which time the person may
2 request a hearing in writing. Failure to serve upon the
3 Department a written request for hearing within the time
4 provided in the notice shall constitute a waiver of the
5 person's right to an administrative hearing. The hearing,
6 findings, and conclusions shall be in accordance with the
7 provisions of this Act and the Department's Rules of Practice
8 and Procedure in Administrative Hearings (77 Ill. Admin. Code
9 100), which are incorporated by reference herein.

10 Upon a finding that the person has violated the provisions
11 of this subsection (c), the Department shall issue the Order of
12 Correction to the telecommunications carrier. If the
13 telecommunications carrier fails to comply with the Order of
14 Correction within 20 days after the order is final, the
15 Department shall inform the Illinois Commerce Commission of the
16 failure to comply and the Illinois Commerce Commission shall
17 require the telecommunications carrier furnishing services to
18 that person to disconnect the telephone service furnished to
19 the telephone number contained in the unlawful advertisement
20 and direct that subsequent calls to that number shall not be
21 referred by the telecommunications carrier to any new telephone
22 number obtained by or any existing number registered to the
23 person.

24 A person may have his or her telephone services restored,
25 after an Order of Correction has been issued, upon a showing,
26 to the satisfaction of the Department, that he or she is in
27 compliance with the provisions of this Act.

28 (d) The Department may require by rule additional
29 information concerning licensed general contractors maintained
30 in the register. The Department shall have the right to examine
31 the payroll records of such persons to determine compliance
32 with this provision. The Department's right to examine payroll
33 records is limited solely to those records and does not extend
34 to any other business records.

35 Section 125. Home rule. The regulation and licensing of

1 general contractors are exclusive powers and functions of the
2 State. A home rule unit may not regulate or license general
3 contractors. This Section is a denial and limitation of home
4 rule powers and functions under subsection (h) of Article VII
5 of the Illinois Constitution.

6 Section 900. The Regulatory Sunset Act is amended by adding
7 Section 4.26 as follows:

8 (5 ILCS 80/4.26 new)

9 Sec. 4.26. Act repealed on January 1, 2016. The following
10 Act is repealed on January 1, 2016:

11 The General Contractor Licensing Act.

12 Section 999. Effective date. This Act takes effect upon
13 becoming law.