

1 **SHB 2626 - H AMD 1062 ADOPTED 2-14-94**

2 By Representatives Mastin, Sommers, Grant and Chandler

3 Strike everything after the enacting clause and insert the
4 following:

5 "NEW SECTION. **Sec. 1.** A new section is added to chapter
6 18.106 RCW to read as follows:

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

16
17 **Sec. 2.** RCW 18.106.020 and 1983 c 124 s 4 are each amended
18 to read as follows:

19 (1) No person may engage in or offer to engage in the trade
20 of plumbing without having a journeyman certificate, specialty
21 certificate, or temporary permit, or without being supervised by
22 a person who has a journeyman certificate, specialty certificate,
23 or temporary permit. No person may employ a person to engage in
24 or offer to engage in the trade of plumbing unless the person
25 employed has a journeyman certificate, specialty certificate, or
26 temporary permit or is supervised by a person who has a
27 journeyman certificate, specialty certificate, or temporary
28 permit.

29 (2) Violation of subsection (1) of this section is an
30 infraction. Each day in which a person engages in the trade of
31 plumbing in violation of subsection (1) of this section or

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

6 (3) Notices of infractions for violations of subsection (1)
7 of this section may be issued to:

8 (a) The person engaging in or offering to engage in the
9 trade of plumbing in violation of subsection (1) of this section;

10 (b) The employer of a person employed in violation of
11 subsection (1) of this section; and

12 (c) The employer's supervisor who authorized the work
13 assignment of the person employed in violation of subsection (1)
14 of this section.

15
16 **Sec. 3.** RCW 18.106.180 and 1983 c 124 s 7 are each amended
17 to read as follows:

18 An authorized representative of the department may issue a
19 notice of infraction as specified in RCW 18.106.020(3) if a
20 person who is doing plumbing work or who is offering to do
21 plumbing work fails to produce evidence of having a certificate
22 or permit issued by the department in accordance with this
23 chapter or of being supervised by a person who has such a
24 certificate or permit. A notice of infraction issued under this
25 section shall be personally served on the person named in the
26 notice by an authorized representative of the department.
27

28 **Sec. 4.** RCW 18.106.190 and 1983 c 124 ú 9 are each amended
29 to read as follows:

30 ~~((+1))~~ The form of the notice of infraction issued under
31 this chapter shall ~~([be] prescribed by the supreme court~~
32 ~~following consultation with the department. To the extent~~
33 ~~practicable, the notice of infraction issued under this chapter~~

1 shall conform to the notice of traffic infraction prescribed by
2 the supreme court pursuant to RCW 46.63.060.

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

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

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

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

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

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

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

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

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

30 ~~((i))~~(9) A statement that failure to respond to a notice
31 of infraction as promised is a misdemeanor and may be punished by
32 a fine or imprisonment in jail.

33

1 **Sec. 5.** RCW 18.106.200 and 1983 c 124 ú 8 are each amended
2 to read as follows:

3 A violation designated as an infraction under this chapter
4 shall be heard and determined by ~~((a district court. A notice of~~
5 ~~infraction shall be filed in the district court district in which~~
6 ~~the infraction is alleged to have occurred. If a notice of~~
7 ~~infraction is filed in a court which is not the proper venue, the~~
8 ~~notice shall be dismissed without prejudice on motion of either~~
9 ~~party)) an administrative law judge of the office of~~

10 administrative hearings. If a party desires to contest the
11 notice of infraction, the party shall file a notice of appeal
12 with the department within fourteen days of issuance of the
13 infraction. The administrative law judge shall conduct hearings
14 in these cases at locations in the county where the infraction is
15 alleged to have occurred.

16
17 **Sec. 6.** RCW 18.106.220 and 1983 c 124 ú 11 are each amended
18 to read as follows:

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

22 (2) If the person named in the notice of infraction does not
23 wish to contest the ~~((determination))~~ notice of infraction, the
24 person shall ~~((respond by completing the appropriate portion of~~
25 ~~the notice of infraction and submitting it, either by mail or in~~
26 ~~person, to the court specified on the notice. A check or money~~
27 ~~order in the amount of the penalty prescribed for the infraction~~
28 ~~must be submitted with the response))~~ pay to the department, by
29 check or money order, the amount of the penalty prescribed for
30 the infraction. When a response which does not contest the
31 determination is received~~((, an appropriate order shall be~~
32 ~~entered in the court's records, and a record of the response and~~
33 ~~order shall be furnished to the department))~~ by the department

1 with the appropriate payment, the department shall make the
2 appropriate entry in its records.

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

13 (4) If any person issued a notice of infraction:

14 (a) Fails to respond to the notice of infraction as provided
15 in subsection (2) of this section; or

16 (b) Fails to appear at a hearing requested pursuant to
17 subsection (3) of this section;
18 the ((court)) administrative law judge shall enter an appropriate
19 order assessing the monetary penalty prescribed for the
20 infraction and shall notify the department of the failure to
21 respond to the notice of infraction or to appear at a requested
22 hearing.

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

28
29
30 **Sec. 7.** RCW 18.106.250 and 1983 c 124 ú 13 are each amended
31 to read as follows:

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

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

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

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

20 (a) The defendant ((was registered)) who was issued a notice
21 of infraction authorized by RCW 18.106.020(3)(a) had a
22 certificate or permit issued by the department in accordance with
23 this chapter, was supervised by a person who has such a
24 certificate or permit, or was exempt from ((registration.

25 ~~(4))~~ this chapter under RCW 18.106.150; or

26 (b) For the defendant who was issued a notice of infraction
27 authorized by RCW 18.106.020(3)(b) or (c), the person employed or
28 supervised by the defendant has a certificate or permit issued by
29 the department in accordance with this chapter, was supervised by
30 a person who had such a certificate or permit, or was exempt from
31 this chapter under RCW 18.106.150.

32 (3) After consideration of the evidence and argument, the
33 ~~((court))~~ administrative law judge shall determine whether the

1 infraction was committed. If it has not been established that
2 the infraction was committed, an order dismissing the notice
3 shall be entered in the ~~((court's))~~ record~~((s))~~ of the
4 proceedings. If it has been established that the infraction was
5 committed, ~~((an appropriate order shall be entered in the court's~~
6 ~~records. A record of the court's determination and order shall~~
7 ~~be furnished to the department))~~ the administrative law judge
8 shall issue findings of fact and conclusions of law in its
9 decision and order determining whether the infraction was
10 committed.

11 ~~((+5))~~(4) An appeal from the ~~((court's))~~ administrative law
12 judge's determination or order shall be to the superior court.
13 The decision of the superior court is subject only to
14 discretionary review pursuant to Rule 2.3 of the Rules of
15 Appellate Procedure.

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

19 (1) A person found to have committed an infraction under RCW
20 18.106.020 shall be assessed a monetary penalty of ~~((one))~~ two
21 hundred fifty dollars for the first infraction, and not more than
22 one thousand dollars for a second or subsequent infraction. The
23 department shall set by rule a schedule of penalties for
24 infractions imposed under this chapter.

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

28 (3) Monetary penalties collected under this chapter shall be
29 ~~((remitted as provided in chapter 3.62 RCW))~~ deposited in the
30 plumbing certificate fund.

1 NEW SECTION. **Sec. 9.** The following acts or parts of acts
2 are each repealed:

3 (1) RCW 18.106.025 and 1983 c 124 s 5; and

4 (2) RCW 18.106.260 and 1983 c 124 s 15.

5
6 NEW SECTION. **Sec. 10.** This act shall take effect July 1,
7 1994."

EFFECT: Strikes the substitute bill and incorporates the following provisions:

(1) One pilot project for enforcement of plumbing certificate of competency requirements will be established instead of two pilots. The pilot project agreement will specify the reimbursement fee to be received by the city for submitting declarations of noncompliance.

(2) Enforcement of plumbing certificate of competency requirements is moved from district court to an administrative hearing conducted by an administrative law judge. Penalties collected for infractions are deposited in the plumbing certificate fund instead of being distributed under the district court penalty formula to the county and the Public Safety and Education Account.

(3) Adds an effective date of July 1, 1994.

(4) Retains the provisions of the substitute bill that established a violation of the plumbing certificate of competency requirements for employing a person without a required certificate and that increased the penalty for a first offense from \$100 to \$250 and established a maximum penalty of \$1,000 for second and subsequent violations.