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HOUSE FILE No. 3048

FIRST COMMITTEE ENGROSSMENT

February 18, 2010

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The bill was read for the first time and referred to the Committee on Commerce and Labor

Referred by Chair to Labor and Consumer Protection Division.

February 26, 2010

Returned to the Committee on Commerce and Labor as Amended.

A bill for an act

relating to labor and industry; modifying construction codes and licensing provisions; modifying certain notice provisions; imposing criminal penalties; amending Minnesota Statutes 2008, sections 178.01; 178.03, subdivisions 3, 4; 178.06; 178.08; 178.11; 326B.04, subdivision 2; 326B.127, subdivision 3; 326B.13, subdivisions 3, 4, 5, 6; 326B.133, subdivision 5; 326B.139; 326B.142; 326B.148, subdivisions 2, 3; 326B.191; 326B.31, subdivision 28; 326B.33, subdivision 17; 326B.42, subdivisions 2, 6; 326B.435, subdivision 2; 326B.47; 326B.84; 326B.89, subdivisions 1, 5, 6, 7, 8, 10, 13, by adding subdivisions; 326B.921, subdivision 3; Minnesota Statutes 2009 Supplement, sections 14.14, subdivision 1a; 326B.145; repealing Minnesota Statutes 2008, sections 299G.11; 299G.13, subdivisions 1, 6, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28; 299G.14; 299G.15; 299G.16; 299G.17; 299G.18; 326B.115; 326B.37, subdivision 13; Minnesota Rules, parts 5200.0020; 5200.0050; 5200.0080, subparts 2, 3, 4, 4a, 4b, 6, 7, 8.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2009 Supplement, section 14.14, subdivision 1a, is amended to read:

Subd. 1a. **Notice of rule hearing.** (a) Each agency shall maintain a list of all persons who have registered ~~their name and United States mail or electronic mail address~~ with the agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the agency:

(1) their electronic mail address; or

(2) their name and United States mail address.

The agency may inquire as to whether those persons on the list wish to ~~maintain their names~~ remain on it and may remove ~~names~~ persons for ~~which~~ whom there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail or electronic

mail to all persons on its list, and by publication in the State Register. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section 14.07, together with an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that the agency intends to adopt a rule and other information required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed.

(b) The chief administrative law judge may authorize an agency to omit from the notice of rule hearing the text of any proposed rule, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule is likely to be important to only a small class of persons;

(2) the notice of rule hearing states that a free copy of the entire rule is available upon request to the agency; and

(3) the notice of rule hearing states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose and motivation.

Sec. 2. Minnesota Statutes 2008, section 178.01, is amended to read:

178.01 PURPOSES.

The purposes of this chapter are: to open to young people regardless of race, sex, creed, color or national origin, the opportunity to obtain training and on-the-job learning that will equip them for profitable employment and citizenship; to establish as a means to this end, a program of voluntary apprenticeship under approved apprentice agreements providing facilities for their training and guidance in the arts, skills, and crafts of industry and trade, with concurrent, supplementary instruction in related subjects; to promote ~~employment~~ apprenticeship opportunities under conditions providing adequate training

and on-the-job learning and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an Apprenticeship Board and apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a Division of Labor Standards and Apprenticeship within the Department of Labor and Industry; to provide for reports to the legislature regarding the status of apprentice training in the state; to establish a procedure for the determination of apprentice agreement controversies; and to accomplish related ends.

Sec. 3. Minnesota Statutes 2008, section 178.03, subdivision 3, is amended to read:

Subd. 3. **Duties and functions.** The director, under the supervision of the commissioner, and with the advice and consultation of the Apprenticeship Board, is authorized: to administer the provisions of this chapter; to promote apprenticeship and other forms of on-the-job training learning; to establish, in cooperation and consultation with the Apprenticeship Board and with the apprenticeship committees, conditions ~~and,~~ training, and learning standards for the approval of apprenticeship programs and agreements, which conditions and standards shall in no case be lower than those ~~prescribed by this chapter~~ established under Code of Federal Regulations, title 29, part 29; to promote equal employment opportunity in apprenticeship and other on-the-job training learning and to establish a Minnesota plan for equal employment opportunity in apprenticeship which shall be consistent with standards established under Code of Federal Regulations, title 29, part 30, as amended; to issue certificates of registration to sponsors of approved apprenticeship programs; to act as secretary of the Apprenticeship Board; to approve, if of the opinion that approval is for the best interest of the apprentice, any apprenticeship agreement which meets the standards established hereunder; to terminate any apprenticeship agreement in accordance with the provisions of such agreement; to keep a record of apprenticeship agreements and their disposition; to issue certificates of completion of apprenticeship; and to perform such other duties as the commissioner deems necessary to carry out the intent of this chapter; provided, that the administration and supervision of supplementary instruction in related subjects for apprentices; coordination of instruction on a concurrent basis with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the function of state and local boards responsible for vocational education. The director shall have the authority to make wage determinations applicable to the graduated schedule of wages and journeyman wage rate for apprenticeship agreements, giving consideration to the existing wage rates prevailing throughout the state, except that no wage determination by the director shall alter an existing wage provision for apprentices or journeymen that is contained in a

bargaining agreement in effect between an employer and an organization of employees, nor shall the director make any determination for the beginning rate for an apprentice that is below the wage minimum established by federal or state law.

Sec. 4. Minnesota Statutes 2008, section 178.03, subdivision 4, is amended to read:

Subd. 4. **Reciprocity approval.** The director, if requested by a sponsoring entity, shall grant reciprocity approval to apprenticeship programs of employers and unions who jointly form a sponsoring entity on a multistate basis in other than the building construction industry if such programs are in conformity with this chapter and have been registered in compliance with Code of Federal Regulations, title 29, part 29, by a state apprenticeship council recognized by or registered with the Bureau of Apprenticeship and Training, United States Department of Labor, when such approval is necessary for federal purposes under Code of Federal Regulations, title 29, section ~~29.12(a)~~ 29.13(a).

Sec. 5. Minnesota Statutes 2008, section 178.06, is amended to read:

178.06 APPRENTICE.

The term "apprentice," as used herein, means a person at least 16 years of age who has entered into a written agreement, hereinafter called an apprentice agreement, with a committee, an employer, an association of employers, or an organization of employees, which apprentice agreement provides for:

(1) a time-based approach involving not less than 2,000 hours or one year of reasonably continuous employment for such person and for participation in an approved program of ~~training~~ on-the-job learning through employment and through concurrent, supplementary education in related subjects;

(2) a competency-based approach involving successful demonstration of acquired skills and knowledge by an apprentice plus on-the-job learning; or

(3) a hybrid approach involving the completion of a specified minimum number of hours plus the successful demonstration of competency.

Whenever a minimum age exceeding 16 years is prescribed by federal or state law to apply to workers in certain hazardous occupations, the minimum age so prescribed shall be applicable to apprentices.

Sec. 6. Minnesota Statutes 2008, section 178.08, is amended to read:

178.08 DIRECTOR TO APPROVE APPRENTICE AGREEMENTS.

Every apprentice agreement is subject to approval by the director and shall be signed by the committee, the employer, an association of employers, or an organization of

employees, and by the apprentice, and if the apprentice is a minor, by a parent or legal guardian. When a minor enters into an apprentice agreement under this chapter for a period of ~~training~~ learning extending into majority the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority.

Sec. 7. Minnesota Statutes 2008, section 178.11, is amended to read:

178.11 LABOR EDUCATION ADVANCEMENT GRANT PROGRAM.

The commissioner shall establish the labor education advancement grant program for the purpose of facilitating the participation of minorities and women in apprenticeable trades and occupations. The commissioner shall award grants to community-based organizations serving the targeted populations on a competitive request-for-proposal basis. Interested organizations shall apply for the grants in a form prescribed by the commissioner. As part of the application process, applicants must provide a statement of need for the grant, a description of the targeted population and apprenticeship opportunities, a description of activities to be funded by the grant, evidence supporting the ability to deliver services, information related to coordinating grant activities with other employment and ~~training~~ learning programs, identification of matching funds, a budget, and performance objectives. Each submitted application shall be evaluated for completeness and effectiveness of the proposed grant activity.

Sec. 8. Minnesota Statutes 2008, section 326B.04, subdivision 2, is amended to read:

Subd. 2. **Deposits.** ~~All remaining balances as of June 30, 2007, in the state government special revenue fund and special revenue fund accounts maintained for the Building Codes and Standards Division, Board of Electricity, and plumbing and engineering unit are transferred to the construction code fund.~~ Unless otherwise specifically designated by law: (1) all money collected under sections 144.122, paragraph (f); 181.723; 326B.101 to 326B.194; 326B.197; 326B.32 to 326B.399; 326B.43 to 326B.49; 326B.52 to 326B.59; 326B.802 to 326B.885; 326B.90 to 326B.998; 327.31 to 327.36; and 327B.01 to 327B.12, except penalties, is credited to the construction code fund; (2) all fees collected under section 45.23 in connection with continuing education for residential contractors, residential remodelers, and residential roofers are credited to the construction code fund; and (3) all penalties assessed under the sections set forth in clauses (1) and (2) and all penalties assessed under sections 144.99 to 144.993 in connection with any violation of sections 326B.43 to 326B.49 or 326B.52 to 326B.59 or the rules adopted under those sections are credited to the assigned risk safety account established by section 79.253.

6.1 Sec. 9. Minnesota Statutes 2008, section 326B.127, subdivision 3, is amended to read:

6.2 Subd. 3. **Powers and duties.** The state building official may, with the approval of
6.3 the commissioner, employ personnel necessary to carry out the inspector's function under
6.4 sections 326B.101 to 326B.194. ~~The state building official shall distribute without charge~~
6.5 ~~a printed or electronic version of the code to each municipality within the state. A printed~~
6.6 ~~or electronic version of the code shall be made available to municipalities and interested~~
6.7 ~~parties for a fee prescribed by the commissioner.~~ The state building official shall perform
6.8 other duties in administering the code assigned by the commissioner.

6.9 Sec. 10. Minnesota Statutes 2008, section 326B.13, subdivision 3, is amended to read:

6.10 Subd. 3. **Filing.** ~~The commissioner shall file one copy of the complete code with the~~
6.11 ~~secretary of state, except that~~ All standards referred to in any model or statewide specialty
6.12 code or any of the modifications of a code need not be filed with the secretary of state. All
6.13 standards ~~referred to in~~ that are incorporated by reference into the code must be kept on
6.14 file and available for inspection in the office of the commissioner.

6.15 Sec. 11. Minnesota Statutes 2008, section 326B.13, subdivision 4, is amended to read:

6.16 Subd. 4. **Hearings Consultation with commissioner required.** ~~The commissioner~~
6.17 ~~shall hold all state hearings and make all determinations regarding any subject matter dealt~~
6.18 ~~with in the code including those in which another state agency proposes to adopt or amend~~
6.19 ~~rules which are incorporated by reference into the code or whenever the commissioner~~
6.20 ~~proposes to incorporate those rules into the State Building Code.~~ In no event may a state
6.21 agency subsequently authorized to adopt rules involving State Building Code subject
6.22 matter proceed to adopt the rules without prior consultation with the commissioner.

6.23 Sec. 12. Minnesota Statutes 2008, section 326B.13, subdivision 5, is amended to read:

6.24 Subd. 5. **Proposed amendments; ~~hearings.~~** Any interested person may propose
6.25 amendments to the code which may be either applicable to all municipalities or, where it
6.26 is alleged and established that geological conditions exist within a municipality which
6.27 are not generally found within other municipalities, amendments may be restricted in
6.28 application to that municipality. ~~Notice of public hearings on proposed amendments shall~~
6.29 ~~be given to the governing bodies of all municipalities in addition to those persons entitled~~
6.30 ~~to notice under the Administrative Procedure Act.~~

6.31 Sec. 13. Minnesota Statutes 2008, section 326B.13, subdivision 6, is amended to read:

Subd. 6. **Adoption.** The commissioner shall approve any proposed amendments deemed by the commissioner to be reasonable in conformity with the policy and purpose of the code and justified under the particular circumstances involved. ~~Upon adoption, a copy of each amendment must be distributed to the governing bodies of all affected municipalities.~~ The commissioner shall make an electronic version of amendments to the code available to municipalities. Upon request, a municipality may receive a paper copy of amendments to the code available for a fee prescribed by the commissioner.

Sec. 14. Minnesota Statutes 2008, section 326B.133, subdivision 5, is amended to read:

Subd. 5. **Grounds.** ~~In addition to the grounds set forth in section 326B.082, subdivision 11, The commissioner may deny, suspend, limit, place conditions on, or revoke a certificate, or may censure~~ use any enforcement provision in section 326B.082 against an applicant or individual holding a certificate, if the applicant or individual:

(1) violates a provision of sections 326B.101 to 326B.194 or a rule adopted under those sections; or

(2) engages in fraud, deceit, or misrepresentation while performing the duties of a certified building official.

Nothing in this subdivision limits or otherwise affects the authority of a municipality to dismiss or suspend a building official at its discretion, except as otherwise provided for by law.

Sec. 15. Minnesota Statutes 2008, section 326B.139, is amended to read:

326B.139 APPEALS.

A person aggrieved by the final decision of any ~~municipality~~ local or state level board of appeals as to the application of the code, including any rules adopted under sections 471.465 to 471.469, may, within 180 days of the decision, appeal to the commissioner. Appellant shall submit a nonrefundable fee of \$70, payable to the commissioner, with the request for appeal. An appeal must be heard as a contested case under chapter 14. The commissioner shall submit written findings to the parties. The party not prevailing shall pay the costs of the contested case hearing, including fees charged by the Office of Administrative Hearings and the expense of transcript preparation. Costs under this section do not include attorney fees. Any person aggrieved by a ruling of the commissioner may appeal in accordance with chapter 14. For the purpose of this section "any person aggrieved" includes the Council on Disability. No fee or costs shall be required when the council on disability is the appellant.

Sec. 16. Minnesota Statutes 2008, section 326B.142, is amended to read:

326B.142 CERTAIN ~~PERMITS~~ CERTIFICATES.

Building ~~permits or~~ certificates of occupancy validly issued before July 1, 1972, ~~regarding buildings or structures being constructed or altered according to the permits or certificates,~~ are valid after that date. ~~The construction may be completed according to the building permit, unless the building official determines that life or property is in jeopardy.~~

Sec. 17. Minnesota Statutes 2009 Supplement, section 326B.145, is amended to read:

326B.145 ANNUAL REPORT.

Each municipality shall annually report by June 30 to the department, in a format prescribed by the department, all construction and development-related fees collected by the municipality from developers, builders, and subcontractors if the cumulative fees collected exceeded \$5,000 in the reporting year, except that, for reports due June 30, 2009, to June 30, 2013, the reporting threshold is \$10,000. The report must include:

(1) the number and valuation of units for which fees were paid;

(2) the amount of building permit fees, plan review fees, administrative fees, engineering fees, infrastructure fees, and other construction and development-related fees; and

(3) the expenses associated with the municipal activities for which fees were collected.

A municipality that fails to report to the department in accordance with this section is subject to the remedies provided by section 326B.082.

Sec. 18. Minnesota Statutes 2008, section 326B.148, subdivision 2, is amended to read:

Subd. 2. **Collection and reports.** All permit surcharges must be collected by each municipality and a portion of them remitted to the state. Each municipality having a population greater than 20,000 people shall prepare and submit to the commissioner once a month a report of fees and surcharges on fees collected during the previous month but shall retain the greater of two percent or that amount collected up to \$25 to apply against the administrative expenses the municipality incurs in collecting the surcharges. All other municipalities shall submit the report and surcharges on fees once a quarter but shall retain the greater of four percent or that amount collected up to \$25 to apply against the administrative expenses the municipalities incur in collecting the surcharges. The report, which must be in a form prescribed by the commissioner, must be submitted together with a remittance covering the surcharges collected by the 15th day following the month or quarter in which the surcharges are collected.

9.1 A municipality that fails to report or submit the required remittance to the
9.2 department in accordance with this subdivision is subject to the remedies provided by
9.3 section 326B.082.

9.4 Sec. 19. Minnesota Statutes 2008, section 326B.148, subdivision 3, is amended to read:

9.5 Subd. 3. **Revenue to equal costs.** Revenue received from the surcharge imposed
9.6 in subdivision 1 should approximately equal the cost, including the overhead cost,
9.7 of administering sections 326B.101 to 326B.194. ~~By November 30 each year, the~~
9.8 ~~commissioner must report to the commissioner of management and budget and to the~~
9.9 ~~legislature on changes in the surcharge imposed in subdivision 1 needed to comply~~
9.10 ~~with this policy. In making this report, the commissioner must assume that the services~~
9.11 ~~associated with administering sections 326B.101 to 326B.194 will continue to be provided~~
9.12 ~~at the same level provided during the fiscal year in which the report is made.~~

9.13 Sec. 20. Minnesota Statutes 2008, section 326B.191, is amended to read:

9.14 **326B.191 CONFLICT OF LAWS.**

9.15 Nothing in sections 326B.163 to 326B.191 supersedes the Minnesota Electrical
9.16 Act in this chapter ~~326~~.

9.17 Sec. 21. Minnesota Statutes 2008, section 326B.31, subdivision 28, is amended to read:

9.18 Subd. 28. **Responsible licensed individual.** A contractor's "responsible licensed
9.19 individual" means the licensed Class A master electrician, Class B master electrician,
9.20 master elevator constructor, or power limited technician designated in writing by the
9.21 contractor in the contractor's license application, or in another manner acceptable to the
9.22 commissioner, as the individual responsible for the contractor's compliance with sections
9.23 326B.31 to 326B.399 ~~and, all rules and orders adopted or issued under these sections, and~~
9.24 all orders issued under section 326B.082. The terms "licensed responsible individual" and
9.25 "licensed responsible master electrician or power limited technician" are synonymous.

9.26 Sec. 22. Minnesota Statutes 2008, section 326B.33, subdivision 17, is amended to read:

9.27 Subd. 17. **Employment of master electrician or power limited technician.**

9.28 (a) Each contractor must designate a responsible master electrician or power limited
9.29 technician, who shall be responsible for the performance of all electrical work in
9.30 accordance with the requirements of sections 326B.31 to 326B.399 ~~or any rule or order,~~
9.31 all rules adopted or issued under these sections, and all orders issued under section
9.32 326B.082. The classes of work that a licensed contractor is authorized to perform shall

10.1 be limited to the classes of work that the responsible master electrician or power limited
10.2 electrician is licensed to perform.

10.3 (b) When a contractor's license is held by an individual, sole proprietorship,
10.4 partnership, limited liability company, or corporation and the individual, proprietor, one
10.5 of the partners, one of the members, or an officer of the corporation, respectively, is not
10.6 the responsible master electrician or power limited technician, all requests for inspection
10.7 shall be signed by the responsible master electrician or power limited technician. If the
10.8 contractor is an individual or a sole proprietorship, the responsible licensed individual
10.9 must be the individual, proprietor, or managing employee. If the contractor is a
10.10 partnership, the responsible licensed individual must be a general partner or managing
10.11 employee. If the licensed contractor is a limited liability company, the responsible
10.12 licensed individual must be a chief manager or managing employee. If the contractor
10.13 is a corporation, the responsible licensed individual must be an officer or managing
10.14 employee. If the responsible licensed individual is a managing employee, the responsible
10.15 licensed individual must be actively engaged in performing electrical work on behalf of
10.16 the contractor, and cannot be employed in any capacity as an electrician or technician by
10.17 any other contractor or employer designated in subdivision 21. An individual may be the
10.18 responsible licensed individual for only one contractor or employer.

10.19 (c) All applications and renewals for contractor licenses shall include a verified
10.20 statement that the applicant or licensee has complied with this subdivision.

10.21 Sec. 23. Minnesota Statutes 2008, section 326B.42, subdivision 2, is amended to read:

10.22 Subd. 2. **Direct supervision.** The term "direct supervision," with respect to direct
10.23 supervision of a plumber's apprentice or registered unlicensed individual by a master,
10.24 restricted master, journeyman, or restricted journeyman plumber, means that:

10.25 (1) at all times while the plumber's apprentice or registered unlicensed individual is
10.26 performing plumbing work, the supervising plumber is present at the location where the
10.27 plumber's apprentice or registered unlicensed individual is working;

10.28 (2) the supervising plumber is physically present and immediately available to the
10.29 plumber's apprentice or registered unlicensed individual at all times for assistance and
10.30 direction;

10.31 (3) any form of electronic supervision does not meet the requirement of physically
10.32 present;

10.33 (4) the supervising plumber actually reviews the plumbing work performed by
10.34 the plumber's apprentice or registered unlicensed individual before the plumbing is
10.35 operated; and

11.1 (5) the supervising plumber is able to and does determine that all plumbing work
11.2 performed by the plumber's apprentice or registered unlicensed individual is performed in
11.3 compliance with the plumbing code.

11.4 Sec. 24. Minnesota Statutes 2008, section 326B.42, subdivision 6, is amended to read:

11.5 Subd. 6. **Plumber's apprentice.** A "plumber's apprentice" is any individual, ~~other~~
11.6 ~~than a master, restricted master, journeyman, or restricted journeyman plumber who, as~~
11.7 ~~a principal occupation, is engaged in working as an employee of a plumbing contractor~~
11.8 ~~under the direct supervision of a master, restricted master, journeyman, or restricted~~
11.9 ~~journeyman plumber and is learning and assisting in the installation of plumbing who is~~
11.10 employed in the practical installation of plumbing under an apprenticeship agreement
11.11 approved by the department under Minnesota Rules, part 5200.0340.

11.12 Sec. 25. Minnesota Statutes 2008, section 326B.435, subdivision 2, is amended to read:

11.13 Subd. 2. **Powers; duties; administrative support.** (a) The board shall have the
11.14 power to:

11.15 (1) elect its chair, vice-chair, and secretary;

11.16 (2) adopt bylaws that specify the duties of its officers, the meeting dates of the board,
11.17 and containing such other provisions as may be useful and necessary for the efficient
11.18 conduct of the business of the board;

11.19 (3) adopt the plumbing code that must be followed in this state and any plumbing
11.20 code amendments thereto. The board shall adopt the plumbing code and any amendments
11.21 thereto pursuant to chapter 14 and as provided in subdivision 6, paragraphs (b), (c), and (d);

11.22 (4) review requests for final interpretations and issue final interpretations as provided
11.23 in section 326B.127, subdivision 5;

11.24 (5) except for rules regulating continuing education, adopt rules that regulate the
11.25 licensure or registration of plumbing contractors, journeymen, ~~apprentices~~ unlicensed
11.26 individuals, master plumbers, restricted master plumbers, and restricted journeymen and
11.27 other persons engaged in the design, installation, and alteration of plumbing systems,
11.28 except for those individuals licensed under section 326.02, subdivisions 2 and 3. The
11.29 board shall adopt these rules pursuant to chapter 14 and as provided in subdivision
11.30 6, paragraphs (e) and (f);

11.31 (6) advise the commissioner regarding educational requirements for plumbing
11.32 inspectors;

11.33 (7) refer complaints or other communications to the commissioner, whether oral or
11.34 written, as provided in subdivision 8, that allege or imply a violation of a statute, rule, or

- 12.1 order that the commissioner has the authority to enforce pertaining to code compliance,
12.2 licensure, or an offering to perform or performance of unlicensed plumbing services;
12.3 (8) approve per diem and expenses deemed necessary for its members as provided in
12.4 subdivision 3;
12.5 (9) approve license reciprocity agreements;
12.6 (10) select from its members individuals to serve on any other state advisory council,
12.7 board, or committee; and
12.8 (11) recommend the fees for licenses and certifications.

12.9 Except for the powers granted to the Plumbing Board, the Board of Electricity, and the
12.10 Board of High Pressure Piping Systems, the commissioner of labor and industry shall
12.11 administer and enforce the provisions of this chapter and any rules promulgated pursuant
12.12 thereto.

12.13 (b) The board shall comply with section 15.0597, subdivisions 2 and 4.

12.14 (c) The commissioner shall coordinate the board's rulemaking and recommendations
12.15 with the recommendations and rulemaking conducted by the other boards created pursuant
12.16 to this chapter. The commissioner shall provide staff support to the board. The support
12.17 includes professional, legal, technical, and clerical staff necessary to perform rulemaking
12.18 and other duties assigned to the board. The commissioner of labor and industry shall
12.19 supply necessary office space and supplies to assist the board in its duties.

12.20 Sec. 26. Minnesota Statutes 2008, section 326B.47, is amended to read:

12.21 **326B.47 PLUMBER'S APPRENTICES UNLICENSED INDIVIDUALS.**

12.22 Subdivision 1. **Registration.** All unlicensed individuals, other than plumber's
12.23 apprentices, must be registered under subdivision 3. ~~To be a registered plumber's~~
12.24 ~~apprentice, an individual must either:~~

12.25 ~~(1) be an individual employed in the trade of plumbing under an apprenticeship~~
12.26 ~~agreement approved by the department under Minnesota Rules, part 5200.0300; or~~

12.27 ~~(2) be an unlicensed individual registered with the commissioner under subdivision~~

12.28 ~~3.~~ A plumber's apprentice or registered unlicensed individual is authorized to assist
12.29 in the installation of plumbing only while under the direct supervision of a master,
12.30 restricted master, journeyman, or restricted journeyman plumber. The master, restricted
12.31 master, journeyman, or restricted journeyman plumber is responsible for ensuring that all
12.32 plumbing work performed by the plumber's apprentice or registered unlicensed individual
12.33 complies with the plumbing code.

12.34 Subd. 2. **Journeyman exam.** A plumber's apprentice or registered unlicensed
12.35 individual who has completed four years of practical plumbing experience is eligible to

13.1 take the journeyman plumbing examination. Up to 24 months of practical plumbing
13.2 experience prior to becoming a plumber's apprentice or registered unlicensed individual
13.3 may be applied to the four-year experience requirement. However, none of this practical
13.4 plumbing experience may be applied if the individual did not have any practical plumbing
13.5 experience in the 12-month period immediately prior to becoming a plumber's apprentice
13.6 or registered unlicensed individual. The Plumbing Board may adopt rules to evaluate
13.7 whether the individual's past practical plumbing experience is applicable in preparing for
13.8 the journeyman's examination. If two years after completing the training the individual
13.9 has not taken the examination, the four years of experience shall be forfeited.

13.10 The commissioner may allow an extension of the two-year period for taking the
13.11 exam for cases of hardship or other appropriate circumstances.

13.12 Subd. 3. **Registration, rules, applications, renewals, and fees.** An unlicensed
13.13 individual may register by completing and submitting to the commissioner a registration
13.14 form provided by the commissioner. A completed registration form must state the date
13.15 the individual began training, the individual's age, schooling, previous experience, and
13.16 employer, and other information required by the commissioner. The board may prescribe
13.17 rules, not inconsistent with this section, for the registration of unlicensed individuals. Each
13.18 applicant for initial registration as a ~~plumber's apprentice~~ registered unlicensed individual
13.19 shall pay the department an application fee of \$25. Applications for initial registration
13.20 may be submitted at any time. Registration must be renewed annually and shall be for the
13.21 period from July 1 of each year to June 30 of the following year. Applications for renewal
13.22 registration must be received by the commissioner by June 30 of each registration period
13.23 on forms provided by the commissioner, and must be accompanied by a fee of \$25. An
13.24 application for renewal registration received on or after July 1 in any year but no more
13.25 than three months after expiration of the previously issued registration must pay the past
13.26 due renewal fee plus a late fee of \$25. No applications for renewal registration will be
13.27 accepted more than three months after expiration of the previously issued registration.

13.28 Sec. 27. Minnesota Statutes 2008, section 326B.84, is amended to read:

13.29 **326B.84 GROUNDS FOR LICENSE SANCTIONS.**

13.30 ~~In addition to the grounds set forth in section 326B.082, subdivision 11, The~~
13.31 ~~commissioner may deny, suspend, limit, place conditions on, or revoke a license or~~
13.32 ~~certificate of exemption, or may censure the person holding the~~ use any enforcement
13.33 provision in section 326B.082 against an applicant for or holder of a license or certificate
13.34 of exemption, if the applicant, licensee, certificate of exemption holder, qualifying person,

14.1 or ~~affiliate of an~~ owner, officer, member, managing employee, or affiliate of the applicant,
14.2 licensee, or certificate of exemption holder, ~~or other agent owner~~:

14.3 (1) has filed an application for licensure or a certificate of exemption which is
14.4 incomplete in any material respect or contains any statement which, in light of the
14.5 circumstances under which it is made, is false or misleading with respect to any material
14.6 fact;

14.7 (2) has engaged in a fraudulent, deceptive, or dishonest practice;

14.8 (3) is permanently or temporarily enjoined by any court of competent jurisdiction
14.9 from engaging in or continuing any conduct or practice involving any aspect of the
14.10 business;

14.11 (4) has failed to reasonably supervise employees, agents, subcontractors, or
14.12 salespersons, or has performed negligently or in breach of contract, so as to cause injury
14.13 or harm to the public;

14.14 (5) has violated or failed to comply with any provision of sections 326B.802 to
14.15 326B.885, any rule or order under sections 326B.802 to 326B.885, or any other law, rule,
14.16 or order related to the duties and responsibilities entrusted to the commissioner;

14.17 (6) has been convicted of a violation of the State Building Code or has refused to
14.18 comply with a notice of violation or stop order issued by a certified building official, or in
14.19 local jurisdictions that have not adopted the State Building Code has refused to correct a
14.20 violation of the State Building Code when the violation has been documented or a notice
14.21 of violation or stop order issued by a certified building official has been received;

14.22 (7) has failed to use the proceeds of any payment made to the licensee for the
14.23 construction of, or any improvement to, residential real estate, as defined in section
14.24 326B.802, subdivision 13, for the payment of labor, skill, material, and machinery
14.25 contributed to the construction or improvement, knowing that the cost of any labor
14.26 performed, or skill, material, or machinery furnished for the improvement remains unpaid;

14.27 (8) has not furnished to the person making payment either a valid lien waiver as to
14.28 any unpaid labor performed, or skill, material, or machinery furnished for an improvement,
14.29 or a payment bond in the basic amount of the contract price for the improvement
14.30 conditioned for the prompt payment to any person or persons entitled to payment;

14.31 (9) has engaged in an act or practice that results in compensation to an aggrieved
14.32 owner or lessee from the contractor recovery fund pursuant to section 326B.89, unless:

14.33 (i) the applicant or licensee has repaid the fund twice the amount paid from the fund,
14.34 plus interest at the rate of 12 percent per year; and

14.35 (ii) the applicant or licensee has obtained a surety bond in the amount of at least
14.36 \$40,000, issued by an insurer authorized to transact business in this state;

15.1 (10) has engaged in bad faith, unreasonable delays, or frivolous claims in defense
15.2 of a civil lawsuit or arbitration arising out of their activities as a licensee or certificate
15.3 of exemption holder under this chapter;

15.4 (11) has had a judgment entered against them for failure to make payments to
15.5 employees, subcontractors, or suppliers, that the licensee has failed to satisfy and all
15.6 appeals of the judgment have been exhausted or the period for appeal has expired;

15.7 (12) if unlicensed, has obtained a building permit by the fraudulent use of a fictitious
15.8 license number or the license number of another, or, if licensed, has knowingly allowed
15.9 an unlicensed person to use the licensee's license number for the purpose of fraudulently
15.10 obtaining a building permit; or has applied for or obtained a building permit for an
15.11 unlicensed person;

15.12 (13) has made use of a forged mechanic's lien waiver under chapter 514;

15.13 (14) has provided false, misleading, or incomplete information to the commissioner
15.14 or has refused to allow a reasonable inspection of records or premises;

15.15 (15) has engaged in an act or practice whether or not the act or practice directly
15.16 involves the business for which the person is licensed, that demonstrates that the applicant
15.17 or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or
15.18 unqualified to act under the license granted by the commissioner; or

15.19 (16) has failed to comply with requests for information, documents, or other requests
15.20 from the department within the time specified in the request or, if no time is specified,
15.21 within 30 days of the mailing of the request by the department.

15.22 Sec. 28. Minnesota Statutes 2008, section 326B.89, subdivision 1, is amended to read:

15.23 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms
15.24 have the meanings given them.

15.25 (b) "Gross annual receipts" means the total amount derived from residential
15.26 contracting or residential remodeling activities, regardless of where the activities are
15.27 performed, and must not be reduced by costs of goods sold, expenses, losses, or any
15.28 other amount.

15.29 (c) "Licensee" means a person licensed as a residential contractor or residential
15.30 remodeler.

15.31 (d) "Residential real estate" means a new or existing building constructed for
15.32 habitation by one to four families, and includes detached garages.

15.33 (e) "Fund" means the contractor recovery fund.

15.34 (f) "Owner" when used in connection with real property, means a person who has
15.35 any legal or equitable interest in real property and includes a condominium or townhome

16.1 association that owns common property located in a condominium building or townhome
16.2 building or an associated detached garage. Owner does not include any real estate
16.3 developer.

16.4 Sec. 29. Minnesota Statutes 2008, section 326B.89, subdivision 5, is amended to read:

16.5 Subd. 5. **Payment limitations.** ~~Except as otherwise provided in this section, The~~
16.6 commissioner shall not pay compensation from the fund to an owner or a lessee in an
16.7 amount greater than \$75,000 per licensee. ~~Except as otherwise provided in this section,~~
16.8 The commissioner shall not pay compensation from the fund to owners and lessees in an
16.9 amount that totals more than \$150,000 per licensee. ~~The commissioner shall not pay~~
16.10 ~~compensation from the fund for a final judgment based on a cause of action that arose~~
16.11 ~~before the commissioner's receipt of the licensee's fee required by subdivision 3. The~~
16.12 commissioner shall only pay compensation from the fund for a final judgment that is
16.13 based on a contract directly between the licensee and the homeowner or lessee that was
16.14 entered into prior to the cause of action and that requires licensure as a residential building
16.15 contractor or residential remodeler.

16.16 Sec. 30. Minnesota Statutes 2008, section 326B.89, subdivision 6, is amended to read:

16.17 Subd. 6. **Verified application.** To be eligible for compensation from the fund, an
16.18 owner or lessee shall serve on the commissioner a verified application for compensation
16.19 on a form approved by the commissioner. The application shall verify the following
16.20 information:

16.21 (1) the specific grounds upon which the owner or lessee seeks to recover from
16.22 the fund:

16.23 (2) that the owner or the lessee has obtained a final judgment in a court of competent
16.24 jurisdiction against a licensee licensed under section ~~326B.803~~ 326B.83;

16.25 (3) that the final judgment was obtained against the licensee on the grounds
16.26 of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of
16.27 performance that arose directly out of a contract directly between the licensee and the
16.28 homeowner or lessee that was entered into prior to the cause of action and that occurred
16.29 when the licensee was licensed and performing any of the special skills enumerated under
16.30 section 326B.802, subdivision 15;

16.31 (4) the amount of the owner's or the lessee's actual and direct out-of-pocket loss on
16.32 the owner's residential real estate, on residential real estate leased by the lessee, or on new
16.33 residential real estate that has never been occupied or that was occupied by the licensee
16.34 for less than one year prior to purchase by the owner;

17.1 (5) that the residential real estate is located in Minnesota;

17.2 (6) that the owner or the lessee is not the spouse of the licensee or the personal
17.3 representative of the licensee;

17.4 (7) the amount of the final judgment, any amount paid in satisfaction of the final
17.5 judgment, and the amount owing on the final judgment as of the date of the verified
17.6 application;

17.7 (8) that the owner or lessee has diligently pursued remedies against all the judgment
17.8 debtors and all other persons liable to the judgment debtor in the contract for which the
17.9 owner or lessee seeks recovery from the fund; and

17.10 (9) that the verified application is being served within two years after the judgment
17.11 became final.

17.12 The verified application must include documents evidencing the amount of the
17.13 owner's or the lessee's actual and direct out-of-pocket loss. The owner's and the lessee's
17.14 actual and direct out-of-pocket loss shall not include attorney fees, litigation costs or fees,
17.15 interest on the loss, and interest on the final judgment obtained as a result of the loss. Any
17.16 amount paid in satisfaction of the final judgment shall be applied to the owner's or lessee's
17.17 actual and direct out-of-pocket loss. An owner or lessee may serve a verified application
17.18 regardless of whether the final judgment has been discharged by a bankruptcy court. A
17.19 judgment issued by a court is final if all proceedings on the judgment have either been
17.20 pursued and concluded or been forgone, including all reviews and appeals. For purposes
17.21 of this section, owners who are joint tenants or tenants in common are deemed to be a
17.22 single owner. For purposes of this section, owners and lessees eligible for payment of
17.23 compensation from the fund shall not include government agencies, political subdivisions,
17.24 financial institutions, and any other entity that purchases, guarantees, or insures a loan
17.25 secured by real estate.

17.26 Sec. 31. Minnesota Statutes 2008, section 326B.89, subdivision 7, is amended to read:

17.27 Subd. 7. **Commissioner review.** The commissioner shall within 120 days after
17.28 receipt of the complete verified application:

17.29 (1) enter into an agreement with an owner or a lessee that resolves the verified
17.30 application for compensation from the fund; or

17.31 (2) issue an order to the owner or the lessee accepting, modifying, or denying the
17.32 verified application for compensation from the fund.

17.33 Upon receipt of an order issued under clause (2), the owner or the lessee shall have
17.34 30 days to serve upon the commissioner a written request for a hearing. If the owner or
17.35 the lessee does not serve upon the commissioner a timely written request for hearing, the

18.1 order issued under clause (2) shall become a final order of the commissioner that may not
18.2 be reviewed by any court or agency. The commissioner shall order compensation from
18.3 the fund only if the owner or the lessee has filed a verified application that complies with
18.4 subdivision 6 and if the commissioner determines based on review of the application that
18.5 compensation should be paid from the fund. The commissioner shall not be bound by any
18.6 prior settlement, compromise, or stipulation between the owner or the lessee and the
18.7 licensee.

18.8 Sec. 32. Minnesota Statutes 2008, section 326B.89, subdivision 8, is amended to read:

18.9 Subd. 8. **Administrative hearing.** If an owner or a lessee timely serves a request
18.10 for hearing under subdivision 7, the commissioner shall request that an administrative law
18.11 judge be assigned and that a hearing be conducted under the contested case provisions
18.12 of chapter 14 within ~~30~~ 45 days after the ~~service of the request for hearing upon the~~
18.13 commissioner received the request for hearing, unless the parties agree to a later date. The
18.14 commissioner must notify the owner or lessee of the time and place of the hearing at least
18.15 15 days before the hearing. Upon petition of the commissioner, the administrative law
18.16 judge shall continue the hearing up to 60 days and upon a showing of good cause may
18.17 continue the hearing for such additional period as the administrative law judge deems
18.18 appropriate.

18.19 At the hearing the owner or the lessee shall have the burden of proving by substantial
18.20 evidence under subdivision 6, clauses (1) to (8). Whenever an applicant's judgment is by
18.21 default, stipulation, or consent, or whenever the action against the licensee was defended
18.22 by a trustee in bankruptcy, the applicant shall have the burden of proving the cause
18.23 of action for fraudulent, deceptive, or dishonest practices, or conversion of trust funds.
18.24 Otherwise, the judgment shall create a rebuttable presumption of the fraudulent, deceptive,
18.25 or dishonest practices, or conversion of trust funds. This presumption is a presumption
18.26 affecting the burden of producing evidence.

18.27 The administrative law judge shall issue findings of fact, conclusions of law, and
18.28 order. If the administrative law judge finds that compensation should be paid to the owner
18.29 or the lessee, the administrative law judge shall order the commissioner to make payment
18.30 from the fund of the amount it finds to be payable pursuant to the provisions of and in
18.31 accordance with the limitations contained in this section. The order of the administrative
18.32 law judge shall constitute the final decision of the agency in the contested case. Judicial
18.33 review of the administrative law judge's findings of fact, conclusions of law, and order
18.34 shall be in accordance with sections 14.63 to 14.69.

19.1 Sec. 33. Minnesota Statutes 2008, section 326B.89, subdivision 10, is amended to read:

19.2 Subd. 10. **Right of subrogation.** Notwithstanding subdivisions 1 to 9 and 11 to 16,
19.3 the commissioner shall not pay compensation from the fund to an owner or lessee unless
19.4 and until the owner or lessee executes an assignment to the commissioner of all rights,
19.5 title, and interest in the final judgment in the amount of the compensation to be paid under
19.6 an agreement under subdivision 7, clause (1), or a final order issued under subdivision
19.7 7, clause (2), or subdivision 8. If the commissioner pays compensation from the fund to
19.8 an owner or a lessee pursuant to an agreement under subdivision 7, clause (1), or a final
19.9 order issued under subdivision 7, clause (2), or subdivision 8, then the commissioner
19.10 shall be subrogated to all of the rights, title, and interest in the owner's or lessee's final
19.11 judgment in the amount of compensation paid from the fund ~~and the owner or the lessee~~
19.12 ~~shall assign to the commissioner all rights, title, and interest in the final judgment in~~
19.13 ~~the amount of compensation paid.~~ The commissioner shall deposit in the fund money
19.14 recovered under this subdivision.

19.15 Sec. 34. Minnesota Statutes 2008, section 326B.89, subdivision 13, is amended to read:

19.16 Subd. 13. **Condominiums or townhouses.** (a) For purposes of this section, the
19.17 owner or the lessee of a condominium or townhouse any of the following types of real
19.18 estate is considered an owner or a lessee of residential property real estate regardless of
19.19 the number of residential units per building-:

19.20 (1) a condominium;

19.21 (2) a townhouse;

19.22 (3) common property in the condominium building or townhouse building in which
19.23 residents live; or

19.24 (4) a garage solely for use by one or more residents of a condominium building
19.25 or townhouse building.

19.26 (b) For purposes of this subdivision, "common property" means common areas and
19.27 facilities as defined in chapter 515, common element as defined in chapter 515A, and
19.28 common elements as defined in chapter 515B.

19.29 Sec. 35. Minnesota Statutes 2008, section 326B.89, is amended by adding a
19.30 subdivision to read:

19.31 Subd. 17. **Felony.** An individual who knowingly makes a false material statement,
19.32 representation, or certification in; omits material information from; or alters or conceals
19.33 any information in the application described in subdivision 6 or any document filed with
19.34 the commissioner in connection with an application for compensation from the fund is

20.1 guilty of a felony and, upon conviction, may be sentenced to imprisonment for not more
20.2 than five years or to payment of a fine of not more than \$10,000 or both.

20.3 Sec. 36. Minnesota Statutes 2008, section 326B.89, is amended by adding a
20.4 subdivision to read:

20.5 Subd. 18. **Recovery of payments.** If the commissioner pays compensation from the
20.6 fund on the basis of any false or misleading information provided to the commissioner
20.7 in connection with the application for compensation, then, upon the application of the
20.8 commissioner, a district court shall order the owner or lessee to repay to the fund all
20.9 such compensation paid from the fund. In addition, the state may be allowed an amount
20.10 determined by the court to be the reasonable value of all or part of the litigation expenses,
20.11 including attorney fees, incurred by the state. The commissioner shall deposit in the fund
20.12 money recovered under this subdivision.

20.13 Sec. 37. Minnesota Statutes 2008, section 326B.89, is amended by adding a
20.14 subdivision to read:

20.15 Subd. 19. **Payment of penalty.** If an owner or lessee violates section 326B.084 in
20.16 connection with an application for compensation from the fund, and if the commissioner
20.17 issues to the owner or lessee an administrative order under section 326B.082, subdivision
20.18 7, for that violation of section 326B.084, then the commissioner shall deposit in the fund
20.19 all penalties paid pursuant to the administrative order.

20.20 Sec. 38. Minnesota Statutes 2008, section 326B.921, subdivision 3, is amended to read:

20.21 Subd. 3. **Registration requirement.** All unlicensed individuals, other than pipefitter
20.22 apprentices, must be registered under subdivision 4. No licensed high pressure piping
20.23 business shall employ an unlicensed individual to assist in the practical construction and
20.24 installation of high pressure piping and appurtenances unless the unlicensed individual is
20.25 registered with the department. A pipefitter apprentice or registered unlicensed individual
20.26 employed by a high pressure piping business may assist in the practical construction and
20.27 installation of high pressure piping and appurtenances only while under direct supervision
20.28 of a licensed contracting high pressure pipefitter or licensed journeyman high pressure
20.29 pipefitter employed by the same high pressure piping business. The licensed contracting
20.30 high pressure pipefitter or licensed journeyman high pressure pipefitter shall supervise no
20.31 more than two pipefitter apprentices or registered unlicensed individuals. The licensed
20.32 contracting high pressure pipefitter or journeyman high pressure pipefitter is responsible

21.1 for ensuring that all high pressure piping work performed by the pipefitter apprentice or
21.2 registered unlicensed individual complies with Minnesota Statutes and Minnesota Rules.

21.3 ~~The board shall make recommendations by October 1, 2008, to the chairs of~~
21.4 ~~the standing committees of the senate and house of representatives having jurisdiction~~
21.5 ~~over high pressure piping regulation on the ratio of licensed contracting high pressure~~
21.6 ~~pipefitters or licensed journeyman high pressure pipefitters to pipefitter apprentices or~~
21.7 ~~registered unlicensed individuals for purposes of supervision.~~

21.8 Sec. 39. **REPEALER.**

21.9 Minnesota Statutes 2008, sections 299G.11; 299G.13, subdivisions 1, 6, 9, 16, 17,
21.10 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28; 299G.14; 299G.15; 299G.16; 299G.17;
21.11 299G.18; 326B.115; and 326B.37, subdivision 13, are repealed.

21.12 Minnesota Rules, parts 5200.0020; 5200.0050; and 5200.0080, subparts 2, 3, 4,
21.13 4a, 4b, 6, 7, and 8, are repealed.

21.14 Sec. 40. **EFFECTIVE DATE.**

21.15 Sections 1 to 39 are effective the day following final enactment.