

# Meeting Minutes: SPECIAL Plumbing Board

Date: March 12, 2018 @ 12:30 p.m.  
Minutes by: Lyndy Logan  
Location: Minnesota Room, Department of Labor and Industry  
443 Lafayette Road No., St. Paul, MN 55117-4344

## Members

Tom Andresen  
Jeff Brown (via teleconference)  
Michael Dryke (via teleconference)  
Grant Edwards (Vice Chair)  
Mike Herman  
Rick Jacobs (Chair)  
Jim Lungstrom (Commissioner's Designee)  
John Parizek (via teleconference)  
Phillip Sterner (Secretary)  
David Wagner  
David Weum

## Members Absent

John Flagg  
Larry Justin

## DLI Staff & Visitors

Suzanne Todnem (Gen. Counsel, DLI)  
Lyndy Logan (DLI)  
Scott Thompson (MN Plumbing Training)  
Tim Malooly (MN Nursery & Landscape)  
Larry Johnson (MN Nursery & Landscape)  
Nick Erickson (Housing First Minnesota)  
Adam Hanson (ABC)  
Tom McCarthy (Local 34)  
Gary Thaden (MMCA)  
Sophie Thaden (MMCA)  
Scott Eggen (City of Minneapolis)  
Richard Hauffe (ICC)  
Luke Westman (PHCC)  
Paul Sullwold (PHCC)  
Russ Jundt (MNLA)  
Jami Sehm (Scott County)  
Dean Berckes (Military Affairs) – via teleconference

## 1. **Call to Order**

The meeting was called to order by Chair Jacobs at 12:36 p.m. Roll call was taken by Chair Jacobs and a quorum was declared with 10 of 12 voting members present in person or via teleconference and one non-voting member. Suzanne Todnem noted that Jim Lungstrom was appointed as the temporary designee for the department due to Cathy Tran's absence. Introductions and housekeeping announcements were made.

## 2. **Approval of Meeting agenda**

A motion was made by Herman, seconded by Edwards, to approve the agenda as presented. The roll call vote was unanimous with 10 votes in favor; the motion carried.

## 3. **Regular Business**

Approval of expense reports – Jacobs approved the expenses as presented.

#### 4. Special Business

##### A. Discuss recent bill proposal HF 3214 and SF 2602 – see Attachment A

Todnem noted that HF 3214 and SF 2602 are identical. Edwards asked what the Board was hoping to accomplish and Todnem said the Board could choose how, or if, to respond to the proposed legislation by:

- 1) Instruct and authorize the Chair to draft a letter to the legislature to be shared with relevant Committees (after Board discussion); or,
- 2) Choose to authorize someone to speak on behalf of the Board should a hearing be called; or,
- 3) Monitor the proposals and Todnem would provide updates.

Todnem said the Department's position is neutral. Jacobs said he reviewed the bills and believes the Board, at the very least, should send a response/communication to the legislature. Jacobs said that as the complexity of water systems increases so too does the risk to people that the systems protect. The proposed legislation, in his opinion, makes the assumption that ASSE requirements alone are adequate. This would have a direct effect on the installation, operation, maintenance and safety of these and future systems. He is not in favor of either bill.

Parizek said the proposed changes to the statute fail to address other types of assemblies that need testing. This specifically addresses RPZ valves but not double check assemblies, pressure vacuum breakers, or spill resistant vacuum breakers. Rebuilding and repairing these assemblies has always fallen under the plumbing license. The other three assemblies that aren't mentioned still fall under the plumbing license. You must be a licensed plumber to install, repair, or re-build any of these 4 devices or assemblies that require annual testing. In addition, the manufacturers of most of the assemblies and devices dealing with backflow recommend annual testing/servicing by a licensed plumber. There is nothing in the ASSE series 5000 standard suggesting that certification of this standard is to replace any required plumbing licensing. In fact, it is just the opposite. This standard recommends that all state, federal, and local plumbing codes should be followed. This would include current licensing requirements. The Board should consider making a recommendation that the language "reduce pressure backflow prevention assemblies" be changed to "backflow prevention assemblies and devices."

Edwards said this legislation could set a dangerous precedence to all trades and codes. This could harm inspection protocol and building officials. This legislation makes a statement that non-plumbers can install plumbing in Minnesota and all code inspections should be alarmed by this. Edwards believes someone from the Board should speak to the legislature about what this bill could do to the entire concept of building codes.

Scott Eggen, City of Minneapolis, said that almost all higher and lower level devices are considered high hazard devices. There is only one double-check valve assembly that is

low hazard and it is very rarely used because of this reason. Most devices are high hazard and are in a system that could potentially cause major health issues.

Tim Malooly, Minnesota Nursery & Landscape Association, addressed the Board. Their interpretation of whether a non-plumber may install, relocate or re-install any backflow prevention assembly of any type is no, this is not the intention of this legislation. The interpretation that the Board is undergoing is understandable; however, the focal point of the language is focusing only upon the backflow prevention component of rebuilding and testing and the original strikeout language on Minnesota Statute 326B.437, Lines 1.16, 1.17, and 1.18 was to open the opportunity for a non-plumber to rebuild and test, provided they were qualified by the department. If this stricken language in the lines noted above is problematic, he is certain that an adjustment could be made to ensure that only licensed plumbers make original installations, replacements or relocation. It is only testing, repair or rebuild.

Edwards asked if the backflow preventer devices are manufactured to the listed NSF 61 Standard and Malooly said yes, any testable devices. Edwards said in repairing this device you open the system thereby altering the plumbing system.

Thaden, representing the Minnesota Mechanical Contractors Association, said they oppose the bill. He said the Board has specific language to change the statute in front of them. The board may consider other language but that language is not in front of them or the legislature. If the Board likes the language that is fine but if not then he urged the Board to make a motion to oppose the bills.

Paul Sullwold, former board member, representing PHCC, said they oppose this bill as it is written and encouraged the Board to let their vast knowledge be known if there is a hearing. It is not a good bill and it is never a good idea to water down the plumbing code.

Dean Berckes said that he too opposes this bill. A licensed professional is needed when the system is altered.

Larry Johnson, Minnesota Nursery & Landscape Association, said he would be happy to discuss changes to find language that would work. They are ready to discuss and find common ground.

Weum said it seems that most of the Board members oppose the bills and if the Board sends a letter to the legislature it should specify exactly what is opposed.

Edwards said he believes the Board members feel that the language is actually not broad enough. If any language is going to be altered it is going to further reinforce that an individual would need a plumbing license if opening a system. He would like to see

the Board members vote that a letter be drafted and designate at least one representative to attend a hearing.

The Board took a ten minute break and reconvened at 2:04 p.m.

Jacobs asked Board members if they would like to do nothing and see what happens or send a letter to the legislature and authorize a board member to testify if the bill goes to a hearing.

Jacobs polled the Board and asked members if they support or oppose the bills as written. There was zero support in favor of the bills and the following members below opposed. Lungstrom said the Department remains neutral.

1. Dryke
2. Edwards
3. Brown
4. Andresen
5. Herman, as it is currently written
6. Wagner, as it is currently written
7. Parizek
8. Jacobs
9. Sterner, as it is currently written
10. Weum, as it is currently written

Edwards said the Chair should write a letter to the legislature on the consensus of the Board and to speak at a hearing if there is one. In addition, industry players could be invited to submit letters to support or contradict the Board and these could also be brought to a hearing.

Parizek said it would be beneficial to have a discussion with the Minnesota Nursery and Landscape Association, the Board, the Department, and the industry.

**A motion was made by Parizek, seconded by Sterner, to send a letter to the legislature opposing HF3214 and SF2602 and to designate the Board chair (and by friendly amendment by Edwards – or his designated board member(s)) to attend any legislative hearings. The roll call vote was unanimous with 10 votes in favor and one abstention from Lungstrom, representing the Department; the motion carried.**

**B. Review comments to the board to date for Minnesota Rules, Chapter 4716.**

Todnem noted that this agenda item was included because it relates to the proposed legislation.

Jacobs said a letter was received from the Minnesota Nursery and Landscape Association with respect to the Request for Comments – see **Attachment B**.

Parizek said the rule draft will be discussed at the Special Ad-Hoc Code Review and Rulemaking Committee meeting scheduled for March 15, 2018, and a draft will be brought forward to the Board at the April 17, 2018 meeting.

## **5. Announcements**

Next regularly scheduled meetings in 2018 – all meetings will be held at 9:30 a.m. in the Minnesota Room. The Executive Committee meetings occur at 8:30 a.m. prior to each regular meeting in the Minnesota Room.

- A. April 17, 2018
- B. July 17, 2018 (annual meeting)
- C. October 16, 2018

## **6. Adjournment**

A motion was made by Edwards, seconded by Herman, to adjourn the meeting at 2:22 p.m. The vote was unanimous with 10 votes in favor of the motion; the motion passed.

Respectfully submitted,

*Phil Sterner*

Phil Sterner, Board Secretary

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in alternative formats upon request

State of Minnesota  
**HOUSE OF REPRESENTATIVES**  
NINETIETH SESSION

**H. F. No. 3214**

03/01/2018 Authored by Kresha and Fenton  
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act  
1.2 relating to labor and industry; modifying backflow rebuilder designations; amending  
1.3 Minnesota Statutes 2016, section 326B.437; Minnesota Statutes 2017 Supplement,  
1.4 section 326B.42, subdivision 1b.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2017 Supplement, section 326B.42, subdivision 1b, is  
1.7 amended to read:

1.8 Subd. 1b. **Backflow prevention rebuilder.** A "backflow prevention rebuilder" is an  
1.9 individual who is qualified by training prescribed by the Plumbing Board ~~and possesses a~~  
1.10 ~~master or journeyworker plumber's license~~ to engage in the testing, maintenance, and  
1.11 rebuilding of reduced pressure zone type backflow prevention assemblies as regulated by  
1.12 the Plumbing Code.

1.13 Sec. 2. Minnesota Statutes 2016, section 326B.437, is amended to read:

1.14 **326B.437 REDUCED PRESSURE BACKFLOW PREVENTION REBUILDERS**  
1.15 **AND TESTERS.**

1.16 (a) ~~No person shall perform or offer to perform the installation, maintenance, repair,~~  
1.17 ~~replacement, or rebuilding of reduced pressure zone backflow prevention assemblies unless~~  
1.18 ~~the person obtains a plumbing contractor's license.~~ An individual shall not engage in the  
1.19 testing, maintenance, repair, or rebuilding of reduced pressure zone backflow prevention  
1.20 assemblies, as regulated by the Plumbing Code, unless the individual is certified by the  
1.21 commissioner as a backflow prevention rebuilder.

2.1 (b) An individual shall not engage in testing of a reduced pressure zone backflow  
2.2 prevention assembly, as regulated by the Plumbing Code, unless the individual possesses  
2.3 a backflow prevention rebuilder certificate or is certified by the commissioner as a backflow  
2.4 prevention tester.

2.5 (c) Certificates are issued for an initial period of two years and must be renewed every  
2.6 two years thereafter for as long as the certificate holder installs, maintains, repairs, rebuilds,  
2.7 or tests reduced pressure zone backflow prevention assemblies. For purposes of calculating  
2.8 fees under section 326B.092, an initial or renewed backflow prevention rebuilder or tester  
2.9 certificate shall be considered an entry level license.

2.10 (d) The Plumbing Board shall adopt expedited rules under section 14.389 that are related  
2.11 to the certification of backflow prevention rebuilders and backflow prevention testers.  
2.12 Section 326B.13, subdivision 8, does not apply to these rules. Notwithstanding the 18-month  
2.13 limitation under section 14.125, this authority expires on December 31, 2014.

2.14 (e) The department shall recognize certification programs that are a minimum of 16  
2.15 contact hours and include the passage of an examination. The examination must consist of  
2.16 a practical and a written component. This paragraph expires when the Plumbing Board  
2.17 adopts rules under paragraph (d).

**SENATE  
STATE OF MINNESOTA  
NINETIETH SESSION**

**S.F. No. 2602**

(SENATE AUTHORS: RUUD and Ingebrigtsen)

DATE  
02/22/2018

D-PG  
6165

OFFICIAL STATUS  
Introduction and first reading  
Referred to Jobs and Economic Growth Finance and Policy

1.1 A bill for an act  
1.2 relating to labor and industry; modifying backflow rebuilder designations; amending  
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2.17 adopts rules under paragraph (d).



## Minnesota Nursery & Landscape Association

1813 Lexington Ave N • Roseville, MN 55113  
651-633-4987 • Fax 651-633-4986 • [www.MNLA.biz](http://www.MNLA.biz)

December 22, 2017

Suzanne Todnem  
Minnesota Department of Labor & Industry  
443 Lafayette Ave. N.  
St. Paul, MN 55155

Dear Ms. Todnem:

Please accept the following official comments from the Minnesota Nursery & Landscape Association (MNLA) with respect to the REQUEST FOR COMMENTS for Possible Amendments to Rules Governing Plumber Licensing, Minnesota Rules, Chapter 4716; Revisor's ID Number R-04365, published by the Minnesota Plumbing Board on October 30, 2017.

- 1) The Minnesota Plumbing Board has adopted rules and advocated for past statute changes that allow only licensed plumbers to become certified Minnesota backflow prevention assembly rebuilders, by regulating the installation, maintenance, testing, repair, replacement and rebuilding of backflow prevention assemblies. However, the MN-rebuilder-prerequisite ASSE 5130 Backflow Prevention Assembly Repairer certification administered by the American Society of Sanitary Engineers (ASSE) requires only that prospective repairers hold a current ASSE 5110 Backflow Prevention Assembly Tester certificate and pass ASSE-approved 5130 training and written/practical exams. Installation and replacement of backflow prevention assemblies are not part of the subject matter of ASSE 5130 certification. Neither should installation and replacement be regulated by Minnesota's rebuilder certification.

Backflow prevention (and the associated assemblies that are used to protect potable water supplies) is considered by ASSE and other institutions to be unique and subject to specific, comprehensive training, regardless of and independent of status as a licensed plumber. The ASSE coursework, testing and practical exams are the same for plumbers and non-plumbers. The ASSE approach supports the requirement that any person who chooses to interact in any way with backflow prevention equipment must first become qualified to do so via stand-alone, comprehensive coursework and exam(s) in the form of ASSE 5110 Backflow Prevention Assembly Tester certificate and if interested in the work of repair or rebuilding of backflow assemblies, pass ASSE-approved 5130 training.

The MNLA believes that the ASSE 5110 and 5130 certifications provide sufficient, stand-alone assurances of competency, understanding and protection of public safety to enable 5130-holders to safely and effectively maintain, repair and rebuild backflow prevention assemblies, regardless of their status as plumbers or non-plumbers. However, Minnesota rules and statutes crafted specifically and uniquely by the Minnesota Plumbing Board and the Minnesota legislature, prohibit non-plumbers from obtaining ASSE 5130 training and becoming rebuilders.

MNLA recognizes and is prepared to support necessary amendments to Minnesota statutes to enable non-plumbers to repair and rebuild backflow prevention assemblies.

The MNLA's Tim Power presented a Request for Action at the April 18<sup>th</sup>, 2017 meeting of the Minnesota Plumbing Board that asked the board to change MN Rules 4716.0096 to allow qualified non-plumbers to rebuild non-RPZ backflow prevention assemblies. We acknowledge that several impediments were pointed out in that plumbing board meeting in making that basic idea come to pass:

- MN Statutes 326B.42 and 326B.437 and MN Rules 4716.0096 (referenced above) all require that "MN rebuilders" must be licensed plumbers.
- Now that several classes of backflow prevention assemblies are mentioned in the 2015 Minnesota Plumbing Code, the Minnesota Plumbing Board has taken the position that the rebuilding of backflow prevention assemblies is considered plumbing work. ASSE takes no such position in its 5110 and 5130 certifications.
- MN Statutes 326B.46 addresses licensing, bond and insurance for plumbing contractors. Since all licensed plumbers must work for a licensed plumbing contractor, the public is considered protected from potential liability. If qualified non-plumbers were allowed to rebuild backflow prevention assemblies, there would need to be some way to assure public protection from liability. The MNLA is prepared to assist in crafting and will support a workable requirement that qualified non-plumber backflow prevention assembly repairer/rebuilders work for a contractor who carries appropriate bond and insurance.

The MNLA hopes that the Minnesota Plumbing Board agrees with the notion that the backflow tester and repairer certifications administered by the American Society of Sanitary Engineers (ASSE) provide a discrete body of knowledge that is sufficient for testing and rebuilding backflow prevention assemblies in Minnesota. If so, the MNLA respectfully requests the assistance of the Minnesota Plumbing Board in proposing statute changes to make that notion possible. If successful, step two would then be to undergo rulemaking to adjust MR 4716.0096 as well.

- 2) MS 326B.42, MS 326B.437 and MR 4716.0096 all address reduced pressure zone (RPZ) backflow prevention assemblies only. The MNLA recommends that the Minnesota Plumbing Board advocate for statute changes to eliminate the references to RPZ's only, since several classes of backflow prevention assemblies in addition to RPZ assemblies are now incorporated in the Minnesota Plumbing Code. Step two would then be to undergo rulemaking to adjust MR 4716.0096 as well.
- 3) Minnesota's Plumbing Code incorporates several classes of backflow prevention assemblies that are newly regulated. The annual addition of hundreds if not thousands of new assemblies associated with private utilities including landscape irrigation systems will require "authorities having jurisdiction" to establish or expand backflow testing registries. The additional testing and potential rebuilding of these assemblies will require an expanded cadre of trained and certified testers and rebuilders. The MNLA urges the Minnesota Plumbing Board to support the expansion of this cadre by allowing 5110-holding non-plumbers to train and certify for ASSE 5130 and to become MN rebuilders, thus helping to ensure the health and safety of Minnesota's citizens and environment.

- 4) Finally, the MNLA is aware of a customized letter of understanding between ASSE and MN DLI that acknowledges Minnesota's unique requirement that only licensed plumbers may even apply in Minnesota to train and certify for ASSE 5130. The MNLA requests that the Minnesota Plumbing Board advocate for MN DLI to alter its unique agreement with ASSE to eliminate its requirement that only licensed plumbers may apply to train and certify for ASSE 5130, enabling qualified non-plumbers to attain ASSE 5130.

Sincerely,

A handwritten signature in blue ink that reads "Cassie M. Larson". The signature is written in a cursive style with a large, prominent "M".

Cassie M. Larson  
Executive Director