

WSR 21-23-080
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 16, 2021, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-104.

Title of Rule and Other Identifying Information: Proposed changes to WAC 296-46B-995, Electrical board—Appeal rights and hearings.

Hearing Location(s): On January 6, 2022, at 9:00 a.m., virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) by visiting [Date of Intended Adoption: March 1, 2022.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDk4ZDMYnZUtYmQxNC00MTQyLWIyZmUtZjYxNGJlY2JkNTg3%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22acb1df6f-3588-43aa-b503-63aebce21ddc%22%7d; or calling (audio only) 1-253-372-2181, Phone Conference ID 495 867 492# (pound sign must be entered). The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.</p></div><div data-bbox=)

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@lni.wa.gov, fax 360-902-5292, by 5 p.m., on January 6, 2021.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@lni.wa.gov, by December 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose amendments to the electrical rules governing the electrical board, appeals and the appeals process under WAC 296-46B-995. The rules governing appeals and the appeal process before the electrical board are confusing and out of date. L&I accepted a petition for rule making from the state's electrical board to amend the rules for the purposes of clarifying, simplifying, and making the procedures for appeals to the board easier to understand and navigate. This rule making is necessary to propose amendments requested by the petitioner so the rules are up-to-date and clear for those that appeal decisions to the board. The proposed amendments will:

- Modify the procedural requirements for the electrical board and electrical board meetings;
- Modify the appeal and hearing requirements for matters to the board; and
- Modify rules for general housekeeping, such as punctuation, typographical and reference corrections, formatting, reorganizing and relocating requirements, removal of obsolete language, etc.

Reasons Supporting Proposal: This rule making is in response to a petition for rule making. The rule changes are necessary to ensure the rules are clear, easier to understand, and navigate for persons appealing decisions to the board.

Statutory Authority for Adoption: Chapter 19.28 RCW; RCW 19.28.031, 19.28.251.

Statute Being Implemented: Chapter 19.28 RCW; RCW 19.28.031, 19.28.251.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Wayne Molesworth, Program Manager, Tumwater, Washington, 360-480-5673; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt from the economic analysis requirement by meeting the following exemption criteria listed in RCW 34.05.328 (5) (b) including:

- Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;
- Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and
- Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

November 16, 2021
Joel Sacks
Director

OTS-3056.2

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

WAC 296-46B-995 Electrical board—Appeal rights and hearings.

General.

~~(1) (Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board.)~~ Electrical board.

~~(a) Except as provided in chapters 19.28 and 42.30 RCW, Open Public Meetings Act, and this chapter, all proceedings will be conducted according to chapter 34.05 RCW, Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. ((See chapter 34.05 RCW, Administrative Procedure Act for specific definitions not described in this chapter.~~

~~(2))~~ (b) See RCW 19.28.311 for the composition of the electrical board.

~~((3))~~ (c) The board adopts the current edition of the "Roberts' Rules of Order, Newly Revised."

~~((4))~~ (d) The board ((will)) holds regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311. Board meetings may be scheduled in a variety of geographic locations in Washington.

~~((5))~~ (e) All hearings before the board will be held on regularly scheduled meeting dates unless the board determines that an alternate date is necessary.

~~(f) The ((director or the)) chairperson or a majority of the members of the board may call ((a)) special meetings ((at any time)) as provided in RCW 42.30.080.~~

~~((6))~~ (g) Each board member ((must)) will be notified ((in writing)) of the agenda, date, time, and place of each regular and special meeting((. "Writing" includes by electronic mail, also known as "email," if the member has provided an email address for such notice)).

~~((7))~~ (h) The board ((or department)) may elect to have ((an appeal heard by the office of administrative hearings either tape)) board meetings recorded or transcribed by a court reporter((; and the board may so elect regarding hearings or board reviews heard by the board as a whole)).

~~((8))~~ (i) A majority of the board constitutes a quorum for purposes of rendering any decision.

~~((a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.~~

~~(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.~~

~~(c) If the board selects the method in (b) of this subsection, at the time of the hearing, the board will set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in (b) and (c) of this subsection may occur by U.S. mail, facsimile or by electronic mail and will be determined by the board at the hearing; the members' votes will be public record.~~

~~(9))~~ (j) Board members may attend meetings in person, via electronic means, or by telephone.

(k) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board (~~(, 7273 Linderson Way)~~) as follows:

By mail: Department of Labor and Industries, P.O. Box 44460, Olympia, WA 98504-4460. ((Twenty copies of filings and documents must))

By personal delivery: Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501.

Documents may be submitted by ordinary mail, certified or registered mail, ((or by)) personal delivery ((. Filings and documents must be received no later than forty-five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.

~~(10) All hearings before the board as a whole will be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary.~~

~~(11) All notices of appeal, with a certified check payable to the department in the amount specified in subsection (12), (15), (16), or (18) of this section if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before the regularly scheduled board meeting at which the hearing would occur. A separate appeal fee is required for each entity's appeal of a specific violation type (e.g., for a single entity, the designated administrator, multiple alleged violations of RCW 19.28.061 (5) (a) — Designated administrator not available, RCW 19.28.061 (5) (d) — Designated administrator fails to ensure proper permit is purchased, and RCW 19.28.061 (5) (e) — Designated administrator fails to ensure corrections are made would require three of the applicable appeal amounts; one for each specific violation type). The total appeal fee for each entity seeking an appeal hearing is one thousand dollars maximum for all violation types. For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs, testimony, or documents for the board's consideration at least forty-five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting), or in an electronic manner acceptable to the department.~~

(1) Except for original appeal documents and notices of appeal from decisions of either the office of administrative hearings or a city or town, any documents a party wants the board to consider at the hearing must be filed with the chief electrical inspector, as secretary to the board, by the dates specified in the notice of hearing letter. Documents submitted after the deadlines may be excluded at the discretion of the board chair as presiding officer in accordance with WAC 10-08-140 (2) (b).

Appeals

~~((12) Appeals of penalties issued by the department.))~~ (2) General appeal requirements.

(a) A party may appeal ((a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal will be assigned to the office of administrative hearings)) the following matters pursuant to chapter 19.28 RCW to the board: Penalties

issued by the department, proposed decisions by the office of administrative hearings, suspension, revocation, or nonrenewals, disputes relating to department interpretation per RCW 19.28.111, 19.28.480, or 19.28.531, appeals of a continuing or basic trainee class or instructor for denials or revocations per WAC 296-46B-970, appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation, and penalty decisions issued through an appellate process of a city or town.

(b) The appeal must be filed within twenty days after ((the notice)) service of the decision ((or penalty is given to the assessed party either by personal service or 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 must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department. The appeal fee for penalties must be in the sum of two hundred dollars or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars. A separate appeal fee is required for each violation type with a maximum of one thousand dollars for all violation types. The appeal fee for all other appeals is two hundred dollars unless specified otherwise.

(c) The issues on appeal must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only. Appeals must identify the contentions of the appellant, and if applicable, must specify to which conclusions of law and findings of fact the party takes exception.

(d) The parties to the appeal will be notified of the date, time, and location of the appeal hearing by letter from the chief electrical inspector, as secretary to the board. The notice letter may also include deadlines for filing memorandums of authorities, prehearing conference or other matters necessary for the smooth adjudication of the appeal. Failure to comply with the deadlines outlined in the notice of hearing letter may result in exclusion of the documents. If a party is unable to attend the scheduled hearing due to the geographic location of the meeting, they must immediately notify the chief electrical inspector, as secretary to the board. The appeal may also be rescheduled for good cause shown.

(e) Requests to reschedule a hearing date must be in writing and made at least thirty days prior to the scheduled meeting at which the appeal is to be heard. The chairperson to the board, as the presiding officer, may grant or deny the request based on the needs of the parties.

(f) If either party intends to file a dispositive motion, they must notify the chief electrical inspector, as secretary to the board, no later than forty-five days prior to the scheduled hearing. The secretary will consult with the presiding officer to determine a briefing schedule so that the motion can be ruled upon at least fourteen days prior to the meeting at which the appeal is scheduled to be heard.

(g) Appeals received at least sixty days before the next regularly scheduled board meeting will be heard at that meeting. When an appeal is received less than sixty days prior to the next regularly scheduled board meeting, the appeal will be scheduled for the following regularly scheduled board meeting.

(h) The board may elect to have the assistance of an administrative law judge in any proceeding.

(3) Appeals of penalties issued by the department.

(a) Appeals will be assigned to the office of administrative hearings who will conduct the hearing pursuant to chapter 34.05 RCW and issue a proposed decision and order.

(b) In all appeals of penalties issued by the department, the department has the burden of proof by a preponderance of the evidence.

~~((13))~~ (4) Appeals of proposed decisions issued by the office of administrative hearings.

~~(a) ((A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs, testimony, or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.~~

~~(14) Appeals of penalty decisions issued through an appellant process of a city or town.~~

~~(a) A party may appeal a decision pursuant to RCW 19.28.010(4) to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(b) The notice of appeal must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs, testimony, or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.~~

~~(15))~~ In all appeals of decision issued by the office of administrative hearings, the party aggrieved by the decision has the burden of proof by a preponderance of the evidence.

(b) All appeals of decisions issued by the office of administrative hearings will be based on the record of the hearing and conducted pursuant to chapter 34.05 RCW.

(c) If neither party timely appeals a proposed decision issued by the office of administrative hearings, the proposed decision and order shall become the final order of the board.

(5) Appeals of suspension, revocation, or nonrenewal. ((a)) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

~~((b) The appeal must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars or, for appeals of nonrenewal due to outstanding final judgments owed to the department, the amount shall be two hundred dollars or ten percent of~~

~~the outstanding penalty amount, whichever is less, but in no event less than one hundred dollars.~~

~~(16))~~ (6) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. ~~((The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.~~

~~(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs, testimony, or documents for the board's consideration at least twenty days prior to the scheduled hearing.~~

~~(17))~~ The request for review must be filed with the office of the chief electrical inspector, as secretary to the board, within twenty days after the department issues its written interpretation.

(b) Appeals according to this section must specify why the department's interpretation or application of the installation or maintenance standards is in error.

(7) Appeals of a continuing or basic trainee class, course sponsor, or instructor for denials, suspensions, or revocations.

(a) A party may ((appeal a decision issued by the department, pursuant to)) request a review of a decision of denial or modification of an application for a class or instructor issued by the department under WAC 296-46B-970 (3) (e) (iv) ((to the superior court per RCW 34.05.542(3))). The party must submit a written request for review to the chief electrical inspector, as secretary to the board, within twenty days of notification of the denial or modification. The request must include the review fee specified in WAC 296-46B-970 (3) (e) (iv). The review fee is nonrefundable.

(b) A party may appeal a suspension or revocation of a course sponsor or instructor by the department under WAC 296-46B-970 (8) (a). The party must submit a written request for review to the chief electrical inspector, as secretary to the board, within twenty days of notification of the suspension or revocation.

~~((18))~~ (8) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

~~((a))~~ A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

~~((b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(19))~~ (9) Appeals of penalty decisions issued through an appellate process of a city or town.

(a) A party may appeal a decision pursuant to RCW 19.28.010(4) to the board. The appeal must be filed within twenty days after service of the decision issued by a city or town and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) All appeals of decisions issued by a city or town will be based on the record of the hearing at the city or town and conducted pursuant to chapter 34.05 RCW.

(c) The appeal procedures will be the same as those for appeals of proposed decisions issued by the office of administrative hearings.

(d) The city or town will reimburse the department for all costs of an appeal.

(10) Judicial review of final decisions of the board.

(a) A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be ~~((done))~~ made in accordance with chapter 34.05 RCW.

~~((20) If appeal(s) according to this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.~~

~~(21) Appeals - General requirements.~~

~~(a) Appeals according to this section must specify the contentions of the appellant, and must for subsection (13) or (14) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board will not grant a hearing de novo.~~

~~(b) In appeals under subsections (13), (14), (15), (16), and (17) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.~~

~~(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.~~

~~(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.)~~ (b) A party may seek judicial review within thirty days of department decisions not specified above in accordance with RCW 34.05.570(4).

Appearance and practice before board.

~~((22))~~ (11) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

~~((23))~~ (12) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

[Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031 and 19.28.251. WSR 19-15-117, § 296-46B-995, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapter 19.28 RCW, RCW 19.28.010 and 19.28.031. WSR 17-12-021, § 296-46B-995, filed 5/30/17, effective 7/1/17. Statutory Authority: Chapter 19.28 RCW. WSR 13-03-128, § 296-46B-995, filed 1/22/13, effective 3/1/13. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551. WSR 09-20-032, § 296-46B-995, filed 9/29/09, effective 10/31/09; WSR 08-24-048, § 296-46B-995, filed 11/25/08, effective 12/31/08; WSR 08-08-084, § 296-46B-995, filed 4/1/08, effective 4/1/08; WSR 06-24-041, § 296-46B-995, filed 11/30/06, effective 12/31/06; WSR 06-05-028, § 296-46B-995, filed 2/7/06, effective 5/1/06. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2003 c 399, 2003 c 211, 2003 c 78, and 2003 c 242. WSR 04-12-049, § 296-46B-995, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2002 c 249, chapters 34.05 and 19.28 RCW. WSR 03-09-111, § 296-46B-995, filed 4/22/03, effective 5/23/03.]