CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 2626

Chapter 174, Laws of 1994

53rd Legislature
1994 Regular Session

PLUMBERS' CERTIFICATE OF COMPETENCY--CITY ENFORCEMENT PILOT PROJECT

EFFECTIVE DATE: 7/1/94

Passed by the House March 8, 1994
Yeas 95  Nays 0

__________________________
BRIAN EBERSOLE
Speaker of the
House of Representatives

Passed by the Senate March 4, 1994
Yeas 31  Nays 17

__________________________
JOEL PRITCHARD
President of the Senate

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 2626 as passed by the House of Representatives and the Senate on the dates hereon set forth.

__________________________
Marilyn Showalter
Chief Clerk

Approved March 30, 1994

__________________________
Mike Lowry
Governor of the State of Washington

FILED

March 30, 1994 - 1:24 p.m.

__________________________
Secretary of State
State of Washington
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. A new section is added to chapter 18.106 RCW to read as follows:

The department of labor and industries shall establish one pilot project in which the department will enter into an agreement with a city regarding compliance inspections by the city to enforce this chapter. Under the terms of the agreement, the city shall be permitted to submit declarations of noncompliance to the department for the department’s enforcement under RCW 18.106.180, with reimbursement to the city at an established fee. The pilot project shall be located in eastern Washington.

Sec. 2. RCW 18.106.020 and 1983 c 124 s 4 are each amended to read as follows:
(1) No person may engage in or offer to engage in the trade of plumbing without having a journeyman certificate, specialty certificate, or temporary permit, or without being supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless the person employed has a journeyman certificate, specialty certificate, or temporary permit or is supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit. For the purposes of this section, "contractor" means any person or body of persons, corporate or otherwise, engaged in any work covered by the provisions of this chapter, chapter 18.27 RCW, or chapter 19.28 RCW, by way of trade or business. However, in no case shall this section apply to a contractor who is contracting for work on his or her own residence.

(2) Violation of subsection (1) of this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of subsection (1) of this section or employs a person in violation of subsection (1) of this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of subsection (1) of this section or at which a person is employed in violation of subsection (1) of this section is a separate infraction.

(3) Notices of infractions for violations of subsection (1) of this section may be issued to:
   (a) The person engaging in or offering to engage in the trade of plumbing in violation of subsection (1) of this section;
   (b) The contractor in violation of subsection (1) of this section; and
   (c) The contractor’s employee who authorized the work assignment of the person employed in violation of subsection (1) of this section.

Sec. 3. RCW 18.106.180 and 1983 c 124 s 7 are each amended to read as follows:

An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020(3) if a person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of having a certificate or permit issued by the department in accordance with this chapter or of being supervised by a person who has such a certificate or permit. A notice of infraction
issued under this section shall be personally served on the person
named in the notice by an authorized representative of the department.

Sec. 4. RCW 18.106.190 and 1983 c 124 s 9 are each amended to read
as follows:

((1))) The form of the notice of infraction issued under this
chapter shall ((be) prescribed by the supreme court following
consultation with the department. To the extent practicable, the
notice of infraction issued under this chapter shall conform to the
notice of traffic infraction prescribed by the supreme court pursuant
to RCW 46.63.060.

(2) The notice of infraction shall include the following:

((a))) (1) A statement that the notice represents a determination
that the infraction has been committed by the person named in the
notice and that the determination shall be final unless contested as
provided in this chapter;

((b))) (2) A statement that the infraction is a noncriminal
offense for which imprisonment shall not be imposed as a sanction;

((c))) (3) A statement of the specific infraction for which the
notice was issued;

((d))) (4) A statement ((that a one hundred dollar)) of the
monetary penalty that has been established for the infraction;

((e))) (5) A statement of the options provided in this chapter for
responding to the notice and the procedures necessary to exercise these
options;

((f))) (6) A statement that at any hearing to contest the
determination the state has the burden of proving, by a preponderance
of the evidence, that the infraction was committed; and that the person
may subpoena witnesses, including the authorized representative of the
department who issued and served the notice of infraction;

((g))) (7) A statement, which the person shall sign, that the
person promises to respond to the notice of infraction in one of the
ways provided in this chapter;

((h))) (8) A statement that refusal to sign the infraction as
directed in subsection ((2)(g))) (7) of this section is a misdemeanor;
and

((i))) (9) A statement that failure to respond to a notice of
infraction as promised is a misdemeanor and may be punished by a fine
or imprisonment in jail.
Sec. 5. RCW 18.106.200 and 1983 c 124 s 8 are each amended to read as follows:

A violation designated as an infraction under this chapter shall be heard and determined by (a district court. A notice of infraction shall be filed in the district court district in which the infraction is alleged to have occurred. If a notice of infraction is filed in a court which is not the proper venue, the notice shall be dismissed without prejudice on motion of either party) an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department within fourteen days of issuance of the infraction. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction is alleged to have occurred.

Sec. 6. RCW 18.106.220 and 1983 c 124 s 11 are each amended to read as follows:

(1) A person who receives a notice of infraction shall respond to the notice as provided in this section within fourteen days of the date the notice was served.

(2) If the person named in the notice of infraction does not wish to contest the (determination) notice of infraction, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response) pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the determination is received (an appropriate order shall be entered in the court’s records, and a record of the response and order shall be furnished to the department) by the department with the appropriate payment, the department shall make the appropriate entry in its records.

(3) If the person named in the notice of infraction wishes to contest the (determination) notice of infraction, the person shall respond by (completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date
shall not be sooner than fourteen days from the date of the notice, except by agreement of the parties) filing an answer of protest with the department specifying the grounds of protest.

(4) If any person issued a notice of infraction:
   (a) Fails to respond to the notice of infraction as provided in subsection (2) of this section; or
   (b) Fails to appear at a hearing requested pursuant to subsection (3) of this section;
   the administrative law judge shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure to respond to the notice of infraction or to appear at a requested hearing.

(5) An order entered by the court under subsection (4)(b) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions in courts of limited jurisdiction.)

Sec. 7. RCW 18.106.250 and 1983 c 124 s 13 are each amended to read as follows:

(1) (A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

   (2) The court may consider the notice of infraction and any other written report made under oath submitted by the department’s authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized representative who issued and served the notice, and has the right to present evidence and examine witnesses present in court.

   (3) The administrative law judge shall conduct notice of infraction cases under this chapter pursuant to chapter 34.05 RCW.

   (2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued ((7)):

   (a) The defendant ((was registered)) who was issued a notice of infraction authorized by RCW 18.106.020(3)(a) had a certificate or permit issued by the department in accordance with this chapter, was
supervised by a person who has such a certificate or permit, or was exempt from ((registration. 
   (4))) this chapter under RCW 18.106.150; or 
(b) For the defendant who was issued a notice of infraction 
authorized by RCW 18.106.020(3)(b) or (c), the person employed or 
supervised by the defendant has a certificate or permit issued by the 
department in accordance with this chapter, was supervised by a person 
who had such a certificate or permit, or was exempt from this chapter 
under RCW 18.106.150.

(3) After consideration of the evidence and argument, the ((court)) 
administrative law judge shall determine whether the infraction was 
committed. If it has not been established that the infraction was 
committed, an order dismissing the notice shall be entered in the 
((court’s)) record((s)) of the proceedings. If it has been established 
that the infraction was committed, ((an appropriate order shall be 
entered in the court’s records. A record of the court’s determination 
and order shall be furnished to the department)) the administrative law 
judge shall issue findings of fact and conclusions of law in its 
decision and order determining whether the infraction was committed. 
((5))) (4) An appeal from the ((court’s)) administrative law 
judge’s determination or order shall be to the superior court. The 
decision of the superior court is subject only to discretionary review 
pursuant to Rule 2.3 of the Rules of Appellate Procedure.

Sec. 8. RCW 18.106.270 and 1983 c 124 s 16 are each amended to 
read as follows:

(1) A person found to have committed an infraction under RCW 
18.106.020 shall be assessed a monetary penalty of ((one)) two hundred 
fifty dollars for the first infraction, and not more than one thousand 
dollars for a second or subsequent infraction. The department shall 
set by rule a schedule of penalties for infractions imposed under this 
chapter.

(2) The ((court)) administrative law judge may waive, reduce, or 
suspend the monetary penalty imposed for the infraction for good cause 
shown.

(3) Monetary penalties collected under this chapter shall be 
((remitted as provided in chapter 3.62 RCW)) deposited in the plumbing 
certificate fund.
NEW SECTION. Sec. 9. The following acts or parts of acts are each repealed:

(1) RCW 18.106.025 and 1983 c 124 s 5; and
(2) RCW 18.106.260 and 1983 c 124 s 15.

NEW SECTION. Sec. 10. This act shall take effect July 1, 1994.
Passed the House March 8, 1994.
Passed the Senate March 4, 1994.
Approved by the Governor March 30, 1994.
Filed in Office of Secretary of State March 30, 1994.