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**HOUSE BILL 1315**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Manweller, Condotta, and Schmick

AN ACT Relating to variances in the plumbing and electrical trades; amending RCW 19.28.095, 19.28.191, 19.28.271, 18.106.010, and 18.106.200; adding a new section to chapter 19.28 RCW; and adding a new section to chapter 18.106 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 19.28 RCW to read as follows:

(1) The department must grant a variance, upon application, to a specialty or master specialty electrician who establishes that:

(a) The department changed its interpretation of this chapter or a rule adopted under this chapter with the result that work performed by the applicant is no longer within the scope of the specialty certificate;

(b)(i) The applicant performed the work at issue under a specialty certificate for at least six thousand hours.  Time spent in an apprenticeship program approved under chapter 49.04 RCW for the applicant's specialty may be substituted for up to four thousand of the six thousand hours; or

(ii) If the work at issue is the work of a telecommunications system installer, the applicant performed the work at issue for at least six thousand hours; and

(c) The applicant has no more than two final judgments for serious violations of this chapter or the rules adopted under this chapter.

(2) The department must grant a variance, upon application, to a specialty or master specialty electrician who establishes that:

(a) The department changed its enforcement of this chapter or a rule adopted under this chapter with respect to the scope of work permitted under a certificate;

(b)(i) The applicant performed the work at issue under a specialty certificate for at least six thousand hours. Time spent in an apprenticeship program approved under chapter 49.04 RCW for the applicant's specialty may be substituted for up to four thousand of the six thousand hours; or

(ii) If the work at issue is the work of a telecommunications system installer, the applicant performed the work at issue for at least six thousand hours; and

(c) The applicant has no more than two final judgments for serious violations of this chapter or the rules adopted under this chapter and no final judgments for working outside the scope of the applicant's specialty.

(3) The department must grant a variance, upon application, to a specialty or master specialty electrician who establishes that:

(a)(i) New technology renders a specialty scope of work obsolete; (ii) electricians certified in that specialty can safely perform the work using the new technology; and (iii) the work to be performed using the new technology is substantially similar to the existing scope of work;

(b)(i) The applicant performed the work in question as permitted under the appropriate specialty certificate for at least six thousand hours. Time spent in an apprenticeship program approved under chapter 49.04 RCW for the applicant's specialty may be substituted for up to four thousand of the six thousand hours; or

(ii) If the work at issue is the work of a telecommunications system installer, the applicant performed the work at issue as permitted under law for at least six thousand hours; and

(c) The applicant has no more than two final judgments for serious violations of this chapter or the rules adopted under this chapter.

(4) A variance application under this section stays any penalty assessed that is not final against the following with respect to work that is the subject of the variance application: (a) The specialty or master specialty electrician who applied for the variance; (b) the general or specialty electrical contractor who engaged the electrician; and (c) the general or specialty electrical contractor administrator or master electrician acting as administrator with respect to the work. The application also stays the time period for an appeal of the penalty assessed. The stay is in effect until the final decision on the variance. If the variance is granted, any pending penalty assessments must be dismissed.

(5) A variance granted under this section modifies the holder's certificate of competency and authorizes the holder to perform the work as specified in the variance. The department must grant the variance with respect to all of the work for which the applicant requested a variance and for which the criteria for a variance are met.

(6) If the department denies an application for a variance, the applicant may appeal to the board. The board must assign the appeal to an administrative law judge. The appeal must be filed within twenty days after notice of the denial. An applicant may not reapply for a variance for the same work until the applicant has completed six thousand hours of the required work since the prior variance application.

(7) An applicant must accompany an application under this section with a fee of one hundred dollars. The department must deposit the fee in the electrical license fund.

(8) For purposes of this section:

(a) "Changed its interpretation" includes a rule amendment; a new or revised interpretive or administrative policy; or a final written order, ruling, approval, opinion, advice, determination, or interpretation of the department that is inconsistent with a prior written order, ruling, approval, opinion, advice, determination, or interpretation of the department or any representative of the department.

(b) "Changed its enforcement" includes an increase in the number of inspectors, change in enforcement emphasis, or any other increased enforcement by the department or any representative of the department.

**Sec.**  RCW 19.28.095 and 2003 c 399 s 602 are each amended to read as follows:

(1) The scope of work for the equipment repair specialty involves servicing, maintaining, repairing, or replacing utilization equipment and any work for which a variance has been granted under section 1(3) of this act.

(2) "Utilization equipment" means equipment that is: (a) Self-contained on a single skid or frame; (b) factory built to standardized sizes or types; (c) listed or field evaluated by a laboratory or approved by the department under WAC 296-46B-030; and (d) connected as a single unit to a single source of electrical power limited to a maximum of six hundred volts. The equipment may also be connected to a separate single source of electrical control power limited to a maximum of two hundred fifty volts. Utilization equipment does not include devices used for occupant space heating by industrial, commercial, hospital, educational, public, and private commercial buildings, and other end users.

(3) "Servicing, maintaining, repairing, or replacing utilization equipment" includes:

(a) The like-in-kind replacement of the equipment if the same unmodified electrical circuit is used to supply the equipment being replaced;

(b) The like-in-kind replacement or repair of remote control components that are integral to the operation of the equipment;

(c) The like-in-kind replacement or repair of electrical components within the equipment; and

(d) The disconnection, replacement, and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit.

(4) "Servicing, maintaining, repairing, or replacing utilization equipment" does not include:

(a) The installation, repair, or modification of wiring that interconnects equipment and/or remote components, branch circuit conductors, services, feeders, panelboards, disconnect switches, motor control centers, remote magnetic starters/contactors, or raceway/conductor systems interconnecting multiple equipment or other electrical components;

(b) Any work providing electrical feeds into the power distribution unit or installation of conduits and raceways; or

(c) Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations), except for electrical work in sewage pumping stations.

**Sec.**  RCW 19.28.191 and 2014 c 156 s 2 are each amended to read as follows:

(1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journey level electrician, journey level electrician, master specialty electrician, or specialty electrician certificate of competency.

(a) Before July 1, 2005, an applicant who possesses a valid journey level electrician certificate of competency in effect for the previous four years and a valid general administrator's certificate may apply for a master journey level electrician certificate of competency without examination.

(b) Before July 1, 2005, an applicant who possesses a valid specialty electrician certificate of competency, in the specialty applied for, for the previous two years and a valid specialty administrator's certificate, in the specialty applied for, may apply for a master specialty electrician certificate of competency without examination.

(c) Before December 1, 2003, the following persons may obtain an equipment repair specialty electrician certificate of competency without examination:

(i) A person who has successfully completed an apprenticeship program approved under chapter 49.04 RCW for the machinist trade; and

(ii) A person who provides evidence in a form prescribed by the department affirming that: (A) He or she was employed as of April 1, 2003, by a factory-authorized equipment dealer or service company; and (B) he or she has worked in equipment repair for a minimum of four thousand hours.

(d) To be eligible to take the examination for a master journey level electrician certificate of competency, the applicant must have possessed a valid journey level electrician certificate of competency for four years.

(e) To be eligible to take the examination for a master specialty electrician certificate of competency, the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(f) To be eligible to take the examination for a journey level certificate of competency, the applicant must have:

(i) Worked in the electrical construction trade for a minimum of eight thousand hours, of which four thousand hours shall be in industrial or commercial electrical installation under the supervision of a master journey level electrician or journey level electrician and not more than a total of four thousand hours in all specialties under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Specialty electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journey level electrician; or

(ii) Successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade.

(g)(i) To be eligible to take the examination for a specialty electrician certificate of competency, the applicant must have:

(A) Worked in the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), or other new nonresidential specialties as determined by the department in rule under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours;

(B) Worked in the appliance repair specialty as determined by the department in rule, restricted nonresidential maintenance as determined by the department in rule, the equipment repair specialty as determined by the department in rule, the pump and irrigation specialty other than as defined by (g)(i)(A) of this subsection or domestic pump specialty as determined by the department in rule, or a specialty other than the designated specialties in (g)(i)(A) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. Except as authorized by any variance granted under section 1(3) of this act, the restricted nonresidential maintenance specialty is limited to a maximum of 277 volts and 20 amperes for lighting branch circuits and/or a maximum of 250 volts and 60 amperes for other circuits, but excludes the replacement or repair of circuit breakers. The initial period must be spent under one hundred percent supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (g)(i)(A) of this subsection, however, until the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department; or

(C) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade.

(ii) In meeting the training requirements for the pump and irrigation or domestic pump specialties, the individual shall be allowed to obtain the experience required by this section at the same time the individual is meeting the experience required by RCW 18.106.040(1)(c). After meeting the training requirements provided in this section, the individual may take the examination and upon passing the examination, meeting additional training requirements as may still be required for those seeking a pump and irrigation, or a domestic pump specialty certificate as defined by rule, and paying the applicable fees, the individual must be issued the appropriate certificate. The department may include an examination for specialty plumbing certificate defined in RCW 18.106.010(10)(c) with the examination required by this section. The department, by rule and in consultation with the electrical board, may establish additional equivalent ways to gain the experience requirements required by this subsection. Individuals who are able to provide evidence to the department, prior to January 1, 2007, that they have been employed as a pump installer in the pump and irrigation or domestic pump business by an appropriately licensed electrical contractor, registered general contractor defined by chapter 18.27 RCW, or appropriate general specialty contractor defined by chapter 18.27 RCW for not less than eight thousand hours in the most recent six calendar years shall be issued the appropriate certificate by the department upon receiving such documentation and applicable fees. The department shall establish a single document for those who have received both an electrical specialty certification as defined by this subsection and have also met the certification requirements for the specialty plumber as defined by RCW 18.106.010(10)(c), showing that the individual has received both certifications. No other experience or training requirements may be imposed.

(iii) Before July 1, 2015, an applicant possessing an electrical training certificate issued by the department is eligible to apply one hour of every two hours of unsupervised telecommunications system installation work experience toward eligibility for examination for a limited energy system certificate of competency (as specified in WAC 296-46B-920(2)(e)), if:

(A) The telecommunications work experience was obtained while employed by a contractor licensed under this chapter as a general electrical contractor (as specified in WAC 296‑46B‑920(1)) or limited energy system specialty contractor (as specified in WAC 296-46B-920(2)(e)); and

(B) Evidence of the telecommunications work experience is submitted in the form of an affidavit prescribed by the department.

(h) Any applicant for a journey level electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may substitute up to two years of the technical or trade school program for two years of work experience under a master journey level electrician or journey level electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to apply armed service work experience towards qualification to take the examination for the journey level electrician certificate of competency.

(i) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Any applicant who has received training in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(j) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journey level electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(k) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, "full-time basis" means two thousand hours.

**Sec.**  RCW 19.28.271 and 2011 c 301 s 7 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.161 through 19.28.271 who has not been issued a certificate of competency, a temporary permit, or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency, a temporary permit, or a training certificate under RCW 19.28.161 through 19.28.271, and photo identification. The department may establish by rule a requirement that the individual also wear and visibly display his or her certificate or permit.

(2) Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.161 through 19.28.271 shall be assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.161 through 19.28.271. An appeal may be made to the board as is provided in RCW 19.28.131. The appeal shall be filed within twenty days after the notice of the penalty is given to the assessed party using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The time for an appeal is stayed while a variance application under section 1 of this act is pending for the work that is the subject of the penalty. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.161 through 19.28.271 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates RCW 19.28.161 through 19.28.271 is a separate violation.

(3) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of RCW 19.28.161 through 19.28.271 or any rules adopted under RCW 19.28.161 through 19.28.271 are violated.

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

(1) The department must grant a variance, upon application, to a specialty plumber who establishes that:

(a) The department changed its interpretation of this chapter or a rule adopted under this chapter with the result that work performed by the applicant is no longer within the scope of the specialty certificate;

(b) The applicant performed the work at issue under a specialty certificate for at least six thousand hours. Time spent in an apprenticeship program approved under chapter 49.04 RCW for the applicant's specialty may be substituted for up to four thousand of the six thousand hours; and

(c) The applicant has no more than two final judgments for serious violations of this chapter or the rules adopted under this chapter.

(2) The department must grant a variance, upon application, to a specialty plumber who establishes that:

(a) The department changed its enforcement of this chapter or a rule adopted under this chapter with respect to the scope of work permitted under a certificate;

(b) The applicant performed the work at issue under a specialty certificate for at least six thousand hours. Time spent in an apprenticeship program approved under chapter 49.04 RCW for the applicant's specialty may be substituted for up to four thousand of the six thousand hours; and

(c) The applicant has no more than two final judgments for serious violations of this chapter or the rules adopted under this chapter and no final judgments for working outside the scope of the applicant's specialty.

(3) The department must grant a variance, upon application, to a specialty plumber who establishes that:

(a)(i) New technology renders a specialty scope of work obsolete; (ii) plumbers certified in that specialty can safely perform the work using the new technology; and (iii) the work to be performed using the new technology is substantially similar to the existing scope of work;

(b) The applicant performed the work in question as permitted under the appropriate specialty certificate for at least six thousand hours. Time spent in an apprenticeship program approved under chapter 49.04 RCW for the applicant's specialty may be substituted for up to four thousand of the six thousand hours; and

(c) The applicant has no more than two final judgments for serious violations of this chapter or the rules adopted under this chapter.

(4) A variance application stays any penalty assessed that is not final against the following with respect to work that is the subject of the variance application: (a) The specialty plumber who applied for the variance; (b) the contractor who engaged the specialty plumber; and (c) the employee of the contractor who directed the work. The application also stays the time period for an appeal of the penalty assessed.  The stay is in effect until the final decision on the variance. If the variance is granted, any pending penalty assessments must be dismissed.

(5) A variance granted under this section modifies the holder's certificate of competency and authorizes the holder to perform the work as specified in the variance. The department must grant the variance with respect to all of the work for which the applicant requested a variance and for which the criteria for a variance are met.

(6) If the department denies an application for a variance, the applicant may appeal to the department. The department must assign the appeal to an administrative law judge. The appeal must be filed within twenty days after notice of the denial. An applicant may not reapply for a variance for the same work until the applicant has completed six thousand hours of the required work since the prior variance application.

(7) An applicant must accompany an application under this section with a fee of one hundred dollars. The department must deposit the fee in the plumbing certificate fund.

(8) For purposes of this section:

(a) "Changed its interpretation" includes a rule amendment; a new or revised interpretive or administrative policy; or a final written order, ruling, approval, opinion, advice, determination, or interpretation of the department that is inconsistent with a prior written order, ruling, approval, opinion, advice, determination, or interpretation of the department or any representative of the department.

(b) "Changed its enforcement" includes an increase in the number of inspectors, change in enforcement emphasis, or any other increased enforcement by the department or any representative of the department.

**Sec.**  RCW 18.106.010 and 2013 c 23 s 14 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory board" means the state advisory board of plumbers.

(2) "Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of this chapter by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of this chapter.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of department of labor and industries.

(5) "Journey level plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter.

(6) "Like-in-kind" means having similar characteristics such as plumbing size, type, and function, and being in the same location.

(7) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems.

(8) "Medical gas piping installer" means a journey level plumber who has been issued a medical gas piping installer endorsement.

(9) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems within a building. Installation in a water system of water softening or water treatment equipment is not within the meaning of plumbing as used in this chapter.

(10) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to the following scopes of work and any work for which a variance has been granted under section 5(3) of this act:

(a) Installation, maintenance, and repair of the plumbing of single-family dwellings, duplexes, and apartment buildings that do not exceed three stories;

(b) Maintenance and repair of backflow prevention assemblies; or

(c) A domestic water pumping system consisting of the installation, maintenance, and repair of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to: (A) A single-family dwelling, duplex, or other similar place of residence; (B) a public water system, as defined in RCW 70.119.020 and as limited under RCW 70.119.040; or (C) a farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space, including but not limited to an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either: (A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journey level plumber, specialty plumber, or trainee, as defined in this chapter; or (B) a person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

**Sec.**  RCW 18.106.200 and 1996 c 147 s 5 are each amended to read as follows:

A violation designated as an infraction under this chapter shall be heard and determined by 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 twenty days of issuance of the infraction. The time for an appeal is stayed while a variance application is pending under section 5 of this act for the work that is the subject of the penalty. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction is alleged to have occurred.

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