

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2060

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2060

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2060

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/05/07

Recorder Job Number: 679

Committee Clerk Signature

*Veronica Spurling*

Minutes:

Roll was taken and all members were present.

Sen. Dever, Chairman, opened the hearing on SB 2060, relating to plumbing board member compensation and plumbing code violations.

Bob Leingang, Secretary and Chief Inspector of the ND State Plumbing Board introduce the bill. See attachment #1. Referencing Change A he mentioned that the board members are from various cities in the state which involves a lot of travel expense.

Referencing Change B, he mentioned an infraction is not a stiff enough penalty to deter the "repeat offenders."

Sen. Nelson in reference to Change A asked why the amounts were even established.

Bob Leingang agreed it would probably be best to leave it open rather than establish a set amount.

Sen. Oehlke asked whether the state electrical board also has their penalties established by the legislature.

Bob Leingang replied yes.

Sen. Lee mentioned that we can change it if it is the wishes of the board, but would like some feedback from the board as to what their wishes are.

Bob Leingang agreed this would be a good idea.

Sen. Lee said we can assume people who are willing to serve are generally honest and will not abuse it and if they do we can deal with it at that time. She asked whether they get reimbursed for mileage, etc. or if that has to come out of the fifty dollars.

Bob Leingang replied they get all expenses reimbursed plus the \$50.00 per day.

Sen. Dever asked about the wording "unless a different penalty is otherwise specifically provided."

Discussion about leniency and flexibility followed.

Opposed:

Tom Kelsch, a local attorney representing the ND Manufactured Housing Association, expressed concern that if the law were changed the penalty would be too steep for every violation, especially in rural areas where it is very difficult to get a plumber. He asked for an opportunity to look into the other occupations listed on the testimony that do have a penalty of Class B Misdemeanor in place.

Kent French with the ND Manufactured Housing Association and representing the Liechty Corporation also expressed concern for the rural areas where it is hard to get a licensed plumber to do the work. He recommended the bill not be passed.

Sen. Horne asked if a homeowner can do his own plumbing and then have it inspected.

Bob Leingang responded that a homeowner can do his own plumbing and doesn't need to get it inspected. His concern is with the plumbers who are charging for their work. After a homeowner plumbs his own he needs to get it inspected by the city or the plumbing board only if his plumbing is connected into the city or other public works system.

Sen. Lee asked if a home is waiting for inspection, can it be lived in?

Bob replied that yes, it can.

Discussion followed on inspections and what is required.

Kent French feels this bill will give the states too much power.

Sen. Dever asked if different cities have different codes and different interpretations of the written code.

Kent French answered in the affirmative.

Opposition:-

Neutral:-

There was discussion of looking into what penalty has been set by other occupations and professional boards listed on page two of the testimony.

There was discussion of the clause "unless otherwise provided" and consensus that the committee would like someone to look into it.

Sen. Dever closed the hearing on SB 2060.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2060

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 1/11/07

Recorder Job Number: 970

Committee Clerk Signature

*Monica Spelling*

Minutes:

Chairman Dever opened discussion on SB 2060.

Sen. Dever asked what other boards had been looked into.

Intern, Peter Zuger, reported he had checked on the electrical board. See attachment # 1 and attachment #2.

Discussion ensued about who can best set the limits on the amount the board can compensate: the board, this legislature, etc.

Sen. Lee made a motion to draft an amendment that would leave out the amount and allow the board to determine what they would compensate for.

Sen. Nelson seconded the motion.

Sen. Horne asked if this would set a trend.

Sen. Judy Lee feels too many amounts are legislated.

Roll Call Vote on amendment to leave out the fifty dollar limit Yes 6 No 0 Absent 0

Discussion about the penalty provided in the bill.

Sen Judy Lee made a motion to pass as amended referring to the penalty being increased to a Class B Misdemeanor.

Seconded by Sen. Oehlke.

Sen. Nelson asked if the committee could see the actual amendment before they vote on it.

Sen. Judy Lee withdrew her motion and Sen. Oehlke withdrew his second.

Chairman Dever closed the discussion on SB 2060.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2060

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 1/12/07

Recorder Job Number: 1001

Committee Clerk Signature

*Victoria Spaulding*

Minutes:

Roll was taken and all members were present.

Chairman Dever opened discussion on SB 2060.

There was discussion of the wording of proposed amendment #78068.0101 with some senators expressing their desire that it could be worded in plain English. The senators discussed they would like to leave the decision on compensation up to the plumbing board.

A motion was made by Sen. Nelson to reconsider their actions by which they amended this bill and further amend SB 2060.

This was seconded by Sen. Marcellais.

Roll Call Vote Yes 6 No 0 Absent 0

A motion was made by Sen. Judy Lee to pass as amended.

The motion was seconded by Sen. Horne.

Roll Call Vote Yes 6 No 0 Absent 0

Carrier: Sen Judy Lee



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2060

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 2/01/07

Recorder Job Number: 2630

Committee Clerk Signature

*Monica Spaulding*

Minutes:

All members of the committee were present.

Chairman Dever opened discussion on SB 2060.

There was discussion on removing some wording for the amendment numbered 0200 to further refine it. They referred to the rules set by the electrical board. See attachment # 1 and #2. Senator Dever said Bob Leingang had suggested the language so they could go after people without a license. The committee discussed the merits of setting limit caps on expenses for their board members.

Senator Lee made a motion to amend SB 2060.

Senator Oehlke seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Senator Lee made a motion to pass SB 2060 as amended.

Senator Nelson seconded the motion.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: Judy Lee

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/27/2006

Bill/Resolution No.: SB 2060

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The ND State Plumbing Board does not receive appropriations from the State General Fund.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Robert Leingang	<b>Agency:</b>	ND State Plumbing Board
<b>Phone Number:</b>	701-328-9979	<b>Date Prepared:</b>	01/02/2007

Date : 1-11-07  
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2060 amendment

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Lee Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Take out the limit of fifty and allow the board to set the limit.

Date : 1-11-07  
Roll Call Vote # : 2

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2060**

*as amended*

Senate **Government and Veteran Affairs** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By

*Lee withdrawn*

Seconded By

*Oehlke withdrawn*

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman			Senator Robert Horne		
Senator Dave Oehlke - VC			Senator Richard Marcellais		
Senator Judy Lee			Senator Carolyn Nelson		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date : 1-12-07  
Roll Call Vote # : 8 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2060

reconsider actions  
further amendment by which  
they amended  
this bill

Senate Government and Veteran Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Nelson Seconded By Marcellais

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date : 1-12-07  
Roll Call Vote # : 2

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2060 as amended**

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 78068.0101

Action Taken do pass as amended

Motion Made By Lee Seconded By Horne

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment J. Lee

If the vote is on an amendment, briefly indicate intent:

Date : 1-12-07  
Roll Call Vote # : 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2060

reconsider actions  
further amendment  
by which they  
amended  
this bill

Senate

Government and Veteran Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Nelson

Seconded By

Marcellais

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor

Assignment

If the vote is on an amendment, briefly indicate intent:

Date : 1-12-07  
Roll Call Vote # : 4

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2060 as amended**

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 78068.0101

Action Taken do pass as amended

Motion Made By Lee Seconded By Horne

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment J. Lee

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**SB 2060: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2060 was placed  
on the Sixth order on the calendar.

Page 1, line 8, overstrike "shall" and insert immediately thereafter "is entitled to", remove "fifty",  
and overstrike "dollars per day for each day actually engaged" and insert immediately  
thereafter "compensation in an amount determined by the board for actual services  
rendered"

Page 1, line 9, overstrike "all members" and insert immediately thereafter "each member and  
employee" and overstrike the second ", and"

Page 1, line 10, overstrike "all employees thereof, shall" and insert immediately thereafter "is  
entitled to", overstrike the first "their", and overstrike the second "their" and insert  
immediately thereafter "official"

Renumber accordingly

Date : 2-1-07  
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. amendment to

2060

Senate Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ~~to process amendment~~

Motion Made By Lee

Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6

No 0

Absent 0

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

after board... add <sup>not</sup> ~~up~~ to <sup>exceed</sup> one hundred dollars per day  
delete language on lines 21 & line 22  
(rules ..... code)

Date : 2-1-07  
Roll Call Vote # : 2

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2060 as amended**

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do pass as amended.

Motion Made By Lee Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Lee

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2060: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2060 was placed  
on the Sixth order on the calendar.

Page 1, line 9, after "board" insert ", not to exceed one hundred dollars per day."

Page 1, line 21, remove ", rules adopted under this chapter.", overstrike the first "or", and  
overstrike "the state plumbing code, or"

Page 1, line 22, overstrike "who fails to do any act required by said code,"

Renumber accordingly

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2060

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2060

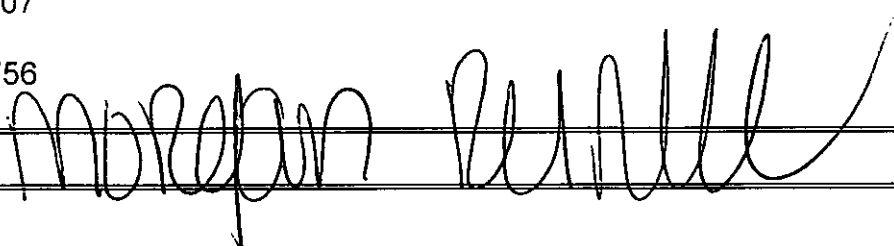
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: 4756

Committee Clerk Signature



Minutes:

**Bob Leingang:** Testimony attached.

**Rep. Froseth:** How many members do you have on the board?

**Bob Leingang:** We have about four members. We have 5 if you count the automatic member from the Health Department.

**Rep. Froseth:** And all of these expenses will be paid through the board?

**Bob Leingang:** Right, the board doesn't get any funds from the general fund. Our funds come from the licensed plumbers, master journeyman, and we collect a fee from clinics. For example the city of Bismarck-Mandan provide their own inspectors so we don't deal with them people at all. We basically go out and find where there isn't a city inspector and have our inspection. It averages on a single family about \$50-60.

**Rep. Weiler:** Can you give me an example of what a violation might be.

**Bob Leingang:** When an individual out there, for example, we just had a case a few years ago where a general contractor went in and remodeled a home. He was a general contractor. He didn't have a license as far as a plumber or electrician. Yet he went in and did all the electrical and plumbing work. We were called in a few weeks later because nothing worked and it was a

shame. That is a case where we would go after an individual. He went and did something where a license was required.

**Rep. Weiler:** Because of your answer I have another question. Are there any user violations that non plumbers may make, are there are any plumbers can make that are subject to what would be a Class B Misdemeanor. I thought that the violations would be what plumbers would make.

**Bob Leingang:** Yes there are some that a plumber would make such as if he doesn't renew his license in time. If he got in trouble with the plumbing code, which in most cases, we have never convicted anyone for. We usually handle it on an individual basis and most of the time these people will come in and realize something isn't' right. Before the job can be completed he is going to have to make some directions. That would the only time that a licensed plumber would ever run into any kind of problem. The law also requires him to complete 2-4 hours of CE training every two years. If he doesn't complete that he wouldn't get his license until he got it completed.

**Rep. Weiler:** So if a plumber does not renew their license and they continue working, if we pass this bill he is going to be guilty of a class B Misdemeanor?

**Bob Leingang:** Yes he could be.

**Rep. Weiler:** You started out in your testimony by saying the Governor's office or the Rep. of the Governor's office that works with your board makes the appointments and all that, and you've been very happy with that?

**Rep. Dahl:** In the original bill it had the compensation set at \$50, and I see that was amended into an amount to be determined by the board. I'm just curious as to what the thought of the committee was to amending that into more flexible language?

**Bob Leingang:** We have a cap of \$50. Senator Judy Lee felt that it should come off and let it

up to the board. The board should be determined to how much they want to pay the members. It went on the floor and I don't know what happened. It came back and there was quite an argument on the Senate side that didn't feel it was right to take the cap off. Then it came back and decided to take it off. I think it was the right way to do it. If you go back and look at our fees since they were increased, now they have to latitude from \$20 to \$100. It gets to a point where the board members can make a decision. I think they did the right thing by putting the cap on there. The other thing that happens is that once that pay gets to high, most of the time our board will have a meeting every other week.

**Rep. Dahl:** I'm just looking through this entire code here and there are provisions here relating to continuing education where the Class B Misdemeanor would apply to. Would you object if we would narrow the scope of this down to essentially more of these instances? If we could point you to specific provisions of the code rather than have the whole chapter.

**Bob Leingang:** Yeah I think I would object. I think that we have amended it enough that as far as the training goes, we would never charge an individual with a class B Misdemeanor for simply reasons. He can't get his license until he completes that. If he doesn't get his license then goes and works without that license, then we would have to go after the individual and file charges against them. That is the only tool that we have to make them abide.

**Rep. Dahl:** I understand that but that is not what the law will say. Essentially if they don't do the training they can be charged with a class B Misdemeanor. I understand what you mean but that is the state's attorney rule.

**Bob Leingang:** I don't read it that way and I don't think we would have a problem with that.

**Rep. Froseth:** I have three questions. How many violations do you have approximately, what is the license fee, and is that fee in code or does the board set that?

**Bob Leingang:** That is in the law. It is \$200. The journeyman is \$75 and the max is \$100.



**Rep. Froseth:** How many violations do you have? Do you have to investigate several a year?

**Bob Leingang:** We have a lot that we do investigate. I will say 20-30 cases a year and out of the 20-30 we have 2 or 3 that we actually take the individual in and charge him. The reason that happens is because if we run into an individual out there that is plumbing without a license and he isn't aware of the law. We explain the law to them and give them a warning. If he is willing to go out and hire a licensed plumber, come in and make corrections, and satisfy the homeowner we drop the charge. The only time we have to go is when we have an individual out there that doesn't go back to the family home or any business out there, and he doesn't make the corrections. So the consumer is stuck out there with a lousy job. And has no way to get back the money he paid out.

**Rep. Kasper:** Bob, I have a friend who has been doing handy work for 25 years as a favor to his friends but never charges them anything. One of the things he knows how to do is plumbing. If I wanted to finish my basement, and ask my friend to do my plumbing for me, knowing he's not licensed. I know he's competent. Can I do that without him having a plumber's license?

**Bob Leingang:** Not really. But in a case like that it is hard to convict an individual like that. You are the homeowner, which in our law says the homeowner can do his own plumbing. You as the homeowner hires this individual. It's hard for us to prove that the individual is working for you for a fee. If we take you to court, the first thing the judge is going to ask you is if you paid that individual. You will say no. Our law says that you as a homeowner can do your own plumbing, and he is just coming in as a friend to help you out. We would never get the case.

**Rep. Karls:** I think what Rep. Dahl is asking is something similar to the issues we deal with. I'm on the State Electrical Board. She's concerned that the plumber who skips out on those

classes can get charged with a Class B Misdemeanor. I don't think that is the case, I just don't think they get their license.

**Bob Leingang:** Right. The only thing that would happen is that until he completes those classes, he wouldn't receive his license.

**Rep. Haas:** I'm going to ask Rep. Dahl to explore this further. We won't act on this bill today. If you could leave information with Rep. Dahl so she can get in contact with you.

**Rep. Boehning:** How have the plumbers in the state been reacting to the amended bill? Have they had any input? What is their position? Do they know it is out there?

**Bob Leingang:** Yes they do know it is out there. The majority that I have talked to are in favor of this penalty. They look at it this way, they are required by law to carry a license. Yet we have a number of individuals that don't have a license. They feel that if they have to pay for a license that the other individual should have to also. With an infraction it is hard to get them convicted. An infraction is a \$25 fine. Yes our people are behind this bill.

**Rep. Boehning:** The other question is how many times do you meet a year.

**Bob Leingang:** Roughly 3 -4 times. If something comes up that we need more, I will call a meeting. It is basically 3-4 times a year.

**Rep. Boehning:** When I'm looking at the bill it says not to exceed \$100/day. What do you feel the board think of that? The rate is currently at \$20, what do you think you will get the daily rate at?

**Bob Leingang:** When the board had put this bill together, they initially had a vote of \$50. I would assume it would have a cap of \$100. The board is going to do it with \$50. I think maybe another way they will look at it is if it is a half a day, it is \$50, a full day \$75. I know the \$50 is going to be what they will go with.

**Rep. Wolf:** To become a licensed plumber, do you have to take a test o be a licensed plumber?

**Bob Leingang:** Yes you do. In order to get to a licensed job, you have to go through an apprenticeship program which is a four year program. There is a fee for each year. The master plumber is required to keep his time after he has completed four years or 7,600 hours. He can come in and take the test. Once he has completed that he has to work 2 years as a journeyman and he can come in and take a test to become a master.

**Rep. Wolf:** You have mentioned you look into so many cases a year. Are those people who are unlicensed plumbers plumbing or are those people who are plumbers whose license has expired?

**Bob Leingang:** All of them are people who are not licensed. The reason we get the complaints is because the consumer will call us. When we have an individual out there that is plumbing without a license in most cases it is hard for us to find them. It is usually in a home where they are doing some remodeling and an individual passes himself off as a licensed plumber. After his job is done we get a call from the consumer saying that things aren't working. Then they come sign what they need to, to get the individual into court.

**Rep. Haas:** When you get a call like that, do you go out yourself and do that inspection?

**Bob Leingang:** Yes it is either myself or one of my inspectors. In some cases when we can't get to them, we try to use the local Sheriff's department. That gets sort of touchy once in awhile especially in your smaller communities. It is no different then the state's attorney. A lot of times they don't want to take these cases for the simple reason that they have a Sheriff out there that is running for re election every 4 years. You don't want to get people mad at you.

**Rep. Haas:** The whole concept behind this is, is it not related to consumer protection?

**Bob Leingang:** Absolutely. That is our function as the ND State Plumbing Board. I have a year

or so left before I retire. It is sort of frustrating. You have consumers out there that an individual went in and did something that he isn't licensed to do. He has nothing to do then come to us so we can file charges. We look at the individual as coming in there and receiving an infraction. We are a state agency.

**Rep. Boehning:** Do you give any of these violations to the larger cities that have their own plumbing inspectors? Or are most of these violations in the rural areas where there are no city inspectors?

**Bob Leingang:** If there is a violation in Bismarck, we turn it over to the City of Bismarck. It is their jurisdiction.

**Rep. Boehning:** Do the cities like Fargo and Bismarck, are there penalties the same as the infraction or do they have some other type of a penalty?

**Bob Leingang:** They would go back and use our statute which is Chapter 43.

**Rep. Haas:** Is there any more testimony on SB 2060? If not we will close the hearing on SB 2060.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2060

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: March 16, 2007

Recorder Job Number: 5203

Committee Clerk Signature

*Morgan Benitez*

Minutes:

**Rep. Haas:** We are ready to deliberate on SB 2060.

**Rep. Dahl:** I want to direct your attention to the classifications that rates the crimes to an AA Felony all the way down to an infraction. The way we have things in code right now is the entire chapter a violation is considered an infraction which can be a fine of \$500 or it can be charged out as a class B Misdemeanor. Legislative council went through the plumbing chapter and drew out the things we felt were actually more criminal violation things. That is what you see on the proposed amendment. The first three items there are just clean up items. Page 1 line 22 says provisions that are more criminal in nature and more deserving of a class B Misdemeanor. I think this amendment achieves the result that we are looking for. We are drawing out the criminal provisions and declaring those class B Misdemeanors so that it is a deterrent. The rest would be left up to administrative rule and action by the board for violation of those chapters. The last part is a study. The plumbing code is not the only one that is this way. The Electrical code and various other boards have blanket provisions throughout the chapters. It is something that the legislature should look at and mean what we say.

**Rep. Dahl:** I move the amendment.

**Rep. Weiler:** I Second that.

**Rep. Haas:** Is there any discussion?

**Rep. Wolf:** Can you read what it will say?

**Rep. Dahl:** Any person who violates section 43-18-10, then what happens, then it should say is guilty of a class B Misdemeanor. That does bring up a good point. That third line in the amendment should say any of the provisions should be over struck.

**Rep. Froseth:** I often wonder how the penalty is arrived at for different types of violations and different licensing. I think it is whatever is acceptable to the industry is what it seems like. There is no guidelines to match the penalty with the type of violation.

**Rep. Weiler:** Did you check with the board?

**Rep. Dahl:** Yes.

**Rep. Haas:** Yes I met with them this morning and they are comfortable with all the changes.

**Rep. Haas:** Is there any further discussion on the amendment?

**Rep. Wolf:** On the amendment where it says page 1 line 22, we list all those sections of code. As I'm looking through the handout I noticed that on page 5 43-18-21, apprenticeship is not included in the listing of the sections that can be guilty of a class B Misdemeanor. I was just wondering why that was done.

**Rep. Haas:** I think that refers to the administration. It doesn't really have anything to do with whether or not something is done right or wrong as far as installation is concerned.

**Rep. Haas:** Is there any other discussion? If not we will do a voice vote. All in favor say 'aye' all opposed say 'no'. The amendment is carried.

**Rep. Weiler:** I move a do pass as amended.

**Rep. Karls:** I second that.

**Rep. Haas:** Is there any discussion on a do pass as amended vote for SB 2060? If not we will take a roll call vote on a do pass as amended motion. The do pass as amended motion for SB

2060 passes with a vote of 11-0-2. Is there a volunteer to carry this bill?

**Rep. Dahl:** I will.

**House Amendments to Reengrossed SB 2060 (78068.0301) - Government and Veterans Affairs Committee 03/16/2007**

Page 1, line 2, after the semicolon insert "to provide for a legislative council study;"

Page 1, line 20, overstrike "who" and insert immediately thereafter "that" and overstrike "any of the"

Page 1, line 21, overstrike "provisions of this chapter"

Page 1, line 22, after the overstruck comma insert "section 43-18-10, 43-18-11, 43-18-11.4, 43-18-17.2, or 43-18-23 or works under the license of another person in a manner that is in violation of section 43-18-13" and remove ", unless a different penalty is"

Page 1, line 23, remove "otherwise specifically provided"

Page 1, after line 23, insert:

**"SECTION 3. LEGISLATIVE COUNCIL STUDY - CRIMINAL PENALTIES FOR VIOLATING OCCUPATIONAL LICENSURE LAWS AND RULES.** The legislative council shall consider studying, during the 2007-08 interim, the laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The study must include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and entire titles of the North Dakota Administrative Agencies Practice Act regulating occupations and professions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly



Date: 3-16-07  
Roll Call Vote #: 1

**2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."**

House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

SB 2060

Action Taken

move Amendment

Motion Made By

Rep. Dahl

Seconded By

Rep. Weller

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weller					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-16-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB 2060

Action Taken DO PASS AS AMENDED

Motion Made By Rep Weiler Seconded By Rep Karis

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman	X		Rep. Bill Amerman	X	
Rep. Bette Grande VC	X		Rep. Louise Potter	X	
Rep. Randy Boehning			Rep. Jasper Schneider	X	
Rep. Stacey Dahl	X		Rep. Lisa Wolf	X	
Rep. Glen Froseth	X				
Rep. Karen Karis	X				
Rep. Jim Kasper					
Rep. Lisa Meier	X				
Rep. Dave Weller	X				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2060, as reengrossed: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed SB 2060 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "to provide for a legislative council study;"

Page 1, line 20, overstrike "who" and insert immediately thereafter "that" and overstrike "any of the"

Page 1, line 21, overstrike "provisions of this chapter"

Page 1, line 22, after the overstruck comma insert "section 43-18-10, 43-18-11, 43-18-11.4, 43-18-17.2, or 43-18-23 or works under the license of another person in a manner that is in violation of section 43-18-13" and remove ", unless a different penalty is"

Page 1, line 23, remove "otherwise specifically provided"

Page 1, after line 23, insert:

**"SECTION 3. LEGISLATIVE COUNCIL STUDY - CRIMINAL PENALTIES FOR VIOLATING OCCUPATIONAL LICENSURE LAWS AND RULES.** The legislative council shall consider studying, during the 2007-08 interim, the laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The study must include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and entire titles of the North Dakota Administrative Agencies Practice Act regulating occupations and professions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

SB 2060

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2060

Senate Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: 04-10-07

Recorder Job Number: 5864

Committee Clerk Signature

*Monica Spaulding*

Minutes:

Chairwoman, Judy Lee, called to order the conference committee on SB 2060.

Roll was taken and all members were present.

Representative Dahl explained the amendments the House adopted. The significant changes were in Section 2. When it came from the Senate it said any violation of the section is a Class B Misdemeanor. Some of the provisions deal with apprenticeships and some of the things mentioned are not criminal in nature so they worked with Legislative Council to pull out what is truly criminal and point to those specifically rather than the whole chapter. In Section 3 they asked for a potential study.

Senator Oehlke said he doesn't have a problem with a study or with tightening it up a bit.

Senator Lee asked if there was any resistance in the House when the amendments were considered.

Representative Dahl: We worked with the Board of Plumbing and they were fine with the changes that were made.

Senator Lee asked if there was anyone in attendance that had concerns over the amendments. There was no response.

Senator Oehlke mentioned the Senate wanted to leave it to the different boards to establish their own dollar amounts so they didn't have to always go through legislative action to make a change.

Senator Horne mentioned there is a \$100.00 cap, and he asked what the study would hope to accomplish.

Representative Dahl stated it was to look at some of the governing boards and how they refer to the penalties that can be levied including the criminal penalties.

There was discussion that this study would be quite broad with the present wording of the amendment. They mentioned this may not be chosen for a study because it is so broad in scope. They decided that if it were chosen for a study Legislative Council could narrow the scope of it if they so chose.

Senator Lee addressed the setting of the \$100.00 cap and feels the people who serve on boards are generally responsible and when serving on a board they should at least be compensated for the time they spend. She doesn't like to see them micromanaged. She wishes there was less detail of that sort in statute. She also suggested possibly deleting "and professions" from the wording.

Representative Weiler: If a plumber let his license lapse and then did some plumbing he shouldn't face as stiff a penalty as someone who was never a plumber and went out to do plumbing. The amendment was added because they want the law to allow for some of these differences.

The wording of line 22-24 on page one of version 0400 was questioned. The intent of it was to make sure it applied to apprentices as well as journeymen.

Senator Horne said with the wording "and professions" it takes in a whole lot more than just the plumbers who were the subject at hand.

There was discussion about deleting it or leaving it as is.

Senator Lee posed the question of whether these decisions should be part of the rules of the boards of the professions or part of the Century Code.

Representative Dahl asked if a board in administrative rules can specify that something is a criminal offense.

Senator Lee said she didn't believe so but she said they could come and recommend to the legislature that a change be made. She would rather have the people who are affected by it be a part of the solution.

Senator Lee asked a question of Tom Tupa. He represents a variety of organizations and boards. Would he see a benefit to changing the verbiage at all? Would there be a problem with any of the groups he represents as far as the area being covered by the misdemeanor category being too broad?

Tom Tupa with APT, Inc. which represents a number of regulatory boards and associations said the interim committee has done some studies of regulatory boards over the last two bienniums. This language does seem rather broad and extensive. It could be rather cumbersome. He feels the intent of this bill was to limit it more to the trade group. There have been a number of studies done on regulatory agencies and this one may not even be selected. There were no further questions for Mr. Tupa.

There was some discussion among committee members about possibly narrowing the focus of the proposed study.

Senator Wolf mentioned that there is already a study being recommended for electricians as a result of HB 1218. The wording in that bill was "shall."

Representative Dahl said she is comfortable with the language as it is but is open to the committee if they would like to narrow the scope somewhat. She mentioned it did not take a lot of time or work to comb through the section to specify what was criminal and what wasn't.

Senator Oehlke made a motion that the Senate accede to the House amendments.

Senator Horne seconded the motion.

Representative Haas said the proposed study is for a specific purpose even though the language sounds broad. It is for the purpose of the plumbers.

Roll Call Vote: Yes 6 No 0 Absent 0



Date : 4-10-07  
Roll Call Vote # : 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2060**

Senate Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Oehlke Seconded By Horne

Senators	Yes	No	Representatives	Yes	No
Senator Lee	✓		Rep. Dahl	✓	
Senator Oehlke	✓		Rep. Weiler	✓	
Senator Horne	✓		Rep. Wolf	✓	

Total (Yes) 6 No 0

Absent 0

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**REPORT OF CONFERENCE COMMITTEE**

**SB 2060, as reengrossed:** Your conference committee (Sens. J. Lee, Oehlke, Horne and Reps. Dahl, Weiler, Wolf) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 983 and place SB 2060 on the Seventh order.

Reengrossed SB 2060 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2060

## SIXTIETH LEGISLATIVE ASSEMBLY

## TESTIMONY TO SENATE BILL NO. 2060

*Same  
to House*

BY: Bob J. Leingang, Secretary, Chief-Inspector, North Dakota State Plumbing Board

Mr. Chairman and members of Government and Veterans Affairs

Change A "

On behalf of the North Dakota State Plumbing Board, I testify in favor of Senate Bill 2060, Section 48-18-05 line eight change the amount that the board members are paid per meeting from ~~twenty~~ dollars to fifty dollars per day. It has been about forty years since this amount has been changed. There are four paid members on the Board, Master Plumber, Journeyman Plumber, Mechanical Engineer and a Representative of the Consumer Public. The board meets three to four times per year.

Change B "

Section 43-18-24. Line 4 add new wording. Rules adopted under this chapter. On line 5, 6, and 7 change ~~an infraction~~ to a class B misdemeanor, unless a different penalty is otherwise specifically provided. This is a request from the States Attorney around the state and would also be in the line with all the other occupations and professional boards. A list is included.

## **OCCUPATIONS AND PROFESSIONAL BOARDS**

All have Penalty of Class B Misdemeanors

Abstracters

Architects

Barbers

Podiatrists

Chiropractors

Contractors

Electricians

Funeral Service Practitioners

Cosmetologists

Osteopaths

Pharmacists

Engineers and Land Surveyors

Dental Hygienists

Real Estate Appraisers

Massage Therapists

Physical Therapists

Dentists

Hearing Aid Dealers

Nursing Home Administrators

Professional Soil Classifiers

Athletic Trainers

Social Workers

*Attachment #1 page 1*  
*1-1-07*

**CHAPTER 43-09  
ELECTRICIANS**

**43-09-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Apprentice electrician" means a person learning the trade under the personal supervision of a state-licensed electrician.
2. "Board" means the state electrical board.
3. "Class B electrician" means a person having the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations governing such work, and shall have eighteen months' experience in farmstead or residential wiring, and shall have passed an examination before the state electrical board based upon the National Electrical Code as it applies to farmstead or residential wiring.
4. "Journeyman electrician" means a person having the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations governing such work.
5. "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to plan, lay out, and supervise the installation and repair of electrical wiring apparatus, and equipment for electric light, heat, and power in accordance with the standard rules and regulations governing such work.

**43-09-02. State electrical board - Members - Terms of office - Vacancies.** The state electrical board must consist of five members appointed by the governor for a term of five years with their terms of office so arranged that one term and only one term expires on June thirtieth of each year. One member of the board shall represent the public and may not be directly associated with the electrical industry. The board must include a master electrician who is a contractor, a journeyman electrician, a consumer member of a rural electric cooperative, and a person associated with an investor-owned utility. A member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until that member's successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term of office.

**43-09-03. Qualifications of members of board.** Repealed by S.L. 1949, ch. 287, § 11.

**43-09-04. Officers of board - Compensation of members.** The members of the board shall select from their members a president, a treasurer, and a secretary. Each appointive member of the board shall receive such amount as may be set by the board ~~but not more than fifty dollars per day~~ for the actual services rendered, and in addition thereto, each member shall receive the necessary and actual expenses incurred by the member in the discharge of the member's duties. The mileage and travel expense allowed may not exceed the amount provided for in section 54-06-09.

**43-09-05. Powers and duties of state electrical board - Biennial report.** The board shall adopt a seal and may adopt reasonable rules to carry out this chapter. The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The board shall appoint qualified inspectors. The inspectors shall inspect, within fifteen days after notice of completion of any electrical wiring installation involving a value of three hundred dollars or more in municipalities having ordinances requiring such inspection, the electrical installation and approve or condemn the same. The inspector shall make a report of the inspection on forms prescribed by the board.

Attachment #1  
page 2  
1-11-07

★ **43-09-23. Criminal penalty - Civil proceedings.** Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to criminal proceedings, the board may commence administrative or civil court proceedings as follows:

1. The board may issue a cease and desist order against a person allegedly making or offering to make electrical installations in violation of section 43-09-09 or 43-09-09.2 based upon information provided to the board by its electrical inspectors or other persons, by investigation reports, affidavits, complaints of witnesses, or oral testimony given to the board at a regular or special board meeting. Violation of the cease and desist order may be considered by the court in issuing a temporary or permanent restraining order and in ordering the payment of costs and attorney's fees in proceedings authorized under this section.
2. The board may apply to the district court in the county in which the violations have occurred for a temporary or permanent injunction under chapter 32-06, enjoining persons from performing, advertising, or contracting for making electrical installations without a valid license issued by the board in violation of section 43-09-09 or 43-09-09.2. The court may not require a written undertaking, security, or bond as a basis for issuing any temporary or permanent restraining order under this section unless the court specifically orders and states the basis for requiring the security. Upon a determination that a violation of section 43-09-09 or 43-09-09.2 has occurred, the court may assess against the defendants the actual costs incurred and reasonable attorney's fees necessary for the investigation and court proceedings against the unlicensed person.
3. After an administrative hearing has been conducted by the board under chapter 28-32, an appeal from an order of the board or from the assessment of costs and attorney's fees may be taken to the district court under chapter 28-32.

**43-09-24. Special emergency.** Repealed by omission from this code.

**43-09-25. License to nonresidents - Reciprocity.** To the extent that other states which provide for the licensing of electricians provide for similar action, the state electrical board may grant licenses of the same grade or class to electricians licensed by other states, upon payment by the applicant of the required fee, after being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of similar licenses in North Dakota.

**43-09-26. Exemption for coal mines.** The jurisdiction of the board and other requirements of this chapter do not apply to installations, wiring, apparatus, or equipment that are part of a coal mine permitted by the public service commission and are subject to the jurisdiction of the federal mine safety and health administration.

**43-07-16. Cancellation of license - Appeal.** Repealed by S.L. 1963, ch. 304, § 16.

**43-07-17. Revocation of license - Relicensing.** A licensee whose license has been revoked may not be relicensed for a period of up to five years.

**43-07-18. Penalty.** Any person acting in the capacity of a contractor without a license is guilty of a class A misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person applies for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

**43-07-19. Nonresident contractors - Agent for service of process.** Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing is evidence of the contractor's consent that any such process against the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.2 and having a current registered agent and registered address on file in the secretary of state's office need not appoint the secretary of state as agent for service of process under this section. Within ten days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

**43-07-20. Employment preference in contract.** In all contracts, except those which involve federal-aid funds and when a preference or discrimination would be contrary to a federal law or regulation, hereafter let for state, county, city, school district, or township construction, repair, or maintenance work under any laws of this state, there shall be inserted a provision by which the contractor must give preference to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of that work. The preference shall not apply to engineering, superintendence, management, or office or clerical work.

No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions.

**43-07-21. Penalty - Injunction proceedings.** Any person violating any provisions of section 43-07-20 is guilty of a class B misdemeanor. A repeated violation constitutes legal grounds for a court, on proper application by the commissioner of labor, to grant an injunction without requiring the posting of a bond or undertaking.



*Attach #2*

## **OCCUPATIONAL AND PROFESSIONAL LICENSING BOARD AUTHORITY TO DEFINE OFFENSES BY RULE WHICH ARE SUBJECT TO CRIMINAL PENALTIES**

This memorandum was requested to identify statutory provisions comparable to the authority that would be given by 2007 Senate Bill No. 2060, which would allow the State Board of Plumbing to adopt administrative rules for which violations would be punishable as a class B misdemeanor.

Among occupational and professional licensing boards, only the State Board of Funeral Service (NDCC 43-10-24), the Board of Barber Examiners (NDCC 43-04-45), and the Private Investigative and Security Board (NDCC 43-30-10) have statutory authority to make rules for which violations are punishable as a class B misdemeanor. The Health Council has authority (NDCC 43-38-04) to make rules governing electrologists and electronic hair removal technicians for which violations are punishable as an infraction. Governing boards are given authority to make rules violations punishable as an infraction only

in the cases of the State Board of Funeral Service (NDCC 43-10-24) and the State Board of Respiratory Care (NDCC 43-42-07). These appear to be the only instances in which statutory authority has been given to an occupational or professional licensing board to establish rules for which violations are punishable as an infraction or misdemeanor.

The most common statutory criminal penalty provision in occupational and professional licensing statutes provides that it is either an infraction or Class B misdemeanor to violate a statutory provision of the North Dakota Century Code chapter governing the occupation. This is the case for occupational and professional licensing boards governing abstracters, accountants, architects, dentists, doctors, electricians, engineers, land surveyors, nurses, psychologists, realtors, sewer and water installers, social workers, veterinarians, and others.

## **CHAPTER 43-18 PLUMBERS**

**43-18-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the state board of plumbing.
2. "Journeyman plumber" means any person, other than a master plumber, who, as the person's principal occupation, is engaged in the practical installation, alteration, and repair of plumbing.
3. "Master plumber" means a person skilled in the planning, supervision, and the practical installation, alteration, and repair of plumbing, and familiar with the laws, rules, and regulations governing the same.
4. "Plumber's apprentice" means any person other than a journeyman or a master plumber, who, as the person's principal occupation, is engaged in learning and assisting in the installation, alteration, and repair of plumbing and drainage, under the immediate and personal supervision of either a master or a journeyman plumber.
5. "Plumbing" means the installation, maintenance, extension, alteration, and removal of all piping, plumbing fixtures, plumbing appliances, and other appurtenances in connection with bringing water into, and using the same in buildings, and for removing liquids and water-carried wastes therefrom.

**43-18-02. State board of plumbing - Members - Appointment - Qualifications.** The state board of plumbing shall consist of the chief sanitary engineer, or the head of any division of the state department of health who may be named by the chief sanitary engineer to act in the chief sanitary engineer's stead, and four persons appointed by the governor. All of the appointed members must have been residents of this state for at least five years immediately preceding their appointment, and one of them must be a master plumber with at least five years of experience in North Dakota, one must be a journeyman plumber with at least five years of experience in North Dakota, one must be a registered professional engineer practicing mechanical engineering in North Dakota, and one must be a representative of the consuming public.

**43-18-03. State board of plumbing - Members - Terms of office - Vacancies - How filled.** Each appointed member of the board shall qualify by taking the oath of office required of civil officers and shall hold office for a term of four years and until a successor is appointed and qualified. The terms of office of the appointed members must be so arranged that one term only expires on the thirtieth day of June of each year. The four members appointed by the governor to the first board must be appointed within thirty days after July 1, 1975, to serve for the following terms: one master plumber for one year, one journeyman plumber for two years, one mechanical engineer for three years, and a representative of the consuming public for four years. A vacancy on the board caused by the death, resignation, or expiration of the term of any appointed member must be filled for the unexpired term by appointment by the governor from the class of members to which the deceased or retiring member belonged.

**43-18-04. Office and officers of board.** The members of the board shall elect from their number a president, a vice president, and a treasurer, and they shall select a secretary, but the office of secretary and treasurer may be held by the same person. The secretary or secretary-treasurer need not be a member of the board but must be a licensed plumber. The board shall have its headquarters at the state capital.

**43-18-05. Members of board and employees - Compensation.** Each appointed member of the board shall receive twenty dollars per day for each day actually engaged in the

performance of the member's duties under this chapter, and all members of the board, and all employees thereof, shall receive their traveling expenses incurred in the performance of their duties. Allowances for traveling expenses must be as provided by law for state officials and employees. All such compensation and expense must be paid out of the state plumbing board fund. The compensation provided for in this section may not be paid to any member of the board who receives salary or other compensation as a regular employee of the state or any of its political subdivisions or any institution or industry operated by the state.

**43-18-06. Board may hire and fix compensation of employees - Incur necessary expenses.** The board may employ inspectors, who must be registered plumbers, and such stenographers and assistants, as may be necessary, and shall fix the compensation of such employees, and may incur such other expenses as may be required. All such salaries and expenses must be paid only out of such moneys as may be in the state plumbing board fund.

**43-18-07. Fees - Where deposited - Use.** Repealed by S.L. 1971, ch. 510, § 15.

**43-18-08. Duties of board.** The board shall:

1. Enforce the provisions of this chapter.
2. Prescribe rules and regulations not inconsistent with the provisions of this chapter for the examination, regulation, and licensing of plumbers, either as master plumbers, journeyman plumbers, plumber's apprentices, or any of such classifications.

**43-18-09. Board to adopt plumbing code - Provisions have force of law.** The board shall formulate, prepare, and circulate among all plumbers within this state, a state plumbing code, which must contain the minimum basic standards for plumbing, drainage, and ventilation of plumbing in buildings of all classes. Such code must be approved by the state department of health. The provisions of said code have the force and effect of law and any violation thereof constitutes a violation of this chapter.

**43-18-10. Firm engaged in installing plumbing to employ master plumber - Exceptions.** No person, firm, corporation, or limited liability company shall engage in the business of installing plumbing and shall not install plumbing in connection with the dealing in and selling of plumbing materials and supplies in any location of this state having a public system of waterworks or sewerage, unless at all times a registered and licensed master plumber, who is responsible for the proper installation thereof, is in charge of such work. In cities of less than one thousand population and in all rural areas, a licensed journeyman plumber may engage in the business of installing plumbing.

**43-18-11. License required - Exception for homeowner and full-time employee.** No person, firm, corporation, or limited liability company shall engage in the business of a master plumber, journeyman plumber, or plumber's apprentice in any location of this state having a public system of waterworks or sewerage unless registered and licensed to do so by the board. Anyone not so licensed may do plumbing work which complies with the provisions of the minimum standards prescribed by the board on premises or that part of premises owned and actually occupied by the person as a residence, or may do plumbing repair on premises where the person is employed in full-time maintenance work, unless otherwise forbidden to do so by a local ordinance. Public water system employees may install and maintain service lines and water meters on premises served by the water system.

**43-18-11.1. When license not required.** Employees of dealers in household appliances need not be licensed pursuant to this chapter when installing household appliances, if any necessary plumbing work is incidental to the installation of the appliance and the work could be performed by a plumber's apprentice.

**43-18-11.2. Conviction not bar to licensure - Exceptions.** Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a plumber, or that,

following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**43-18-11.3. Advertising prohibited - Exceptions - Penalty.**

1. Except as provided in this section, where a plumbing license is required under section 43-18-11 or by local ordinance, no person offering plumbing contracting services may advertise as a plumbing contractor, master plumber, or journeyman plumber unless the person employs a licensed journeyman plumber, or the person is a licensed master plumber. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989.
2. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.
- b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
  - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
  - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars or imprisonment not to exceed thirty days, or both, may be imposed.

**43-18-11.4. Plumbing inspectors - License required - Exception.** A person employed by the state board of plumbing or a political subdivision to inspect plumbing installations must be licensed as a journeyman or master plumber. This section does not apply to an inspector employed by the board of plumbing or a political subdivision as of July 2, 1989.

**43-18-12. Examination - When held - Notice.** Examinations must be held at the time and place prescribed by the board. Notice of such examinations must be given by mail to all persons who have made application to take the examination. The board may call a special examination at any time.

**43-18-13. License - How obtained - Fee.** Any person qualified under the rules of the board who desires to take the examination to become a registered and licensed plumber shall make application to the board therefor and pay to the treasurer of the board the examination fee. Such fee may not exceed two hundred dollars for a master plumber's certificate and license and one hundred dollars for a journeyman plumber's certificate and license. The board, when the condition of its fund permits and when in its judgment it is deemed advisable, may reduce the amount of the examination fees, but it may not increase the same above the amount specified in this section. Any such change must be adopted by the board to take effect on the first day of January following its action and must apply to all examination fees in the classes specified in the ruling. The applicant shall appear at the next regular meeting of the board for examination of applicants. If upon examination the applicant is found by the board to be qualified as a master plumber or journeyman plumber, or both, it shall issue to the applicant a certificate of registration and license which entitles the applicant to do the work and be a plumber as specified in the license. A master plumber's and journeyman plumber's license may be issued to one and the same person, and the holder of a master plumber's license may be granted a journeyman plumber's license without the payment of the journeyman's fee. All certificates and licenses must be numbered consecutively and may not be transferable, and no person may work under the license issued to another person. Should a person fail upon examination to qualify as a master or journeyman plumber, such person has the right to review the examination to determine the reasons for failure and has the right to appeal to the board.

**43-18-13.1. Reciprocity with other states.** The board may register, without examination, upon payment of the required fee, nonresident applicants registered under the laws of other states having requirements for regulating plumbers which the board determines are substantially equivalent to the requirements of this state in those instances where such other state grants similar privileges to North Dakota residents licensed under this chapter.

**43-18-14. Board to keep register of licenses issued.** The board shall keep a register in which must be entered the names and addresses of all persons to whom certificates of registration and license are issued under the provisions of this chapter as master plumbers, and also a register in which must be entered the names and addresses of all persons to whom certificates of registration and license are issued under the provisions of this chapter as journeyman plumbers. Such register must be open to the public for inspection.

**43-18-15. Temporary license - When issued.** The board, upon the payment of the regular examination fee, may issue a temporary permit to engage in the business of master plumber or journeyman plumber, or both, to any person who furnishes satisfactory evidence of the person's qualifications. Such permits are revocable permits and are effective to December thirty-first of the year in which they are issued. No person may be issued such temporary permits for longer than four years.

**43-18-16. Plumber licensed by board may practice at any place in state - Exception.** A plumber registered and licensed by the board to engage in the business of master plumber, journeyman plumber, or plumber's apprentice may engage in or work at the business of plumbing at any place in this state, except in cities that have adopted ordinances requiring a municipal license or registration in addition to the state license before permitting any plumber to work in such municipality.

**43-18-17. Renewal of license - Fee.** A certificate and license issued under the provisions of this chapter is valid for only one year and expires on the thirty-first day of December of the year in which it was issued. The certificate must be renewed by the board upon application made within thirty days after the expiration thereof and on the payment of a sum not to exceed two hundred dollars for a master plumber's certificate and license, and the sum of one hundred dollars for a journeyman plumber's certificate and license. The board, when the condition of its fund permits and when in its judgment it is deemed advisable, may reduce the amount of the renewal fees, but it may not increase the same above the amount specified in this section. Any such change must be adopted by the board to take effect on the first day of January following its action and applies to all renewals in the classes specified in the ruling.

**43-18-17.1. Continuing education.** After January 1, 1991, each applicant for renewal of a master or journeyman plumber's license under section 43-18-17 must have successfully completed prior thereto at least two credit hours, and thereafter a minimum of two credit hours and not to exceed four credit hours within a two-year period, of continuing education relating to the plumbing trade.

Credit hours for educational sessions must be determined by the board on a continuing basis to evaluate new sessions as they become available for fulfilling the educational requirements of this section. The board may charge a fee sufficient to offset expenses incurred for any educational sessions for which it is directly responsible.

**43-18-17.2. Report of work - Exception.** A person shall report doing plumbing work subject to inspection under section 43-18-17.3 to the board upon forms furnished by the board. This section does not apply to plumbing installations in buildings that are not connected to a public system of waterworks or sewerage or in political subdivisions where inspection is required by local ordinance.

**43-18-17.3. Inspection of installation - Exception.** The board has jurisdiction over and shall make provision for inspection of plumbing installations or alterations to public buildings and installations in newly constructed dwelling units, except as provided in this section. Political subdivisions may provide for inspection of plumbing work done within their jurisdictional limits.

The board may charge the person responsible for the installation a reasonable fee not to exceed the cost of inspection. No inspection is required for any repair work or plumbing fixture replacement which requires only minor alteration, or to buildings that are not connected to a public system of waterworks or sewerage, and does not apply to maintenance work conducted by regularly employed maintenance personnel on the business premises of their employer.

**43-18-18. Grounds for revocation of license.** The board may revoke any certificate issued under the provisions of this chapter if the holder is guilty of:

1. Commission of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as a plumber, or the board determines, following conviction of any offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Error or fraud in obtaining the holder's certificate;
3. Permitting the use of the holder's certificate and license in violation of this chapter;
4. Incompetency;
5. Failure to furnish certification of completion of continuing education as required under section 43-18-17.1; or
6. Failure to report work as required under section 43-18-17.2.

**43-18-19. Revocation - Hearing.** A certificate of registration and license issued under the provisions of this chapter may be revoked only after a hearing of the charges by the board. The holder of the certificate must be notified in writing by the board of the charges against the holder and of the time and place fixed for the hearing. Such notice must be served by registered or certified mail, addressed to the post-office address of the certificate holder as shown in the holder's certificate of registration and license. The time set for the hearing must be not less than ten days after the service of the notice. The hearing must be public and full opportunity must be given the accused to produce witnesses and evidence in the accused's own behalf and to examine the witnesses against the accused. After hearing all the evidence, the board shall render its decision in writing and the accused must be furnished, by mail, a copy thereof. If the accused is found guilty of any offense for which revocation of the license is provided, the certificate of registration and license is revoked automatically.

**43-18-20. Revocation of license - When reinstated.** A person whose certificate of registration and license issued under the provisions of this chapter has been revoked by the board may not be permitted to apply for a license for a period of one year from the date of the revocation. After the expiration of such time, the board may consider an application for reinstatement of such person and upon a showing that the disability has been removed or that there is no further likelihood that the offense will be repeated, the board may reinstate the license.

**43-18-21. Apprenticeship.** Every apprentice plumber shall, within thirty days after beginning apprenticeship, register with the state plumbing board on a registration application form which will be supplied by the board, showing date of beginning apprenticeship, age, schooling, previous experience, employer, and such other information as the board may require, except that a person who is working in a school-work program need not register. A registration certificate issued under the provisions of this section shall be valid for only one year and shall expire on the thirty-first day of December of the year in which it was issued. The certificate shall be renewed by the board upon application made within thirty days after the expiration thereof and on payment of the sum set by the board, but not to exceed twenty dollars for the first year, thirty dollars for the second year, forty dollars for the third year, and fifty dollars for the fourth year of apprenticeship. The fee after a four-year term of apprenticeship is the same as the fee for a journeyman plumber. This certificate of registration shall be the license required to be employed as a plumber's apprentice in this state.

**43-18-22. Local authorities report violations to board.** Such local authority as may be designated by an ordinance of the municipality to issue plumbing permits and licenses, and to approve plumbing plans, shall report to the board willful violations of the state plumbing code and of any municipal ordinances regulating the same, and any incompetence on the part of any registered and licensed plumber that comes to the attention of the local authority.

**43-18-23. Working as plumber without license.** It is unlawful for any person to work, for compensation, as a master plumber, journeyman plumber, or plumber's apprentice without being registered and licensed as a plumber in such classification.

**43-18-24. Violation of chapter - Penalty.** Any person who violates any of the provisions of this chapter or of the state plumbing code, or who fails to do any act required by said code, is guilty of an infraction.

**43-18-25. Injunction.** In addition to the criminal penalty provided in section 43-18-24, the civil remedy of injunction is available to plumbing inspectors to restrain and enjoin violations of any provisions of this chapter. Any person claiming to be injured in person or property because of violations of this chapter may bring a civil action for damages.

## **12.1-32-01. Classification of offenses — Penalties.**

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.

2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.

5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.

6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.

7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

**Source.** S.L. 1973, ch. 116, § 31; 1975, ch. 116, § 23; 1979, ch. 177, § 2; 1995, ch. 134, § 1; 1997, ch. 132, § 1.

**Effective Date.** - The 1997 amendment of this section by section 1 of chapter 132, S.L. 1997 became effective August 1, 1997.