

## Form #3

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

  
Authorized Signature

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 27, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No ) West Virginia Division of Labor  
Room B-749, Building #6  
State Capitol Complex  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: ~~Supervision of Plumbing Work~~

1. Authorizing statute(s) citation W Va Code §21-14-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 27, 2007

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 27, 2007

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached Comments Attach

No comments received \_\_\_\_\_

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2007

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Andrew A. Brown, Asst. to the Commissioner

West Virginia Division of Labor

Room B-749, Building #6

State Capitol Complex , Charleston, WV 25305

Ph: (304) 558-7890, ext.#112 FAX (304) 558-2273

abrown@labor.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

## Response To Public Comments

Two organizations submitted comments to the proposed rule , Supervision of Plumbing Work. The Affiliated Construction Trade Foundation and the Home Builders Association of West Virginia submitted identical comments. Those comments and the Division's response is as follows:

1. It was suggested that the Division consider the adoption of the current State Building Code (87 CSR 4) as the state plumbing standard instead of a direct reference to the International Plumbing Code. *The Division agreed with this suggestion and the change was made to the proposed rule.*
2. It was suggested that the Division consider a license fee structure incorporating different fees for different classes of licensure and also provide for varying renewal cycles. *The Division rejected this suggestion as it would create administrative problems within the licensing section. All other licenses issued by the Division have one year effective periods and within each program, the fees are consistent. The Division chose to maintain this consistency with this new process.*
3. It was suggested that the Division remove the license test for the "plumber in training" classification because this was an entry level classification. The Division rejected this suggestion in the belief that all licensees, regardless of skill level, should be tested for basic knowledge.
4. It was suggested that clarification be provided for the required supervision of a plumber in training. It was further suggested that a plumber in training could only work under the direct supervision of a Journeyman or Master Plumber on a one to one ratio. *The Division has taken no action on this suggestion deferring the issue to the Legislative Rule-making Review Committee for the possibility of drafting legislation to clarify the intent of the statute. By definition, a plumber in training is any plumber with less than 8,000 hours of experience and must work under direct supervision. This would eliminate self-employed plumbers (sole-proprietorship) who have been in the business for less than four years (8,000 hours.). This plumber would have to employ a qualified plumber to provide their own supervision. The Division believes that this was not the Legislature's intent when it mandated supervision of plumbers.*
5. It was suggested that licenses be so coded that the distinction can be made between a grandfathered plumber and one who was qualified by testing. *The Division agrees to this suggestion but would prefer to make that distinction administratively within the licensing process.*

# AFFILIATED CONSTRUCTION TRADES FOUNDATION

A Division of the West Virginia State Building and Construction Trades Council, AFL-CIO



Steve White

Director

600 Leon Sullivan Way  
Charleston, WV 25301

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Email: [stevewhite@actwv.org](mailto:stevewhite@actwv.org)

Website: [www.actwv.org](http://www.actwv.org)

July 24, 2007

West Virginia Division of Labor  
Attn: Andrew Brown  
Room B-748, Building 6  
State Capitol Complex  
Charleston, WV 25305

Dear Andy:

I have reviewed the proposed rule entitled Supervision of Plumbing Work, Title 42-Series 32, and want to offer some comments for your consideration.

1. Under 4.1 we suggest you refer to the "building code adopted by the State of West Virginia." This stems from the last phrase of the definition of Plumbing in the bill.

(e) "Plumbing" means the practice, materials and fixtures utilized within a building in the installation, extension and alteration of all piping, fixtures, water treatment devices, plumbing appliances and appurtenances, in connection with sanitary drainage or storm drainage facilities; the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential, commercial and institutional facilities; backflow preventers; and public or private water supply systems, **as defined by the state building code.** (Emphasis added).

While current state code does follow the International Plumbing Code, we suggested specific reference be left out of the bill so that if the state decide to make a change in the code to be followed, the licensing requirements would always be in line.

2. We suggest a revised license fee as follows; one year \$75 or three years \$150 for Journeyman and Master; \$50 per year for plumber in training. This approach will make it easier to administer, provide an incentive to get a longer license. Keep the fee in line with electricians licensing at \$50 if a three year license is taken but also with crane operators at \$75 per year.

The trainees need to be on a year-to-year basis because they may drop out or get kicked out of a training program, or they could graduate and apply for a full license at any given year. Furthermore they most likely make less money by definition.

3. We suggest you remove 7.2 (c) regarding an examination for the plumber in training classification. Since this is an entry level position a test is not warranted. A related change to 6.1 c) would be needed.

4. Some clarification of the supervision required for Plumber in Training is needed. I suggest we

state they must work under the direct supervision of a Journeyman or Master who has a valid WV license and that a Journeyman or Master may supervise no more than one Plumber in Training at any one time. Here is some suggested language:

(a) A plumber in training must work under the supervision of a licensed master or journeyman plumber. A master or journeyman plumber shall not supervise more than one plumber in training at any one time.

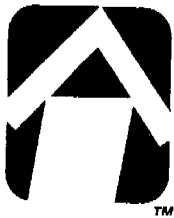
5. Licenses should be coded in a way that shows who is grand-fathered and who took the test. This will help when reciprocity agreements with other states are attempted.

Thanks,

A handwritten signature in black ink, appearing to read "Steve White", with a stylized, looped flourish at the end.

Steve White

cc: West Virginia State Pipe Trades



# HOME BUILDERS ASSOCIATION OF WEST VIRGINIA

A MEMBER OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

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July 26, 2007

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WV Division of Labor  
Attention: Andy Brown  
Room B-748 Building 6  
State Capitol Complex  
Charleston, WV 25305

Re: Rules/Regulations  
Plumbers' License

Dear Andy,

We have reviewed 42-23 (Supervision of Plumbing Work) and also met with members of the ACT Foundation and Randy Ferguson on Wednesday to discuss any mutual concerns/support we might have of the rule.

When distributed to our membership, the only comment we heard was that owners of rental property can do routine plumbing repairs but that there was no designated exemption for property management companies. We are pointing out to this member, that his concern is addressed in the statute under the definition of "Plumbing" – meaning the "practice/materials/fixtures utilized in the installation, extension and alteration of systems." All parties agree that routine maintenance duties do not require a licensed person to perform.

Steve White (ACT Foundation) indicated that comments he had previously made to you included

- 1) Clarification that national standards being used would specify that they are the ones adopted by the State of WV,
- 2) That the "state building code" be referenced (when applicable) in places and that other than referenced by name, the term "as defined by the state building code" be used,
- 3) A revised license fee allowing a person to have the option of renewing for three (3) years as well as one (1) year at a reduced cost,
- 4) Removing the language in 7.2 © which would require testing of a plumber-in-training



***A Building Force.***



Andy Brown  
Division of Labor  
July 26, 2007  
Page 2

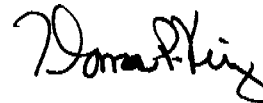
- 5) 'Coding' licenses to differentiate grandfathered license holders who have 'tested' and those who did not 'test'.

We would support the suggestions in Mr. White's letter.

We also reviewed a copy of the "Affidavit of Plumbing Experience" which was drafted by DOL. We believe it provides a means of fair assessment to document past experience.

We very much appreciate the good work that you have done in the fair interpretation of the rules/regulations mandandated by HB 2747 and the opportunity we have been given to comment. I, as well as our office and staff, will always be available for any assistance we might give to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas P. King", with a stylized, cursive script.

Thomas P. King  
President

**Do Not Mark in This Box**

2007 JUN 27 PM 3

SECRETARY OF STATE

## Review Committee

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Supervision of Plumbers

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Labor

Address: Building #6, Room B-749  
State Capitol Complex  
Charleston, WV 25305

Phone Number: (304) 558-7890 Email: abrown@labor.state.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This new legislation requires the licensure of plumbers. The total operation will be funded by a license fee of \$75 per year. It is estimated that approximately 2,700 plumbers will seek licensure. This should generate about \$202,500 in special revenue to fund the operation. Additional personnel will be required for this new activity. Initially, the division estimates the need for two office clerical positions and three field compliance officers. As shown below, the anticipated costs are within the revenue estimates. Therefore, the program will be self-supporting.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	199,400.00	192,950.00	1 97,000.00
Personal Services	170,500.00	170,500.00	1 72,000.00
Current Expenses	28,900.00	22,450.00	25,000.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	202,500.00	202,500.00	202,500.00

Rule Title: \_\_\_\_\_

Rule Title:

Supervision of Plumbers

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

See summary above. This program will be self-supporting from special revenue collected in the form of license fees.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

NONE

Date: June 27, 2007

Signature of Agency Head or Authorized Representative



## **SUMMARY**

This is a new rule. The rule is mandated by the passage of House Bill 2747, Supervision of Plumbing Work, W.Va Code §21-14. The rule sets the basic licensing criteria for the licensing of plumbers. This original rule is intended to set requirements for the "grandfather" period which shall conclude in 2009. After that period, written examinations will be required for all new licensees.

RECEIVED

2007 JUL 27 PM 4: 24

**TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR**

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**SERIES 32  
SUPERVISION OF PLUMBING WORK**

**§42-32-1. General.**

1.1. Scope. -- This legislative rule governs certification, fees, examinations, training, powers and duties of the commissioner and penalties for violations in accordance with W. Va. Code §§21-14, et seq, and 29A-3-1 et seq.

1.2. Authority. -- W. Va. Code §21-14-4.

1.3. Filing Date. --

1.4. Effective Date. --

**§42-32-2. Application and Enforcement.**

2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, materials and transactions governed or otherwise defined under coverage of the Supervision of Plumbing Work, W. Va. Code §21-14 et seq.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

**§42-32-3. Definitions.**

3.1. "Commissioner" means the commissioner of labor.

3.2. "Division" means the West Virginia Division of Labor.

3.3. "Immediate family" is limited to one or more of the following: father, mother, spouse, brother, sister, son, and/or daughter.

**§42-32-4. Adoption of Standards.**

4.1. National standards. For the enforcement of this rule, the plumbing code as adopted by the West Virginia Fire Commission in §87 CSR 4, State Building Code, is hereby incorporated by reference.

4.2. State standards. [RESERVED]

**§42-32-5. Certification Required; Exemptions.**

5.1. Effective the first day of January, two thousand-nine, no person may perform plumbing

work in this state without license issued under this rule.

5.2. This licensure requirement does not apply to:

- (a) A person who personally performs plumbing work on a single family dwelling owned or leased by that person or by a member of that person's immediate family;
- (b) A person who performs plumbing at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating the plant or establishment;
- (c) A person who performs plumbing work while employed by an employer who engages in the business of selling appliances at retail, so long as such plumbing work is performed incidental to the installation or repair of appliances sold by the employer;
- (d) A person who, while employed by a public utility or its affiliate, performs plumbing in connection with the furnishing of public utility service;
- (e) A person who performs plumbing work while engaging in the business of installing, altering or repairing water distribution or drainage lines outside the foundation walls of a building, public or private sewage treatment or water treatment systems including all associated structures or buildings, sewers or underground utility services;
- (f) A person who performs plumbing work while engaged in the installation, extension, dismantling, adjustment, repair, servicing or alteration of a heating, ventilation and air condition (HVAC) system, air-veyor system air exhaust system or air handling system;
- (g) A person who performs plumbing work at a coal mine that is being actively mined or where coal is being processed; or
- (h) A person who performs plumbing work at manufacturing, industrial or natural gas facilities.

**§42-32-6. Minimum Qualifications for Licensure.**

6.1. The commissioner shall certify any applicant for a license who:

- (a) Is at least eighteen years of age;
- (b) Submits an application on forms provided by the commissioner;
- (c) Submits copy of the required written examination scores reflecting a score of seventy percent (70%) or more: and
- (d) Pays the application fee as defined in section ten of this rule.

6.2. On or before the first day of July, two thousand nine, the commissioner may certify an applicant for a license without written examination if the applicant:

- (a) Is at least eighteen years of age;
- (b) Submits an application on forms provided by the Commissioner;
- (c) Provides a acceptable documentation or sworn affidavit which demonstrates that they meet the minimum experience requirements for the plumber license classification requested; and
- (d) Pays the application fee as defined in section ten of this rule.

6.3. A license issued under this rule is valid throughout the state, is not assignable or transferable, and is valid for one year from the date on which it was issued.

6.4. The commissioner shall provide each licensee a renewal application forty-five (45) days in advance of the license expiration. Upon return of the renewal form and payment of the applicable fee, the commissioner shall renew the license for a period of twelve (12) months. Provided, however, a license which is expired by ninety (90) days or more may not be renewed.

#### **§42-32-7. Examinations Required.**

7.1. Any person desiring a license under the provisions of this article shall submit to the commissioner an application for examination on forms provided by the commissioner.

7.2. All persons desiring license under the provisions of this article shall pass a written examination. The contents of the examination shall be based on the standards adopted under section four of this rule. All applicants are required to pass the examination for the license classification desired. The classifications of license are as follows:

- (a) Master plumber;
- (b) Journeyman plumber; or
- (c) Plumber in training.

7.3. The commissioner shall provide for the written examination of all license applicants. The examination shall test the applicant's knowledge of the standards as adopted in section four of this rule.

(a) The commissioner may:

1. Contract with a private testing agent to conduct the written examinations.

The private testing agent shall charge examination fees according to a rate schedule developed by the commissioner and the applicant shall pay all examination fees directly to the testing agent; or

2. Develop a written examination process within the division to include a fees schedule not to exceed the actual cost of administering the examinations. The license applicant shall pay all fees directly to the division in advance of the examination



(b) The minimum passing score is a score of seventy (70%) percent for each examination.

(c) An applicant who fails the examination may request and the division or private testing agent shall provide the applicant with an analysis of his or her performance on the failed examination. An applicant who fails the examination shall be afforded the opportunity to be re-examined after thirty (30) days and upon the submission of a new application and the payment of the fees required.

**§42-32-8. Denial, Suspension, Revocation, or Reinstatement of License.**

8.1. The commissioner may deny, suspend, revoke or reinstate a license.

8.2. A violation of W. Va. Code §21-14, et seq, or this rule is grounds for the denial, suspension, revocation or refusal to reinstate a license and permits the imposition of disciplinary action: Provided, That no disciplinary action against a licensee may be imposed without a proper prior notice as served under W. Va. Code §56-2-1, and an opportunity for hearing held before the commissioner or his designee under the provisions of W. Va. Code §29A-5-1, et seq, the Administrative Procedures Act, wherein the licensee shall be provided the opportunity to present evidence in person, by counsel or both and after which, if the commissioner finds a violation of this article has occurred, the commissioner may impose any disciplinary action permitted in the article or rule.

8.3. The performance of plumbing work in violation of W. Va. Code §21-14, et seq, or this rule may result in the suspension of a license for not less than twenty-four hours nor more than one year, or revocation of the license until reinstated.

8.4. Each licensed plumber shall carry proof of valid licensure on his or her person during the performance of plumbing work.

8.5. A person whose license has been revoked may apply for a new license one year after the date of the revocation.

**§42-32-9. Penalties.**

9.1. A person required to obtain a license under this article or rule, who is found performing plumbing work without a valid license on their person, shall be issued a cease and desist order. The order shall remain in effect until such time as the person comes into compliance with subsection 8.4 of this rule.

9.2. Any person continuing to engage in plumbing work after the issuance of a cease and desist order is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(a) For the first offense, a fine of not less than two hundred dollars no more than one thousand dollars;

(b) For the second offense, a fine of not less than five hundred dollars nor more than two thousand dollars, or confinement in jail for not more than six months, or both;

(c) For the third and subsequent offenses, a fine of not less than one thousand dollars nor more than five thousand dollars and confinement in jail for not less than thirty days nor more than one year.

9.3. A separate offense means each day, after the issuance of a cease and desist order, that the person performs plumbing work that is in violation of the article or this rule.

9.4. The Commissioner may pursue injunctive relief to enjoin any violation of any provision of this article or this rule.

**§42-32-10. Plumber License Fund; Fees; Disposition of Funds.**

10.1. A plumber license fund is established in the state treasurer's office in accordance with W. Va. Code §21-14-9. Payments are authorized from this fund for the enforcement of W. Va. Code §21-14 and this rule.

10.2. The annual license fee shall be seventy-five dollars (\$75) which shall cover the costs incurred for the issuance or renewal of a license.

**§42-32-11. Local License Ordinances void.**

On and after the first day of January, two thousand-nine, no city, county or other political subdivision of this state may require the licensure and supervision of plumbers as a condition to perform plumbing work within that jurisdiction. Any such requirement in effect prior to the effective date of this article shall become void as of the first day of January, two thousand-nine.

**§42-32-12. Reciprocity.**

To the extent that other states which provide for the licensing and supervision of plumbers have requirements the equivalent to this article, the commissioner, in his or her discretion, may grant licenses of the same classification without examination to plumbers licensed by other states.