

# STATE OF WEST VIRGINIA

## Office of the State Fire Marshal Licensure of Electricians

### SPECIAL REPORT

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#### Oversight of Licensed Electricians

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Performance Evaluation and Research Division  
Building 1, Room W-314  
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**CHARLESTON, WEST VIRGINIA 25305**  
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PE 97-14-85

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**December 1997**

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Antonio E. Jones, Ph.D.  
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December 14, 1997

The Honorable Billy Wayne Bailey  
State Senate  
Drawer A  
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The Honorable Vicki Douglas  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

This is to transmit a Special Report on the **Office of the State Fire Marshal -- Licensure of Electricians**, which will be presented to the Joint Committee on Government Operations on Sunday, December 14, 1997. The issue covered herein is "Oversight of Licensed Electricians."

Sincerely,

A handwritten signature in cursive script, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

Enclosure

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*Joint Committee on Government and Finance*

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## EXECUTIVE SUMMARY

### **ISSUE AREA    The State Fire Marshal's Office does not Investigate Complaints or Conduct Oversight of Licensed Electricians, and Uses Fees from Electrical Licenses to Perform Other Functions**

The duties of the Fire Marshal were amended by the Legislature on April 8, 1989 to include the licensure of electricians. Article 3b [§ 29-3B-1 et seq.], Chapter twenty-nine of the West Virginia *Code* states that the purpose of this amendment is to

*protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform electrical work through licensure by the state fire marshal of the state fire commission.*

An inquiry of the State Fire Marshal's Office revealed that the Office has no oversight function for this licensure process. The office does develop tests, administer tests, issue and renew licenses, and protect licensed electricians and the public from encroachment by unlicensed electricians. However, there is no oversight for licensed electricians.

*The State has greater than 10,500 licensed electricians. Since the Office began the mandatory state licensing electricians in 1989, it has never held a disciplinary hearing, or suspended or revoked a license. In addition, there are no continuing education requirements despite the fact that there were about 200 significant changes in the National Electrical Code in 1996 alone. Further, license revenues, which amounted to over \$540,000 in FY97, are subsidizing other activities of the State Fire Marshal's Office.*

There are many threats resulting from the lack of oversight of licensed electricians. These include potential loss of life, health, property and public confidence. Nationally, there were 40,000 fires caused by problems with home electrical wiring. It is critical that *public confidence* in the licensure of occupations and professions be maintained by providing a channel for complaints regarding performance or questions of competence. As long as the potential loss of life and property exists due to the conduct of electricians, oversight should be a condition of licensure, as is the case with architects, professional engineers, land surveyors, psychologists, social workers, physicians, and electricians in other states.

This lack of oversight has been caused by the Office's perceived lack of resources and authority. Under the State Fire Code (an independent and unrelated statute) personal care homes caring for three or less patients, buildings used wholly as dwelling houses for no more than two families, and farm structures are excluded from its general provisions to protect privacy rights. The State Fire Marshal's Office has interpreted this exclusion of the Fire Code to prevent it from inspecting complaints involving work performed in these types of structures. However, a legal opinion by Legislative Services disagrees that the State Fire Code encumbers the State Fire Marshal's authority provided under West Virginia *Code* § 29-3B-1 et seq., to suspend or revoke

an electrician's license if that person incompetently or unsafely performs electrical work, and concludes "the fire marshal may perform those steps necessary to make this determination." Other causes include a perceived lack of funding, even though the Office collected greater than \$540,000 in FY97 for licensure functions, much of which is used for other purposes; and a perception that the Office must directly witness the act or have video graphic evidence to pursue a hearing.

*Given the relative lack of attention this important program has received under the State Fire Marshal's Office, it is recommended that the Legislature consider establishing a separate division within the Board of Registration for Professional Engineers to assume all electrician licensure responsibilities, using existing resources as collected by the State Fire Marshal. Or, if the State Fire Marshal is to retain this authority, complaints against licensed electricians or persons illegally practicing the occupation of electrician should be fully investigated, hearings should be held, licenses should be suspended or revoked as appropriate, and records regarding those proceedings should be maintained, and reported to the Legislature annually.*



The State Fire Commission appoints the State Fire Marshal in accordance with article six [ § 29-6-1 et seq.], Chapter twenty-nine of the West Virginia Code. The Code further states in article three [ § 29-3-11 et seq.], Chapter twenty-nine that the State Fire Marshal, “shall have all responsibility for the implementation of fire safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes.”

The duties of the Fire Marshal were amended by the Legislature on April 8, 1989 to include the licensure of electricians. Article 3b [ § 29-3B-1 et seq.], Chapter twenty-nine of the West Virginia Code states that the purpose of this amendment is to

*protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform electrical work through licensure by the state fire marshal of the state fire commission.*

The Legislative Auditor found that the **State Fire Marshal does not provide oversight of the licensed electricians, and that much of the \$540,000 annual revenues derived from electrician licensure activities is used for other functions of the Fire Marshal’s office.**

## **ISSUE AREA    The State Fire Marshal’s Office does not Investigate Complaints or Conduct Oversight of Licensed Electricians, and Uses Fees from Electrical Licenses to Perform Other Functions**

Inherent in the supervision of electricians is the responsibility to license new electricians and renew the licenses of already licensed electricians. According to the West Virginia Code, a license is a “valid and current *certificate of competency* issued by the state fire marshal.” Another responsibility inherent in the supervision of electricians is oversight of licensed electricians. Article 3b [ § 29-3B-1 et seq.], chapter twenty-nine of the West Virginia Code states that

*The state fire marshal may, upon complaint or his own inquiry, after notice and hearing as provided by article five [ § 29A-5-1 et seq.], chapter twenty-nine-a of this code, suspend or revoke the license of any person who holds a license if: 1) the license was granted upon an application or documents supporting such application which materially misstated the terms of the applicant’s qualifications or experience; 2) such person subscribed or vouched for such misstatement by an applicant; 3) such person incompetently or unsafely performs electrical work; 4) such person violated any statute of the state of West Virginia or any ordinance of any municipality or county of the state of West Virginia which protects the consumer or public against unfair, unsafe, unlawful or improper business practices; or 5) such person fails to comply with any rule of the state fire marshal promulgated to fulfill his responsibilities under this article.*

As was stated above, Article 3b [ § 29-3B-1 et seq.], chapter twenty-nine of the West Virginia Code gives the Fire Marshal’s Office the authority to investigate and conduct hearings, suspend and revoke licenses for such a person who incompetently or unsafely performs electrical work to protect the consumer or public against unfair, unsafe, unlawful or improper business practices. The statute gives the Fire Marshal authority for oversight of licensed electricians, which is a charge of the State

Fire Marshal distinct from enforcement of the State Fire Code.

According to the State Fire Marshal, only five complaints have been filed with the State Fire Marshal’s Office between April 8, 1989 and November 21, 1997. The complaints and their dispositions are shown in TABLE 1 below.

<p style="text-align: center;"><b>TABLE 1</b>  <b>Complaints and their Dispositions</b>  <b>April 8, 1989 to November 21, 1997</b></p>		
<b>Date</b>	<b>Nature of Complaint</b>	<b>Disposition</b>
August 1989	National Electrical Code wiring violation in a single family dwelling.	“Informed complainant, we had no jurisdiction in single family dwellings.”
October, 1990	National Electrical Code wiring violations regarding protection of wiring from physical damage, proper securing of wiring, approved bushings for wiring through walls, and splices within panel box.	“Mr. [X] was an employee and required no license to do this work. During this time frame our budget was lost and had to be redone and everything was put on hold. Case not followed up on because with or without a license, by law Mr. [X] could do this work under the exceptions.”
August 1991	National Electrical Code wiring violation in a single family dwelling.	“Informed complainant, we had no jurisdiction in single family dwellings.”
June 1992	100 amp, 3 phase panel listed on blueprints and a 200 amp, single phase panel installed.	“...no violation of electric code, this was a specification and design conflict.”
October 1992	National Electrical Code wiring violation in a single family dwelling.	“Informed complainant, we had no jurisdiction in single family dwellings.”

According to State Fire Marshal’s Office staff, they usually recommend that the citizens hire attorneys and pursue their grievances in civil litigation when they file a complaint. On a few occasions, complaints were made regarding licensed electricians and the Fire Marshal’s Office dispatched an investigator to **get a signed statement** from the electrician confirming that the electrician follows all applicable standards and treats consumers fairly. Furthermore, the State Fire Marshal’s Office **has never conducted a hearing, suspended or revoked any electrician’s**

**license**, despite the comparatively large number of electricians, which has risen from 9,058 in 1994 to 10,535 in 1996 (see TABLE 2 below).

<b>TABLE 2</b> <b>Total Number of Licensed Electricians by Number of New Licenses and Renewals</b> <b>FY 1994 - FY 1996</b>	
<b>Year</b>	<b>Total Number of Licenses</b>
1994	9058
1995	10197
1996	10535

*Source: FY 1994 - FY 1996 West Virginia State Fire Commission Annual Reports*

## **EFFECTS**

There are many threats resulting from the lack of oversight of licensed electricians. These include potential loss of life, health, property and public confidence. Nationally, there were 40,000 fires caused by problems with home electrical wiring. As a leading cause of fires, electrical problems result in many deaths and injuries each year. Fires are a reality. Families lose their homes, furnishings and unreplaceable family treasures to fires every day. It is critical that **public confidence** in the licensure of occupations and professions be maintained by providing a channel for complaints regarding performance or questions of competence. As long as the potential loss of life and property exists due to the conduct of electricians, oversight should be a condition of licensure, as is the case with architects, professional engineers, land surveyors, psychologists, social workers, physicians, and electricians in other states.

Based on the probability of complaints occurring in the field of electrical work as compared to selected other licensed occupations and professions, one would expect some complaints, if a process was made available to the public. TABLE 3 shows complaints filed and disciplinary actions taken by the boards governing the licensing of architects, licensed practical nurses, land surveyors and professional engineers.

<b>TABLE 3</b>			
<b>Comparison of Complaints and Disciplinary Actions</b>			
<b>Licensure Authority</b>	<b>Active Licenses</b>	<b>Complaints</b>	<b>Disciplinary Actions</b>
State Fire Marshal's Office (FY 97)	10,535	0	0
State Board of Examiners for LPNs (FY96)	6,700	124	2 revocations 24 suspensions 10 reprimands
Board of Land Surveyors (CY94)	747	28	0
Board of Architects (FY 97)	1,035	11	1 suspension 1 Revocation
Board of Registration for Professional Engineers (FY97)	5,220	9	3 consent orders 1 cease & desist 1 cert. of authorization issued

Perhaps an even better comparison can be made between state electrician licensure programs. Consider the state of Massachusetts' electrician licensure program. In FY 1996 it licensed 33,098 electricians and 3,776 security/fire alarm installers, over three times the number of West Virginia, but it collected \$750,816 in fees, which is only 39% higher than the \$540,945 collected in licensed electrician fees by the West Virginia State Fire Marshal's Office in FY97 to cover approximately 10,535 electricians. Massachusetts had 142 complaints of which 104 were resolved. The Massachusetts Board issued approximately 250 warnings and resolved approximately 125 disputes related to rulings made by local wiring inspectors. The board also assisted local wiring inspectors on approximately 200 occasions, either by telephone or site visit. Investigators inspected approximately 120 premises, checking 200 licenses, and investigated the scenes of 75 fires. See TABLE 4 on the next page.

**TABLE 4**  
**West Virginia State Fire Marshal's Office Electrician Licensing**  
**Compared with the Massachusetts Board of State Examiners of**  
**Electricians & Electrician Appeals**

State Program	Revenues	Licenses Issued	Average Cost Per Licensee	Number of Complaints
West Virginia	\$540,945	10,535	\$51.35	0
Massachusetts	\$750,816	33,098	\$22.68	142

*Source: West Virginia State Fire Marshal's Office (FY97) and Massachusetts Board of State Examiners of Electricians and Electricians Appeals (FY96)*

Other states have taken very strong positions on oversight of licensed professions. Utah and New York not only take oversight of licensed professionals seriously, each have *Internet sites dedicated to providing consumers information about licensed professionals*. At a click of a mouse one can learn what persons are licensed to practice a given profession and also determine whether specific individuals have had disciplinary actions taken against them. The New York site even provides descriptions of incidents resulting in disciplinary action.

**Continuing education** is an integral part of occupational and professional licensure. Boards of licensure establish requirements for keeping up with changes in their fields. The lack of oversight of electricians leaves to chance that licensees know the relevant changes in electrical codes or safety procedures when working in hazardous situations. In 1996, there were about 200 significant changes in the National Electrical Code. There are no requirements by the State Fire Marshal to obtain continuing education to renew licenses.

An additional effect of not conducting oversight of electricians is that the funds for such purpose, i.e., \$50 for annual renewal of licenses, is used for other purposes of the State Fire Marshal. TABLE 5 shows revenue generated from issuing and renewing licenses for electricians for FY97.

<b>TABLE 5</b>	
<b>Electrician Licensure Revenues</b>	
<b>Licensure Activity</b>	<b>Revenue Generated</b>
Renewals	\$503,460
Tests	\$29,935
Temporary Licenses	\$7,550
<b>TOTAL</b>	<b>\$540,945</b>
<i>Source: State Fire Marshal's Office</i>	

## CAUSAL FACTORS

### *Perceived lack of resources and authority*

One reason that the Fire Marshal's Office is not fulfilling its responsibility for the oversight of licensed electricians is a *perceived lack of resources and authority*. In a letter dated October 27, 1997 the Deputy Fire Marshal stated that "we do not have the resources or authority to do electrical wiring inspections in dwellings." The Fire Marshal's Office asserts that when the Legislature added this responsibility to the office (April 8, 1989) it cut general funding and dedicated licensure revenues to subsidize existing programs and fund the supervision of electricians. It is true that the Fire Commission's general funds (account No. 6170) decreased from \$876,340 in 1989 to \$756,666 in 1990. However, beginning in Fiscal Year 1990 the Fire Commission had an additional fund from licensure revenues (account 8017), denoted as Fire Marshal Fees, which provided added funding of \$438,648 to the Fire Commission. These two funds combine for a total of *\$1,195,314 representing a 36% increase in funding from the previous year* (see TABLE 6).

<b>TABLE 6</b>			
<b>Budget Summary for FY 1988-1990</b>			
<b>FY</b>	<b>General Fund (Account 6170)</b>	<b>Special Fund (Account 8017)</b>	<b>Total Allocated Funds</b>
1988	\$814,452	\$0	\$814,452
1989	\$876,340	\$0	\$876,340
1990	\$756,666	\$438,648	\$1,195,314
<i>Source: Digest of the Enrolled Budget Bill FY 1988 - 1990</i>			

The Fire Marshal's Office claims that it has no authority to inspect electrical wiring in dwellings because of an exemption clause in the Fire Code which states that "this State Fire Code has no application to personal care homes caring for three or less patients or buildings used wholly as dwelling houses for no more than two families and has no application to farm structures." However, the purpose of this exemption is to protect the privacy of the average citizen living in one or two family structures from routine or random fire code inspections. The average citizen, living in a single or double family dwelling, with a complaint against a licensed electrician would, in most cases, be willing to allow the Fire Marshal access to their home.

A legal opinion obtained by the Legislative Auditor disagrees with the lack of authority on the part of the fire Marshal. It states in relevant part as follows:

*I agree that enforcement of chapter twenty-nine, article three-b (Supervision of Electricians) is independent of, and not directly related to, the state fire code. The provisions of the state fire code do not encumber the enforcement of the electricians' law. It would be logical to infer that if the state fire marshal has the power to suspend or revoke an electrician's license if that person incompetently or unsafely performs electrical work, the fire marshal may perform those steps necessary to make this determination. That would, of course, include inspection of any work performed by the electrician. The fire marshal could provide the details of this task under his or her rule making authority found under §29-3B-5. Of course, this inspection authority also could be set forth in whatever detail desired by an addition of specific language to article three-b. The inspection can be done under present statutory authority in any case.*

The Fire Marshal's Office also asserts that "unless the Fire Marshal's Office witnesses the act or has video graphic evidence, the Fire Marshal's Office cannot take disciplinary action. The alleged perpetrator will usually deny performance of the work. It is one person's word against another's." As with any disciplinary proceeding, there will be questions of fact in almost any case. The State Fire Marshal has the responsibility to investigate complaints about licensed electricians. If an investigation fails to produce compelling evidence, then perhaps a hearing should not be held. However, if evidence is produced, such as a processed check showing payment for work, the complainant's testimonial or other exhibits, certain questions of fact can be determined in an administrative hearing. Stopping an investigation with a simple denial by the licensee is an abdication of oversight responsibilities.

## CONCLUSION

With the responsibilities of electrician licensure placed upon the State Fire Marshal in 1989, is the duty of oversight. Electricians pay an initial \$10-\$25 testing fee, depending upon the type of electrician's license, and \$50 each year to activate and renew licenses. The license purchased by these fees represents a *certificate of competency*. It shows the consumer that the electrician is qualified to perform electrical work. Not fulfilling the oversight responsibilities for

licensure of electricians causes harm to honest and competent licensed electricians who are competing with electricians using inferior materials and workmanship. The collection of licensure fees without fulfilment of this responsibility represents a form of “taxation without representation”, since the \$50 fee is only covering processing of license renewal and protection from encroachment by unlicensed electricians. Most importantly, this lack of an oversight function could result in the loss of life, health or property of the citizens of West Virginia.

## **RECOMMENDATIONS**

### ***Recommendation 1***

The legislature should consider establishing a separate division within the Board of Registration for Professional Engineers to assume all electrician licensure responsibilities, using existing resources as collected by the State Fire Marshal.

***OR***

### ***Recommendation 2***

The State Fire Marshal should investigate complaints against licensed electricians or persons illegally practicing the occupation of electrician, hold hearings, suspend or revoke such licenses as appropriate, and keep records regarding those proceedings, and report such information to the Legislature annually.