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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 968

February 19, 2009

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

1.1 A bill for an act
1.2 relating to labor and employment; creating a Board of Residential Construction;
1.3 modifying license regulation; authorizing rulemaking; amending Minnesota
1.4 Statutes 2008, sections 326B.02, subdivisions 2, 5; 326B.802, by adding a
1.5 subdivision; proposing coding for new law in Minnesota Statutes, chapter 326B.

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

1.7 Section 1. Minnesota Statutes 2008, section 326B.02, subdivision 2, is amended to read:

1.8 Subd. 2. **Transfer of authority.** The commissioner of administration may not use
1.9 the authority under section 16B.37 to modify the transfers of authority to the Board of
1.10 Residential Construction, the Plumbing Board, the Board of Electricity, or the Board of
1.11 High Pressure Piping Systems under this chapter.

1.12 **EFFECTIVE DATE.** This section is effective September 1, 2009.

1.13 Sec. 2. Minnesota Statutes 2008, section 326B.02, subdivision 5, is amended to read:

1.14 Subd. 5. **General rulemaking authority.** The commissioner may, under the
1.15 rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt,
1.16 amend, suspend, and repeal rules relating to the commissioner's responsibilities under this
1.17 chapter, except for rules for which the rulemaking authority is expressly transferred to
1.18 the Board of Residential Construction, the Plumbing Board, the Board of Electricity, or
1.19 the Board of High Pressure Piping Systems.

1.20 **EFFECTIVE DATE.** This section is effective September 1, 2009.

1.21 Sec. 3. Minnesota Statutes 2008, section 326B.802, is amended by adding a
1.22 subdivision to read:

2.1 Subd. 2a. **Board.** "Board" means the Board of Residential Construction.

2.2 Sec. 4. **[326B.803] BOARD OF RESIDENTIAL CONSTRUCTION.**

2.3 Subdivision 1. **Composition.** (a) The Board of Residential Construction shall
2.4 consist of 13 members. Twelve members shall be appointed by the governor with the
2.5 advice and consent of the senate and shall be voting members. Appointments of members
2.6 by the governor shall be made in accordance with section 15.066. If the senate votes to
2.7 refuse to consent to an appointment of a member made by the governor, the governor shall
2.8 appoint a new member with the advice and consent of the senate. One member shall be
2.9 the commissioner of labor and industry or the commissioner's designee, who shall be a
2.10 voting member. Of the 12 appointed members, the composition shall be as follows:

2.11 (1) four members shall be licensed residential building contractors or licensed
2.12 residential remodelers, two of whom reside in the seven-county metropolitan area and
2.13 two of whom reside in greater Minnesota;

2.14 (2) two members shall be certified building officials as defined in section 326B.133,
2.15 one of whom must reside in the seven-county metropolitan area and one of whom must
2.16 reside in greater Minnesota;

2.17 (3) one member shall be a residential construction supplier;

2.18 (4) two members shall be carpenters, one of whom must reside in the metropolitan
2.19 area and one of whom must reside in greater Minnesota;

2.20 (5) one member shall be a fire marshal;

2.21 (6) one member shall be a licensed manufactured home installer as defined under
2.22 section 327.31, subdivision 11; and

2.23 (7) one member shall be a public member as defined by section 214.02.

2.24 (b) All of the appointed members except for the public member and the fire marshal
2.25 must have at least four years of experience in the residential construction industry or
2.26 have successfully completed an apprenticeship under an approved apprentice agreement
2.27 under chapter 178.

2.28 (c) One of the licensed residential building contractors or licensed residential
2.29 remodelers shall be appointed to an initial term to end December 31, 2012. Two of
2.30 the licensed residential building contractors or licensed residential remodelers shall be
2.31 appointed for an initial term to end December 31, 2013. One of the licensed residential
2.32 building contractors or licensed residential remodelers shall be appointed for an initial
2.33 term to end December 31, 2014. One of the certified building officials shall be appointed
2.34 for an initial term to end December 31, 2012. The other building official shall be appointed
2.35 for an initial term to end December 31, 2013. The residential construction supplier shall be

3.1 appointed for an initial term to end December 31, 2013. One carpenter shall be appointed
3.2 for an initial term to end December 31, 2012. The other carpenter shall be appointed for
3.3 an initial term to end December 31, 2014. The fire marshal shall be appointed for an initial
3.4 term to end December 31, 2014. The manufactured home installer shall be appointed for
3.5 an initial term to end December 31, 2014. The public member shall be appointed for
3.6 an initial term to end December 31, 2012.

3.7 (d) Except for the initial terms designated in paragraph (c), the terms of appointed
3.8 members are three years, with the terms ending December 31. Members appointed by
3.9 the governor are limited to three consecutive terms. The governor shall reappoint the
3.10 current members or appoint replacement members with the advice and consent of the
3.11 senate. Midterm vacancies must be filled for the remaining portion of the term. Vacancies
3.12 occurring with less than six months time remaining in the term must be filled for the
3.13 existing term and the following three-year term. Members may serve until successors are
3.14 appointed, but in no case later than July 1 in a year in which the term expires unless
3.15 reappointed.

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

3.18 (1) elect a chair, vice-chair, and secretary as provided in subdivision 6;

3.19 (2) adopt bylaws that specify the duties of its officers and the meeting dates of
3.20 the board, and contain other provisions as may be useful and necessary for the efficient
3.21 conduct of the business of the board;

3.22 (3) establish by rule the residential building code that must be followed in this
3.23 state and any residential building code amendments, to include performance guidelines
3.24 in the State Building Code for new construction and remodeling. The board shall adopt
3.25 the residential code and any amendments pursuant to chapter 14 and as provided in
3.26 subdivision 6, paragraphs (b) and (c);

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

3.29 (5) adopt rules that regulate the licensure or registration of residential building
3.30 contractors and residential remodelers as defined in section 326B.802. The board shall
3.31 adopt these rules pursuant to chapter 14 and as provided in subdivision 6, paragraphs
3.32 (d) and (e);

3.33 (6) refer complaints or other communications to the commissioner as provided in
3.34 subdivision 8;

3.35 (7) approve per diem and expenses deemed necessary for its members as provided in
3.36 subdivision 3;

4.1 (8) approve license reciprocity agreements;
4.2 (9) select from its members individuals to serve on any other state advisory council,
4.3 board, or committee; and
4.4 (10) recommend fees for licenses and certifications.

4.5 (b) Except for the powers granted to the Board of Residential Construction,
4.6 Plumbing Board, Board of Electricity, and the Board of High Pressure Piping Systems,
4.7 the commissioner shall administer and enforce the provisions of this chapter and any
4.8 rules adopted under it.

4.9 (c) The board shall comply with section 15.0597, subdivisions 2 and 4.

4.10 (d) The commissioner shall coordinate the board's rulemaking and recommendations
4.11 with the recommendations and rulemaking conducted by other appropriate boards under
4.12 this chapter. The commissioner shall provide staff support to the board. The support
4.13 includes professional, legal, technical, and clerical staff necessary to perform rulemaking
4.14 and other duties assigned to the board. The commissioner shall supply necessary office
4.15 space and supplies to assist the board in its duties. The commissioner shall post on the
4.16 department's official Web site meeting notices and meeting minutes for all boards for
4.17 whom the commissioner provides administrative support under this chapter.

4.18 Subd. 3. **Compensation.** (a) Members of the board may be compensated at the rate
4.19 of \$55 a day spent on board activities, when authorized by the board, plus expenses in
4.20 the same manner and amount as authorized by the commissioner's plan adopted under
4.21 section 43A.18, subdivision 2.

4.22 (b) Members who are state employees or employees of political subdivisions of
4.23 the state must not receive the daily payment for activities that occur during working
4.24 hours for which they are compensated by the state or political subdivision. However,
4.25 an employee of the state or political subdivision may receive the daily payment if the
4.26 employee uses vacation time or compensatory time accumulated in accordance with a
4.27 collective bargaining agreement or compensation plan for board activities. Members who
4.28 are state employees or employees of political subdivisions of the state may receive the
4.29 expenses provided for in this subdivision unless the expenses are reimbursed by another
4.30 source. Members who are state employees or employees of political subdivisions of the
4.31 state may be reimbursed for child care expenses only for time spent on board activities
4.32 that are outside their working hours.

4.33 (c) The board shall adopt internal standards prescribing what constitutes a day spent
4.34 on board activities for purposes of making daily payments under this subdivision.

4.35 Subd. 4. **Removal; vacancies.** (a) An appointed member of the board may be
4.36 removed by the governor at any time (1) for cause, after notice and hearing, or (2) after

5.1 missing three consecutive meetings. The chair of the board shall inform the governor of
5.2 an appointed member missing three consecutive meetings. After the second consecutive
5.3 missed meeting and before the next meeting, the secretary of the board shall notify the
5.4 appointed member in writing that the member may be removed for missing the next
5.5 meeting. In the case of a vacancy on the board, the governor shall, with the advice
5.6 and consent of the senate, appoint a person to fill the vacancy for the remainder of the
5.7 unexpired term pursuant to subdivision 1, paragraph (e).

5.8 (b) Vacancies shall be filled pursuant to section 15.0597, subdivisions 5 and 6.

5.9 Subd. 5. **Membership vacancies within three months of appointment.**

5.10 Notwithstanding any law to the contrary, when a vacancy on the board occurs within
5.11 three months after being filled through the appointments process, the governor may,
5.12 upon notification to the Office of the Secretary of State, choose a new member from the
5.13 applications on hand and need not repeat the process.

5.14 Subd. 6. **Officers, quorum, voting.** (a) The board shall elect annually from its
5.15 members a chair, vice-chair, and secretary. A quorum of the board shall consist of a
5.16 majority of the members of the board qualified to vote on the matter in question. All
5.17 questions concerning the manner in which a meeting is conducted or called that is not
5.18 covered by statute shall be determined by Robert's Rules of Order, revised, unless
5.19 otherwise specified by the bylaws.

5.20 (b) Each residential code amendment considered by the board that receives an
5.21 affirmative two-thirds or more majority vote of all of the voting members of the board
5.22 shall be included in the next residential code rulemaking proceeding initiated by the board.
5.23 If a residential code amendment considered, or reconsidered, by the board receives less
5.24 than a two-thirds majority vote of all of the voting members of the board, the residential
5.25 code amendment must not be included in the next residential code rulemaking proceeding
5.26 initiated by the board.

5.27 (c) The board may reconsider residential code amendments during an active
5.28 residential code rulemaking proceeding in which the amendment previously failed to
5.29 receive a two-thirds majority vote of all of the voting members of the board only if new or
5.30 updated information that affects the code amendment is presented to the board. The board
5.31 may also reconsider failed code amendments in subsequent code rulemaking proceedings.

5.32 (d) Each proposed rule and rule amendment considered by the board pursuant to the
5.33 rulemaking authority specified in subdivision 2, paragraph (a), clause (5), that receives an
5.34 affirmative two-thirds majority vote of all of the voting members of the board must be
5.35 included in the next rulemaking proceeding initiated by the board. If a proposed rule or
5.36 rule amendment considered, or reconsidered, by the board receives less than an affirmative

6.1 two-thirds majority vote of all of the voting members of the board, the proposed rule or rule
6.2 amendment must not be included in the next rulemaking proceeding initiated by the board.

6.3 (e) The board may reconsider a proposed rule or rule amendment during an active
6.4 rulemaking proceeding in which the amendment previously failed to receive an affirmative
6.5 two-thirds majority vote of all of the voting members of the board only if new or updated
6.6 information that affects the proposed rule or rule amendment is presented to the board.
6.7 The board may also reconsider a failed proposed rule or rule amendment in subsequent
6.8 rulemaking proceedings.

6.9 Subd. 7. **Board meetings.** (a) The board shall meet at least two times each calendar
6.10 year at times the board specifies. Notice and conduct of all meetings are governed by
6.11 chapter 13D and the bylaws.

6.12 (b) If compliance with section 13D.02 is impractical, the board may conduct a
6.13 meeting of its members by telephone or other electronic means so long as the following
6.14 conditions are met:

6.15 (1) all members of the board participating in the meeting, wherever their physical
6.16 location, can hear one another and can hear all discussion and testimony;

6.17 (2) members of the public present at the regular meeting location of the board can
6.18 clearly hear all discussion and testimony and all votes of members of the board and, if
6.19 needed, receive those services required by sections 15.44 and 15.441;

6.20 (3) at least one member of the board is physically present at the regular meeting
6.21 location; and

6.22 (4) all votes are conducted by roll call, so each member's vote on each issue can be
6.23 identified and recorded.

6.24 Each member of the board participating in a meeting by telephone or other electronic
6.25 means is considered present at the meeting for purposes of determining a quorum and
6.26 participating in all proceedings.

6.27 If telephone or other electronic means are used to conduct a regular, special, or
6.28 emergency meeting, the board, to the extent practical, shall allow a person to monitor
6.29 the meeting electronically from a remote location. The board may require the person
6.30 making such a connection to pay for documented costs that the board incurs as a result of
6.31 the additional connection.

6.32 If telephone or other electronic means are used to conduct a regular, special, or
6.33 emergency meeting, the board shall provide notice of the regular meeting location, of the
6.34 fact that some members may participate by telephone or other electronic means, and that
6.35 a person may monitor the meeting electronically from a remote location. Any person
6.36 monitoring the meeting electronically from a remote location may be required to pay

7.1 documented costs incurred by the board as a result of the additional connection. The
 7.2 timing and method of providing notice is governed by section 13D.04.

7.3 Subd. 8. **Complaints.** (a) The board shall promptly forward to the commissioner
 7.4 the substance of any complaint or communication it receives, whether written or oral, that
 7.5 alleges or implies a violation of a statute, rule, or order that the commissioner has the
 7.6 authority to enforce pertaining to: (1) the license or registration of any person authorized
 7.7 by the commissioner to provide residential building contractor or residential remodeling
 7.8 services; (2) the performance or offering to perform residential building contractor or
 7.9 residential remodeling services requiring licensure or registration; or (3) residential code
 7.10 compliance. Each complaint or communication that is forwarded to the commissioner
 7.11 must be submitted on a form provided by the commissioner.

7.12 (b) The commissioner shall advise the board of the status of the complaint within 90
 7.13 days after the board's written submission is received, or within 90 days after the board
 7.14 is provided with a written request for additional information or documentation from the
 7.15 commissioner or the commissioner's designee, whichever is later. The commissioner shall
 7.16 advise the board of the disposition of a complaint referred by the board within 180 days
 7.17 after the board's written submission is received. The commissioner shall annually report to
 7.18 the board a summary of the actions taken in response to complaints referred by the board.

7.19 Subd. 9. **Data Practices Act.** The board is subject to chapter 13, the Minnesota
 7.20 Government Data Practices Act, and shall protect data classified as not public from
 7.21 unlawful disclosure.

7.22 Subd. 10. **Official records.** The board shall make and preserve all records necessary
 7.23 for full and accurate knowledge of its official activities in accordance with section 15.17.

7.24 **EFFECTIVE DATE.** This section is effective September 1, 2009.

7.25 Sec. 5. **[326B.804] RECIPROCITY WITH OTHER STATES.**

7.26 (a) The commissioner may enter into reciprocity agreements for residential building
 7.27 contractor and residential building remodeler licenses with another state if approved by the
 7.28 board. Once approved by the board, the commissioner may issue a temporary residential
 7.29 building contractor or residential remodeler license without requiring the applicant to
 7.30 pass an examination provided the applicant:

7.31 (1) submits an application under section 326B.805;

7.32 (2) pays the fee required under section 326B.815; and

7.33 (3) holds a valid comparable license in the state participating in the agreement.

7.34 (b) Agreements are subject to the following:

8.1 (1) the parties to the agreement must administer a statewide licensing program that
8.2 includes examination and qualifying experience or training comparable to that required
8.3 in Minnesota;

8.4 (2) the experience and training requirements under which an individual applicant
8.5 qualified for examination in the qualifying state must be deemed equal to or greater than
8.6 required for an applicant making application in Minnesota at the time the applicant
8.7 acquired the license in the qualifying state;

8.8 (3) the applicant must have acquired the license in the qualifying state through
8.9 an examination deemed equivalent by the commissioner to the license examination
8.10 in Minnesota;

8.11 (4) at the time of application, the applicant must hold a valid license in the qualifying
8.12 state and have held the license continuously for at least one year before making application
8.13 in Minnesota;

8.14 (5) an applicant is not eligible for a license under this section if the applicant has
8.15 failed the license examination in Minnesota, or if the applicant's license has been revoked
8.16 or suspended;

8.17 (6) an applicant who has failed to renew a residential building contractor or licensed
8.18 residential remodeler license for two years or more after its expiration is not eligible for
8.19 a license under this section; and

8.20 (7) any person granted a temporary license under this section must obtain a
8.21 permanent license pursuant to section 326B.805 within six months of receiving a
8.22 temporary license.

8.23 **EFFECTIVE DATE.** This section is effective September 1, 2009.