

**NORTH DAKOTA STATE PLUMBING BOARD
SPECIAL MEETING MINUTES**

July 6, 2016

The North Dakota State Plumbing Board met on July 6, 2016, at 3:00 p.m., at 1110 College Drive Suite 209, Bismarck, ND, President Lon Drevecky presided.

Board members present were Jason Dirk – Journeyman Plumber, Lon Drevecky – President/Mechanical Engineer (telephonically), Dean Eman – Master Plumber (telephonically) and Heather Jones – Consumer Member.

Board member Wayne Kern – Vice President/State Health Department was absent.

Staff members present were Brent Beechie – Secretary/Chief Inspector and Kimberley Tomanek – Business Manager.

Others present was Edward Erickson – Office of the Attorney General.

OLD BUSINESS

Background Checks

President Drevecky called on Mr. Beechie to discuss background checks.

Mr. Beechie explained that at the March 9, 2015 board meeting a motion was made to give Edward Erickson with the Office of the Attorney General the authority to request an emergency bill for criminal background checks through the delayed bills committee. Mr. Erickson submitted said bill but it was denied. He added that at the last board meeting it was decided that background checks would be discussed further at a special meeting so that Mr. Erickson may attend to answer questions and provide his recommendations. Mr. Beechie concluded by saying that the plumbing authorities in Idaho, Minnesota, Montana and South Dakota do not complete background checks on licensees.

President Drevecky said that after reading the North Dakota Century Code pertaining to criminal background checks, he noticed that several other boards and commissions have already gotten the authority to complete the checks. He went on to say that the Board is looking for more information and guidance on how to proceed with this matter.

Mr. Erickson explained that there were very few boards and licensing commissions that had the authority to run backgrounds checks until after an incident happened at Valley City State University. He stated that an individual was hired as a security guard directly by the university, therefore was not required to be licensed by the Private Investigation and Security Board. Mr. Erickson added that because he was a direct hire, no criminal history background check was completed by the Private Investigation and Security Board or the university. He said that unfortunately the individual was a violent criminal who raped and murdered a student. Mr. Erickson indicated that during the legislative session immediately following the incident at Valley City State University, there was a considerable amount of boards and licensing commissions that began seeking authority to perform criminal history background checks. He went on to say

that over the years there have been several other boards and licensing commissions that have been given the same authority. Mr. Erickson stated that the North Dakota State Plumbing Board would have credible reasons to request the authority to perform criminal background checks. He ended by saying that some entities will only perform checks on an applicant after a complaint is made, but most entities choose to perform checks on all new applicants.

Mr. Eman asked who would be responsible for paying for the background checks and how long they typically take to be completed. Mr. Erickson responded by saying that the applicant would be responsible for paying the fees for the background checks as well as fingerprinting. He said that most background checks are completed in approximately two weeks.

Mr. Beechie asked whether or not background checks could be performed on just out of state applicants that do not have a reciprocity agreement with the Board. Mr. Erickson explained that by doing that it would violate commerce clause in the United State Constitution.

Mr. Beechie inquired about if the Board is given approval to perform background checks, would the Board have to start doing it immediately. Mr. Erickson said that the bill would be drafted in such a way that it is a permissive authority and not a mandated authority, so the Board can start performing the checks when it is ready.

Ms. Jones questioned whether or not the Board would be liable if an applicant that has a known felony becomes a repeat offender after he was granted licensure even after an extensive background check was completed. Mr. Erickson answered by saying that only if the Board was completely reckless and shirked its duties could it be held responsible. If a decision was based upon proper investigation and facts, but the decision proves to be wrong, there would no liability put back on the State. He said that if the Board had the authority and was completely reckless about it, then that would be a different issue. Mr. Erickson stated that regulatory decisions are protected against liability.

There was a brief discussion about how criminal background checks are processed through the North Dakota Bureau of Criminal Investigation office.

MOTION: Ms. Jones made a motion to give Edward Erickson the authority to draft a bill for permissive use of criminal history background checks that will be presented at the October 5, 2016 board meeting for final approval. Mr. Dirk seconded the motion and it was unanimously approved with board members Dirk, Drevecky, Eman and Jones voting in favor.

NEW BUSINESS

License Fees

President Drevecky called on Mr. Beechie to talk about license fees.

Mr. Beechie said that he is proposing to go through legislation to increase license fees and fee caps for plumbers and sewer and water individuals. He went on to say that the last time that license fees were increased was approximately 24 years ago. Mr. Beechie added that he is proposing that exam fees and late fees be separate fees and increased as well.

Mr. Beechie asked how things have gone for other boards and commissions in the past when requesting fee increases. Mr. Erickson responded by saying that generally the legislators go along with the board recommendations especially when the Board is backing it up with facts about their budget and the amount of time since the last time fees were increased. He indicated that most boards present a cap for the fees through legislation and then put the actual amount in Administrative Rules. Mr. Erickson said that by taking this approach, then the next time the Board wants to raise the fee amount, it would be done through Administrative Rules rather than going back through legislation. He added that the other option is going through legislation to include the cap and actual amount because it is less expensive to go through legislation than Administrative Rules, but going through legislation can only happen every other year during session.

There was a brief discussion about the costs that would be incurred going through legislation versus the administrative rules process and what the steps would be for each option. It was the general consensus of the Board that Ms. Tomanek will provide a more detailed spreadsheet with fee options and the decided upon amounts will be included in the bill that Mr. Erickson will draft and present at the October 5, 2016 board meeting.

MOTION: Ms. Jones made a motion to make license fees, exam fees and late fees all separate fees. Mr. Dirk seconded the motion and it was unanimously approved with board members Dirk, Drevecky, Eman and Jones voting in favor.

MOTION: Mr. Eman made a motion to draft a bill for legislation to include the verbiage similar to "the license fee shall be set at X for 2017-2018 and the cap will be Y. The Board may increase the license fee in the future through the Administrative Rules process". Mr. Dirk seconded the motion and it was unanimously approved with board members Dirk, Drevecky, Eman and Jones voting in favor.

ADJOURNMENT

MOTION: Mr. Eman made a motion to adjourn the meeting. Mr. Dirk seconded the motion and it was unanimously approved with board members Dirk, Drevecky, Eman and Jones voting in favor.

The meeting adjourned at 4:26 p.m., to meet again on October 5, 2016 in Bismarck.

Attest _____

President

Vice-President

Master Plumber

Journeyman Plumber

Consumer Member