

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.180.401 fee schedule and) ADOPTION
the adoption of NEW RULE I)
pertaining to continuing education)
provider qualifications)

TO: All Concerned Persons

1. On April 29, 2010, the Board of Plumbers (board) published MAR notice no. 24-180-46 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 974 of the 2010 Montana Administrative Register, issue no. 8.

2. On May 27, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the June 4, 2010, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: The board received numerous comments regarding the proposed amendments to ARM 24.180.401. All the comments were made in opposition to the board's proposed increases to licensure fees.

RESPONSE 1: After thoroughly considering the strong opposition to the increases reflected in the comments and making another detailed and thorough review of current and future board finances, the board decided not to increase the fees in the amounts originally proposed, but is instead proposing revisions as shown below. The board did not propose the fee increases arbitrarily or unnecessarily, and does not take this action lightly. The board appreciates all comments made and thanks everyone who participated in the rulemaking process.

COMMENT 2: Several commenters stated that the licensing fees for Montana plumbers are disproportionate to licensing fees of other Montana occupations and to licensing fees for plumbers in other states.

RESPONSE 2: The number of licensees, the board's activities, and other factors make such a comparison one of "apples to oranges." Additionally, other states have sources of revenue and other legislative advantages that make a fair comparison impossible. The proposed fee increases are necessary to keep fees commensurate with costs, considering the board's responsibilities and the number of active licensees paying those fees. However, the board is actively seeking other revenue

sources and will be aggressively seeking legislative changes that are hoped to offset some of the board's costs.

COMMENT 3: Numerous commenters stated that the fees are not reasonable, especially in light of the economy and the income of plumbers.

RESPONSE 3: The board is sympathetic to these concerns, but notes that economic performance and licensee income do not factor into the board's necessary operating costs. Some board costs are actually greater in these economic times, and the board is statutorily mandated to set and adjust fees to keep fees commensurate with associated costs.

COMMENT 4: Several commenters questioned why the board referred to increased legal expenses during board meetings as justification for the proposed fee increases, even though a review of the board's records and statements through December 2009 indicated a positive financial outlook for the board.

RESPONSE 4: In general, the board's legal and compliance costs have increased as a result of increased enforcement efforts against unlicensed plumbing. The board also notes that complaints against licensees are significantly higher and more investigations have been commissioned. While the billing rate for legal work has not increased, the amount of effort to enforce the plumbing statutes, rules, and standards has increased, which raises board costs.

COMMENT 5: Several commenters opined that the fee increases may not be necessary because some expenses incurred in 2009 will not necessarily be repeated in future years and used as an example legal expenses, in relation to the contract for outsourcing the administration of the licensing exams.

RESPONSE 5: There is no particular one-time cost or any set of one-time costs that are responsible for the board's proposed fee increases. Rather, the estimated overall costs of administering the board's functions necessitate the fee increases.

COMMENT 6: Several commenters stated that the board should explore both additional revenue sources and, like the board's licensees, ways to reduce costs. The commenters stated that CE audits cost too much, and the board should instead require proof of CE as a condition to license renewal.

RESPONSE 6: At its March 2010 meeting, the board determined to significantly reduced the number of CE audits to minimize the fee increase. In addition, the board is actively seeking additional sources of revenue, more efficient ways to prevent unlicensed plumbing, and other statutory changes to provide for the protection of the public, without making licensure cost prohibitive. The board maintains that CE is necessary for the protection of the public and may, following a meeting of its legislative committee, follow through with the suggestion that each licensee's CE be proven as a condition to renewal.

COMMENT 7: Several commenters asserted that because the master of record status has been treated the same since 1975, the proposed new fee for the status is not justified.

RESPONSE 7: The board has ascertained through current accounting that there are administrative costs associated with master plumbers of record, and those costs should be recovered through an appropriate fee.

COMMENT 8: One commenter asserted that the increase in board costs is disproportionately low compared to the proposed fee increases.

RESPONSE 8: The board is amending the proposed fee increases to meet the current projections.

COMMENT 9: Several commenters complained that only licensees pay for enforcement against unlicensed plumbing, while all of the public benefit through the board's protection.

RESPONSE 9: The professional and occupational licensing boards exist to regulate the plumbing profession, which includes protecting the public against unqualified and unlicensed practitioners. The board intends to aggressively pursue legislative changes to assist in controlling unlicensed plumbing while providing alternative revenue sources. The board points out that pursuing actions against those practicing plumbing work without a license also protects licensees' jobs.

The fee increases are required if the board is going to continue its work of protecting the public, which is accomplished primarily by investigating and preventing unlicensed plumbing and enforcing licensee standards of conduct. Recently, the unlicensed practice of plumbing has become a focus of enforcement efforts, although the board is not currently able to recover its costs from those cases. The board concluded that the burden of enforcing unlicensed practice should not be borne exclusively by licensees, and the board asks for the support of its licensees, labor and industry organizations, and others to help solve this problem.

COMMENT 10: A few commenters stated that the additional fees are not justified because there are no additional benefits being offered.

RESPONSE 10: The board is statutorily mandated to set and maintain licensure fees to meet costs or the board cannot function. No additional services can be offered because the cost of providing the current level of services necessitates the higher fees.

COMMENT 11: One commenter suggested the board increase enforcement without incurring more costs by making state inspectors provide services as compliance officers for the board.

RESPONSE 11: The board is seeking to make appropriate changes to existing laws. This comment suggests what may be an appropriate change to law, but the suggestion does not circumvent the current need for fee increases.

COMMENT 12: A few commenters questioned why the board needs to increase fees twice in the last three years, when the board had not done so for many years before.

RESPONSE 12: The board notes that if smaller fee increases had occurred throughout the period of time when no increase was made, it would probably not have been necessary to have two significant fee increases so close together.

COMMENT 13: Several commenters stated that the proposed fee increases are particularly unfair to apprentices and will harm recruiting for the Joint Apprenticeship and Training Committees.

RESPONSE 13: The current requirements for initial licensure are those the board has determined to be minimally necessary to protect the public. The board notes that there is no administrative fee charged by the board to become an apprentice and believes that the fee increases will not significantly influence the number of apprentices entering the trade.

COMMENT 14: One commenter stated that the cards mailed out on behalf of the board did not give adequate notice of the fee increase.

RESPONSE 14: The board and department ensure adequate public notice and opportunity for public participation in the rulemaking process by following the statutory requirements of the Montana Administrative Procedure Act.

COMMENT 15: A commenter suggested that the state should refund what it took out of the plumbing reserve in the past ten years.

RESPONSE 15: The board will look into the matter.

COMMENT 16: One commenter suggested that the board should control the administrative costs for services provided by the department.

RESPONSE 16: The board consistently explores ways to reduce costs, but notes that seeking a legislative change to control administrative costs is outside the scope of this proposed rulemaking.

4. The board has amended ARM 24.180.401 with the following changes, stricken matter interlined, new matter underlined:

24.180.401 FEE SCHEDULE (1) remains as proposed.

(2) Application fee

\$ ~~420~~ 100

(a) through (3) remain as proposed.

(a) Journeyman	480 <u>170</u>
(b) Master	325 <u>280</u>
(4) remains as proposed.	
(a) Journeyman	480 <u>160</u>
(b) Master	325 <u>265</u>
(5) Medical gas endorsement application fee	420 <u>100</u>
(6) through (8) remain as proposed.	
(9) Master plumber of record fee	65 <u>50</u>
(10) through (14) remain as proposed.	

5. The board has adopted NEW RULE I (24.180.2103) exactly as proposed.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 6, 2010