

Good morning, Your Honor. My name is Rick Jacobs and I am the Minnesota Plumbing Board Chair. I have been in the plumbing industry for 30 years. I am currently the Senior Plumbing Inspector for the City of St. Paul and hold a Minnesota Master and Journey Level Plumber License, American Society of Sanitary Engineers 5110 Tester, 5120 Surveyor, and 5130 Rebuilder Backflow Prevention Certifications, and NITC Medical Gas Certification. I am a graduate of the United Associations five year instructor Training Program, have a degree in Industrial Training with a Plumbing Specialty, and currently teach Minnesota plumbing code at St. Paul College. I would like to make a few comments on behalf of the Plumbing Board.

Historically, the State of Minnesota's regulation of the construction industry was fragmented, with several separate agencies performing licensing, enforcement, permitting, and inspection functions for the various construction trades. For example, plumbers were regulated by the Department of Health, residential building contractors by the Department of Commerce, electricians by an independent Board of Electricity, and boiler operators and high pressure piping contractors by the Department of Labor and Industry, or, "DLI." Also, the various components of the State Building Code were promulgated and administered by the Department of Administration.

This fragmentation resulted in a wide range of fees that construction practitioners paid depending on the agency that regulated them and the laws and rules adopted for them. Other factors relating to the conduct of business, including inspections, permits, and enforcement were also varied among the trades.

In 2005, then-Governor Tim Pawlenty recognized the need for uniformity among the construction trades and saw an opportunity to create a "one stop shop" for businesses and individuals in the construction industry, as well as the businesses and consumers who employed these firms and individuals. As a result, Gov. Pawlenty issued a reorganization order that consolidated the construction-related functions of these agencies and created the Construction Codes and Licensing Division (CCLD) at DLI.

One of the primary goals of the consolidation was to make the licensing structures, fees, and requirements of the trades as uniform and consistent as possible. Over time, CCLD has been able to set fees based on the skill level of the license rather than the trade involved. For example, in Minnesota Statutes, section 326B.092, the license fees for a journeyworker plumber are the same as the fees for a journeyworker electrician, elevator constructor, or high pressure pipefitter.

CCLD has taken steps to simplify and improve other processes involved in the regulation of the construction trades, including electronic permitting and unified enforcement tools and plan review procedures, all of which have made industry's interactions with the State of Minnesota more efficient, timely, consistent, and cost-effective. Many of these changes were enacted with the cooperation and input of the industry boards established by the legislature.

Regulation of the construction trades has yielded many improvements in the construction industry. Continuing education is part of regulation and has been for a long time. This is true of the construction industry and many other fields. The purpose of continuing education is to maintain and enhance the professional knowledge of practitioners and ensure awareness of changes to laws, rules, and codes that affect their work.

For example, licensed plumbers and electricians are required to take 16 hours of DLI-approved continuing education each two-year license cycle. Since 2009, registered unlicensed electricians have been required to register with DLI and take two hours of continuing education each renewal year.

In 2017, the legislature granted the Plumbing Board authority to adopt rules relating to continuing education requirements for registered unlicensed individuals. The Plumbing Board looked at the electrical industry's regulations and saw a successful example of continuing education requirements for registered unlicensed electricians. The Plumbing Board determined that it would be a benefit to the plumbing industry and to the professional development of registered unlicensed

individuals to establish a continuing education requirement that mirrors the requirement for registered unlicensed electricians.

The example of the electrical industry has shown that employees benefit from their education and that it has not proved to be a barrier to entry in the trade. According to DLI, there are currently over 10,000 registered unlicensed electricians in Minnesota, and around 2,200 registered unlicensed plumbers.

The Board believes that the proposed rules provide necessary and reasonable requirements that benefit the plumbing industry as a whole, the public who is served, and the people seeking to begin careers in the field. Based on concerns raised at committee and Board meetings, the Board discussed at length the proposed rule requirement that registered unlicensed individuals obtain two continuing education hours per renewal year. The Board concluded that a requirement of two years of continuing education per renewal year for registered unlicensed individuals is necessary and reasonable.

The proposed rule was thoroughly vetted and discussed at public open meetings by the Plumbing Board's Ad-Hoc Code Review & Rulemaking Committee, the Plumbing Board itself, and members of the public.

Thank you.

Good Morning,

I am Craig Curley; I live in rural Fillmore County Minnesota. I am one of three owners of Superior Companies of Minnesota and have been the General Manger of Superior Mechanical since 2011. Superior Mechanical employs approximately 180 employees, preforms work in the trades of Plumbing, HVAC, Mechanical insulation and High pressure piping. The home office of Superior is located in Rochester with a branch office in Pequot Lakes Minnesota. I have been employed at Superior Mechanical since 1994 and currently am the Master of Record for the company. I personally hold Master Plumbing Licenses in the States of Minnesota, Iowa and North Dakota. I currently hold Master Plumbing licenses in the cities of Minneapolis, Saint Paul and Saint Louis Park Minnesota. I hold a Master Hydronics license in the State of Iowa and Fuel Gas licenses in Minneapolis, Saint Paul, Rochester and Winona Minnesota. In addition to licenses held, for a four year period I was a Prometric testing expert that would evaluate disputed answers on plumbing Journeyman exams for many different states and cities across the nation.

Part of my testimony today is one of not only firsthand experience of my own path to becoming a Licensed Plumber but the paths of 1000's of Men and Women in the state since the modern plumbing code was adopted by the state of Minnesota. A non-union plumber's journey to licensure in some cases is very similar to a Union affiliated plumber's journey. It simply depends on who they work for. To think differently is not only naive but very presumptuous. The 4716.025 proposed rule changes are exactly that, written under presumptuous ideas. Those that drafted the verbiage presume that the non-union apprentice receives no formal training with no proof otherwise. Can I speak for every non-union shop in the state, no I cannot, but neither can those that drafted the proposed ruling.



In 1994 when I started my plumbing career, Superior did not have an organized training program. So a group of non-union shops would gather at Mayo High school on nights and weekends through the winter months 2 times a week and have code classes taught by guest teachers. The teachers would be licensed plumbers, inspectors and or contractors. In the following couple of years Superior grew to a size that we had enough apprentices allowing Jim Gander to start our own craft training curriculum. It was then that we started holding classes at our shop. These classes were not only held for our apprentices but for many other non-union shops apprentices. The classes were not only focused on code but on a wide range of trade based areas to create a well-rounded Journeyman when it came time to take their test. The progression of our training program continued through the years with a “give back to what you were given” mantra. New teachers would be those that achieved Journeyman or Master Status through our classes. This continued until 2017. In 2017 Superior Mechanical invested approximately \$170,000 into our training center to make it not only state of the art but attractive to the new generation of employee. The platform of our training program was built on one that is recognized by the Department of Labor and Industry.

This is the evolution of non-union training.

The standard rebuttal to this by others is “well that isn’t the training smaller non-union shops get around the state”. I have a two part response to that. 1.) How do we know that they are not doing some kind of formal or informal training in house? I don’t know and neither do those that presume negatively. How do we know that there isn’t 100’s of 1994 Superiors gathering at a high school, a church or at a coworkers house training or reviewing code?

2) The enforced measure of an individual's training or code knowledge is if they pass the state administered Journeyman or Master Exam. Per the DOLI, this test measures an individual's knowledge of the code. What is the difference if they gained that knowledge in a union training hall or the basement of a house? None, if log the same registered field hours and both pass the same test. Why would one be required to take additional education and the other not? Why should the two hours even be required if the Journeyman's test is the enforceable measure of an individual's code aptitude?

In closing, I want to convey my non-wavering understanding of the intent of the code and my respect for the plumbing boards duties. The bottom line of our industry is the health and welfare of the public. To ensure that this continues, codes and reflection on existing codes need to be evaluated and adjusted as needed to change with the industry. Considering this I have to ask the question, would it be acceptable for the Minnesota Department of Health to make a nurse in training or intern, take additional education if they "aren't" trained by the Mayo Clinic but by a hospital in rural Minnesota. Would it be acceptable to have two sets of rules for those individuals that are licensed and regulated by the same state agency? Are those that receive health services from the rural Minnesota hospital in danger? This is the scenario that we are essentially debating, a different set of rules for people operating under the same umbrella of a state regulated industry. "This" is a very dangerous road to go down.

Thank you for your time and attention to my testimony,

Good Morning,

I am Jim Gander, I live in Rochester. I am the founding partner of Superior Mechanical which employs about 180 Minnesotans. More than half of our employees are either plumbers or pipe fitters. All of our field employees work daily in multiple construction disciplines including; Plumbing, HVAC, Gas fitting, hydronic piping, mechanical insulation, and also as general labors. Our team is not encumbered by union rules and therefore we work in the multiple disciplines.

I have served on various trade organization and government boards from 1988 through the present. Including a stint on the workers compensation advisory board and the various plumbing boards from 1984 through 2011. Since I retired from the plumbing board I have been a frequent visitor at the meetings and stay involved in their concerns. I have been a paid consultant for Ecolab, Uponor, Watco, and Woodford. I have also served as an unpaid code consultant and regulatory advisor to the Minnesota Plumbing, Heating and Cooling Association. My issue with the proposed rules change is not only the methods DLI has taken to adopt the rules but specifically the so called "continued education" of registered unlicensed plumbers. To be blunt these named individuals are more commonly known as non-union apprentices.

Quite some time ago DLI chose to identify our apprentices as "registered" individuals . I believe this was done in order to be able legally require CE. I also believe that when Minnesota law began addressing CE it's intent was not for individuals that had yet to reach a level in their particular career that would demand code refreshment. DLI has now expanded the standard definition of continuing education to include mandated pre-licensure training.

In the early 1900's citizens were becoming sick and dying from water borne diseases, caused from unhealthy plumbing systems. Larger communities and states were forced to adopt licensure rules and codes unions, politicians, health officials, came to the rescue and low and behold the situation reversed itself and the regulation was successful within just a few decades. In 1933 Minnesota adopted its plumbing licensure rules and code. Presumably due to political pressure the law was limited to towns of less than 5000, but articles



written at this time eluded to the plan to expand the rules to all communities that had either a shared sewer system or water system.

Nothing happened until the early 2000's when I finally convinced the industry that we should adopt a licensure that could end this exception. My suggestion was a hard pill to swallow for many as it required the licensure of many without a test. I suggested we give those who are doing this work in towns of less than 5000 a restricted license to enable them to continue to do what they had been doing. I argued that if we do this now. We could require these individuals to install systems compliant with the plumbing code. These folks would eventually grow older and either retire or pass away. Eventually all plumbers would be duly licensed and tested. This would give the regulators the ability to enforce the code by having the threat of licensure removal as their tool.

Fast forward to 2017 the legislature somehow got an idea to assign the Plumbing Board the power to adopt so called CE for the non-union apprentices. At this time I admit I was asleep at the wheel. I just could not imagine that continuing education could mean something quite opposite. I had no idea that continuing education could mean mandated training for pre-licensure people. I still believe that the citizenry of Minnesota would agree with me and Webster's dictionary that CE is education for folks already who have already reached a level of their profession that demanded a license but needed refreshing in their particular trade. Instead of having an open and transparent discussion about mandated apprentice training the union lobbyists butchered the definition of CE and used the "registered" title to manipulate the intent of the law.

My problem is borne in the "needs and reasonableness" of the question. Since nearly 1933 our problem has been resolved. People never get sick from code compliant, permitted, and inspected Plumbing systems. I wish to commend the many union persons, inspectors, and regulators for this outstanding resolve and success. Many lives have been saved. Our code and our statute currently has all it needs to ensure this outcome. Apprentices and registered unlicensed people, union or not cannot work alone on any job. A licensed Journeyman or master must be on sight at all times. The contractors licensure and bond is on the line should these rule be

ignored. If the "need" is for the apprentice to be trained in the code he is working in then remove this rule. Having regulation for the sake of having regulation is wrong. This is like posting 2 speed limits for a speed zone, it is redundant and totally unnecessary.

Any unnecessary regulation will cause additional cost.

Manipulation of words or phrases is wrong continuing education should be just that continuing from the accomplished licensure, nothing more.

The precedent that this word manipulation may cause leads me to believe that the regulators and lobbyists who have invented this need do not desire only 2 hour of CE but much more.



BE AN APPRENTICE

BOILER ENGINEERS

BUILDING
OFFICIALS

ELECTRICIANS AND
ELECTRICAL
INSTALLERS

ELEVATOR
CONSTRUCTORS

HOMEOWNERS

PIPEFITTERS

PLUMBERS

2015 Minnesota Plumbing
Code

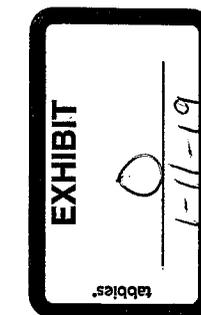
Backflow prevention
certification

For workers and the public > Plumbers > Registered unlicensed plumbers

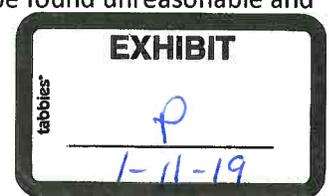
REGISTERED UNLICENSED PLUMBERS

Registered unlicensed plumbers

- An individual who is not licensed as a plumber may only perform plumbing work in Minnesota if they are registered with us as a registered unlicensed plumber (formerly known as an apprentice).
- There is no work experience required to register as a registered unlicensed plumber and the initial filing fee is \$14.
- Once registered, a registered unlicensed plumber may only perform plumbing work under the direct supervision of a license master plumber or journeyworker plumber.
- For work in communities with a population under 5,000, unlicensed work can be supervised by a license restricted master plumber or restricted journeyworker plumber.
- Unlicensed plumbers must also be a W-2 employee of a licensed plumbing contractor, licensed restricted plumbing contractor, or a registered plumbing employer (for work performed on the employer's premises only).
- Unlicensed registrations are renewed on an annual basis, with a renewal fee of \$19.
- To renew, an unlicensed plumber must take two hours of approved continuing education and submit a work experience verification form completed by their employer.



- My name is Megan Henkemeyer and I am with J-Berd Mechanical Contractors. Part of my role at J-Berd includes the onboarding of new employees. As part of that process I meet with each of them to assist them with their registration on the MN DLI website as a registered unlicensed plumber.
- We review the requirements of being a registered unlicensed plumber, renewal information, and explain the number of hours that can be reported in each renewal cycle as well as how to report and renew their registrations.
- In August 2018, I was working with a new employee of ours reviewing the requirements as listed on MN DLI's website and preparing to help them get registered.
- (Screen Shot) This is the screen that appeared when I pulled up the information.
- As we reviewed the requirements we reached the last bullet point which stated:
To renew, an unlicensed plumber must take two hours of approved continuing education and submit a work experience verification form completed by their employer.
- At that time, I was aware of the proposed language that the Board was putting together in regards to this matter, so I explained to the best of my ability to the new hire that this was not a requirement as of yet, as it had not been formally adopted, and that I would get back to them in regards to this.
- I was very concerned about this language being posted publicly as a requirement for registered unlicensed individuals and promptly reached out to Associated Builders and Contractors to see if they had heard anything differently from how it was left off at the last board meeting. *and we who we are a member of*
- Some correspondence between ABC and MN DLI followed and sometime later the requirement was removed from the MN DLI website. This premature public posting of a proposed rule had *me* very concerned.
- It's my understanding that it is the Plumbing Board's opinion that this will be a cost, responsibility, and burden of the unlicensed individual. While it's accurate that these are personal licenses, I believe that industry wide efforts such as Construct Tomorrow and Project Build initiatives indicate that the industry as a whole is struggling to retain and attract talent after the 2008 recession and the anticipated labor shortage that is looming.
- My personal opinion is that the burden of reporting and maintaining will not fall onto the registered unlicensed individuals as suggested, but will fall onto any plumbing contractor, small or large, as they struggle to attract and maintain talent, while also staying in compliance with Minnesota Department of Labor and Industry's licensing rules.
- Licensed plumbing contractors in the State of MN are required to ensure their employees are properly registered and therefore would need to ensure their staff has completed the CE hours.
- I would like to add that the already favorable pass rates on the journeyman plumbing exam of 79% relative to other trades that we have data from MN DLI on, indicates that the training and education that MN Plumbing Contractors, Master Plumbers, and Journeyman Plumbers provide to their staff is already adequate in preparing them for a career in this field.
- A comparable trade in our industry would be electrical, which already has these requirements in place and pass rates over the past 5 years remain around 30% indicating that those individuals are no better prepared for obtaining a license those pursuing a plumbing license.
- I would respectfully request that the proposed continuing education requirements be found unreasonable and unnecessary



- Adam Hanson*
- My name is Adam Hanson and I am with the Associated Builders and Contractors of Minnesota. Our association represents 350 commercial and industrial contractors, associates, and suppliers.
 - Our members build and upgrade schools, multi-family housing, office buildings, restaurant and retail establishments, renewable energy projects, and critical infrastructure throughout Minnesota.
 - Our contractor members recruit, train, and produce high-quality, multi-skilled craft professionals. These men and women are invaluable and highly-sought after in this tight labor market. These men and women also choose to work for merit shop contractors, meaning they choose not to affiliate with a trade union.
 - One of the uniting principles our members share is the desire to be free from unnecessary, arbitrary, or punitive regulations that disproportionately affect or are levied on our members because of their choice to be union-free.
 - We are here today because ABC and our plumbing contractor members object not only to portions of the proposed Plumbing Board rule itself, but also the process the Board and Department of Labor and Industry used for the rule.
 - As you have heard (or will hear), our contractors have specific concerns with how this new rule will negatively affect their plumbing businesses along with the men and women they employ.
 - What I want to discuss is why the Plumbing Board and DLI have not properly explained why this rule is needed, as well as why this rule is not reasonable. *new continuing education*
 - The Minnesota Supreme Court has defined an agency's burden in adopting rules by requiring the agency to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."¹
 - The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.²

¹ *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d at 244.

² *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).



- Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.³
- New requirements for licensed trades are often implemented under the rationale of health and safety concerns. In fact, when the Board of Electricity sought to adopt a new rule with a similar continuing education requirement on its registered unlicensed individuals who perform electrical work, “the board asserted that the need for continuing education exists because the Department had found significant, repeated problems with work performed by unlicensed individuals.”⁴
- Here, the Department and Board have not articulated either in its SONAR or at past Plumbing Board meetings any specific or general health and safety concerns that necessitated this rule. The closest the thing to this is a conclusory statement without evidence on page 16 of the SONAR that states that it is necessary and reasonable to require a regulated party to obtain some continuing education to maintain their registration to ensure competence in the interest of public health.
- I would note that outside of the electrical industry, no regulated party that we are aware in Minnesota who has not obtained licensure is required to obtain continuing education while still undergoing training or accruing hours needed for licensure. Not doctors, not dentists, not law students. Continuing education occurs *after* licensure is obtained, not before.
- Another distinction between the electrical industry and the plumbing industry, and why continuing education requirements were needed in electrical according to the Board of Electricity was that direct supervision of registered unlicensed individuals was not required for all electrical work at the time.
- There, only general supervision was required for certain technology circuit and systems work, thus the stated need for continuing education on the Electrical Code at the time.
- Here, all plumbing work in Minnesota performed by registered unlicensed individuals must be done under direct supervision by a master or journeyworker.

³ Greenhill v. Bailey, 519 F.2d 5, 19 (8th Cir. 1975).

⁴ In the Matter of the Proposed Rules of the Board of Electricity Governing Electrical Licensing and Training; Minnesota Rules, Chapter 3800, Report of the Administrative Law Judge at 25, 26.

- Unlike general supervision that was present on some electrical work, direct supervision for plumbing work means that:
 - at all times while the plumber's apprentice or registered unlicensed individual is performing plumbing work, the supervising plumber is present at the location where the plumber's apprentice or registered unlicensed individual is working;
 - the supervising plumber is physically present and immediately available to the plumber's apprentice or registered unlicensed individual at all times for assistance and direction;
 - any form of electronic supervision does not meet the requirement of physically present;
 - the supervising plumber actually reviews the plumbing work performed by the plumber's apprentice or registered unlicensed individual before the plumbing is operated; and
 - the supervising plumber is able to and does determine that all plumbing work performed by the plumber's apprentice or registered unlicensed individual is performed in compliance with the plumbing code.”⁵

*under
Minn. Stat.
326B.42
sub. 2*

- Because not all electrical work was required to be performed under the direct supervision of a licensed individual, the Board of Electricity believed that all unlicensed individuals should be required to have the same or similar continuing education as license holders.
- Here, that is not the case. All plumbing work legally performed in the state of Minnesota requires direct supervision from a licensed plumber who has demonstrated competency on the Plumbing Code and is already required to complete continuing education on the Plumbing Code.
- The Board of Electricity also cited low pass rates for its electrical license exams as further evidence for the need for continuing education requirements on the Electrical Code. It was (and still is) at less than 50%.
- The department has not offered this as a justification for mandating a new continuing education requirement because there is not nearly as low pass rate as exists on the electrical side.
- In fact, journeyworker plumbing exam pass rates were tied with journeyworker elevator exam pass rates at 79% in 2018, the highest of any journeyworker exam that *year.*

⁵ Minn. Stat. § 326B.42 subd. 2 (2019).

year.

- For the years we have data on, which is 2014 through 2018, the pass rate for the journeyworker electrical exam has never been above 36%. The continuing education requirement on registered unlicensed individuals does not seem to be helping the pass rate increase.
- Finally, this rule only applies to one segment of the regulated plumbing industry: registered unlicensed individuals. Registered plumbing apprentices, like those in union apprenticeship programs, are exempt from this rule. There is no law, rule, regulation, or other requirement from the state, the Department of Labor and Industry, the Plumbing Board, or the Apprenticeship Advisory Council that registered apprentices take code-specific continuing education annually or before they take their licensure exam.
- ABC has a registered apprenticeship standard curriculum for plumbing, approved by the Department of Labor and Industry that does not require two hours of annual code training.
- If it is truly necessary and reasonable to require two hours of code training each year for registered unlicensed individuals to enhance the individuals' knowledge of the Code and ensure competence in the interest of public health, the same should be true of plumbing apprentices, regardless of labor affiliation.
- The fact that there are two different standards for these otherwise similarly situated groups of unlicensed plumbers indicates that the proposed rule isn't needed and is arbitrarily being carried out.
- I would respectfully request that the proposed continuing education requirements for Rule 4716.0205 subpart 1(C) be found unnecessary and unreasonable for the reasons given.

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