



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

LICENSE CARPENTER CONTRACTORS

House Bill 4987 (Substitute H-1) House Bill 4988 as introduced First Analysis (2-1-00)

Sponsor: Rep. Randy Richardville
Committee: Regulatory Reform

THE APPARENT PROBLEM:

According to information supplied by the Michigan Regional Council of Carpenters, a carpentry contractor is involved in a residential house project from start to finish. Carpenters install the footings and foundations; do the framing; install the roofing, siding, windows, doors and hardware, insulation, drywall, cabinets, and flooring; and do the trim work. Carpenters generally work as subcontractors under licensed residential builders or residential maintenance and alteration contractors. Under Article 24 of the Occupational Code, carpentry is within the purview of a licensed residential builder, and residential maintenance and alteration contractor's license is required to specify the particular craft or trade for which the licensee has qualified (e.g., carpentry, concrete, swimming pool installation, waterproofing a basement, and so on). However, unlike those that engage in mechanical services (heating and cooling), plumbing, or electrical work, carpenters do not have to be licensed by the state to engage in the profession of carpentry if they are hired as subcontractors by licensed builders and maintenance and alteration contractors.

Carpenters are an integral part of home construction and renovation, as it is often the carpenter contractor who must make the plans for a project work, such as when the plans do not match the basement or foundation, and who must pass information on the project to other contractors such as plumbers, electricians, masons, and roofers so that those professionals can do their jobs safely and correctly. Though technically carpenters fall under the trades and activities performed by licensed residential builders or residential maintenance and alteration contractors, it is reported that many carpenters engaging in business in Michigan are not individually licensed by the state or working for licensed builders. Unfortunately, this leaves little recourse for the individual who has received a poor quality work product. It is not uncommon to hear stories of such things as walls collapsing within five years of construction, nor to hear

of people giving thousands of dollars to contractors for work that is never performed. Though the Occupational Code prohibits a person from engaging in a regulated occupation without a license, and subjects violators to criminal sanctions, the Department of Consumer and Industry Services directs its limited resources to investigating complaints against licensed individuals. Further, the State Construction Code Act prohibits working on residential buildings in the capacity of a licensed residential builder or residential maintenance and alteration contractor without a license, and specifies that a violation is punishable by a civil fine. These provisions are to be enforced by county prosecuting attorneys or the attorney general, but again, those enforcement authorities generally direct their limited resources to more pressing criminal matters. Unless a person can get help from a local prosecutor, or bring a civil action, there is very little recourse for a dissatisfied consumer.

Some in the building professions believe that the situation may be helped by creating a separate carpenter contractor license for those engaged in carpentry, which would include framing, and installing or repairing walls, decks, ceilings, and roofs that are part of a wooden structure.

THE CONTENT OF THE BILLS:

The bills would establish a separate license for carpenter contractors and set license fees. The bills are tie-barred to each other, and would do the following:

House Bill 4987 would amend the Occupational Code (MCL 339.2401 et al.) to remove carpentry from the list of crafts and trades performed by a licensed residential maintenance and alteration contractor and create a separate carpentry contractor's license. A "carpenter contractor" would mean a person who was engaged in carpentry involving a residential structure for a fixed sum, price, fee, percentage, or other

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consideration of value, other than for wages for personal labor only. "Carpentry" would be defined as the erecting, installing, altering, repairing, servicing, or maintaining of wooden structures or their structural parts and would include, but not be limited to, all framing, decks, walls, ceilings, roofs, and components that go to make the framing of a structure complete in wood construction, including the prefabrication of any wood structure or component. Under the bill, "wood construction" and "wooden structure" would include construction methods that utilize substitute materials that include metal studs and composite framing, and finish materials that replace or are used in conjunction with traditional wood construction.

For a period of one year after the bill's effective date, the Department of Consumer and Industry Services (CIS) would have to issue a carpenter contractor license to a person who applied to the department, paid the applicable license and application fees, successfully completed an examination establishing knowledge of the obligations of a carpenter contractor, and demonstrated that he or she had been working as a carpenter contractor for at least 12 of the preceding 24 months. After that time, carpenter contractors would be regulated by the provisions currently regulating residential builders and maintenance and alteration contractors. The bill would also change the membership and name of the Residential Builders' and Maintenance and Alteration Contractors' Board to add carpenter contractors; the board would comprise two licensed members of each profession. Not later than 180 days after the bill's effective date, the director of CIS would have to promulgate rules to establish master, journey, and apprentice classes of carpenters. Existing industry standards that define and set forth skill levels regarding the classes could be adopted by reference.

House Bill 4988 would amend the State License Fee Act (MCL 338.2239) to set the application processing fee, examination fees, and annual license fee for a carpenter contractor at the same levels as those in place for residential builders and residential maintenance and alteration contractors.

BACKGROUND INFORMATION:

The bills are nearly identical to House Bills 6226 and 6227, which were introduced in the 1997-1998 legislative session. The bills were passed by the House but did not see Senate action.

FISCAL IMPLICATIONS:

According to a fiscal note dated 1-26-00, the House Fiscal Agency reports that House Bill 4987 would increase costs to the state by requiring the Department of Consumer and Industry Services to create a licensure structure to regulate carpenter contractors, and by requiring the department to promulgate rules to establish master, journey, and apprentice classes of carpenters. However, the agency reports in a second fiscal note, also dated 1-26-00, that House Bill 4988 would increase revenue to the state by establishing an annual license fee and by setting fees to cover the application processing costs and examination and examination review costs. The amount of the revenue increase would depend on the number of applications for licensure and the number of licenses granted.

ARGUMENTS:

For:

Reportedly, some carpentry work in home construction has been performed by unqualified persons, resulting in eventual damage to homes such as interior walls collapsing within five years of being built. Currently, carpentry is included in the list of trades and crafts that may be performed by a person with a residential maintenance and alteration contractor's license. However, many unlicensed persons are also engaging in carpentry, especially in residential home construction. Since the Department of Consumer and Industry Services has only enough enforcement resources to act on complaints against those individuals licensed under the Occupational Code, it is important that a separate license be created for those engaging in rough carpentry in home construction. The requirement in House Bill 4987 that applicants pass an examination should promote expertise in the profession. Also, if regulated, consumers could appeal to the department for help in settling disputes or in reporting shoddy work. As it is now, consumers have little recourse if taken by an unscrupulous contractor or if the contractor has performed poorly.

For:

Licensed home builders may subcontract with one or more carpenters, who may not be licensed, to complete various tasks on a home project. The subcontractor in turn may employ others, and may pay them as independent contractors or pay them in cash. Some people in the industry maintain that this practice deprives the state of tax dollars and puts the licensed builder at risk for repairs or defects in work performed by the subcontractors. Further, there is some concern

that subcontractors may not carry liability insurance or be in compliance with requirements to carry workers' compensation insurance, which could put an added liability on the homeowner if an injured carpenter were to sue the homeowner or the builder. House Bill 4987 should address these concerns. If all carpenter contractors had to be licensed by the state, it would be easier to ensure that the necessary liability insurance was being carried and that all workers would be covered by workers' compensation coverage.

Response:

Many in the industry feel that these concerns are unjustified. Currently, before a permit for residential construction or renovation is issued for a project costing \$600 or more, the applicant must verify that the work will be performed by a licensed builder or contractor unless the homeowner or members of his or her immediate family will do all of the work. Reportedly, information pertaining to workers' compensation coverage, the builder's license number and federal ID number, as well as other information, must be listed on the permit, or the permit applicant could be subject to criminal prosecution or civil fines. Therefore, some industry members felt that current laws adequately protect workers in the case of accidents. Further, the burden of responsibility for shoddy work by subcontractors is rightfully placed on the licensed builder; supervising subcontractors is the function of the general contractor.

Against:

If the primary purpose of the bill is to protect consumers from shoddy work being performed by unqualified persons, the bill would do little to correct the situation. According to departmental staff, the Department of Consumer and Industry Services receives about 1,000 complaints a year on contractors licensed under the code, and is able to process about 1,000 cases a year. However, with a backlog of 2,000 cases at the start of 1998, and with the department receiving approximately 1,800 complaints in fiscal year 1998-1999 (according to the Michigan Regional Council of Carpenters), it does take time to resolve a case. Further, current laws lack sufficient teeth to act as much of a deterrent for unscrupulous contractors. The department can do little more than issue cease and desist orders, though they are often able to help resolve disputes between licensed contractors and clients. Therefore, creating a license for individuals doing carpentry would not stop unlicensed people from doing such work, nor would it necessarily weed out ill-trained or unskilled persons from the profession. A better approach may be to give state departments the resources they need to enforce compliance with the statutes. It is already illegal to do

carpentry work for hire on a job costing over \$600 without being licensed as either a residential builder or as a residential alteration and maintenance contractor.

Also, it cannot be said enough that government simply cannot be expected to replace the common sense of the public. Consumers simply must take the time to educate themselves before hiring a contractor to do work on their homes. It is unfortunate that people are sometimes cheated out of savings for work that is never performed, or performed badly, but there are steps a consumer can take to protect himself or herself. People can call the local Better Business Bureau, can check with licensing boards for licensed occupations, get a list of references of former clients to see the quality of work first hand, and so on. Consumers could also call state associations for guidelines on how to choose a competent contractor. In short, consumers must take the time to gather facts, educate themselves, and exercise judgment in choosing a contractor, whether the profession is licensed or not.

Against:

The bill should be amended to specify that a person licensed as a residential builder or a residential maintenance alteration contractor would not have to also be licensed as a carpenter contractor. As it is written, the bill would appear to require that licensed builders and contractors would also have to have a separate license to do carpentry work.

Against:

The bills are problematic on several levels. For example, carpenters do not have the broad expertise, knowledge, or training to oversee all aspects of home construction or major renovation work, such as handling subcontracts, leases, sales, property management, and so on. Yet, House Bill 4987, by allowing carpenter contractors to employ salespersons, would essentially allow a licensed carpenter contractor to do almost everything that builders and contractors currently do. Under the bill, it is conceivable that a carpenter contractor could build a home from start to finish, and then sell or lease that home.

Currently, carpentry is one of many crafts and trades that licensed builders and licensed residential maintenance and alteration contractors are authorized to perform. These contractors must pass an examination to be licensed. If the exam required to be created for carpenter contractors dealt exclusively with the knowledge and skill required to perform tasks of carpentry, then a carpenter contractor should not be able to engage in activities currently reserved for licensed builders, such as building a home from scratch

and then selling it without the aid of a licensed real estate agent. To do otherwise would merely blur the distinction between carpenter contractors and licensed builders.

Against:

Though some believe that creating a separate license for carpenter contractors has merit, the argument has been made that it would be more appropriate to create a freestanding act similar to the acts that regulate heating and cooling specialists, plumbers, and electricians rather than to amend the Occupational Code. Further, it has been pointed out that in creating a freestanding act, regulation of carpenter contractors would fall under the purview of the Bureau of Construction Codes, which administers and enforces the State Construction Code and oversees state and local building officials, rather than the general licensing office of the Department of Consumer and Industry Services.

Against:

Some industry members feel that the bills would create a significant administration and enforcement burden on the Department of Consumer and Industry Services and possibly on local building officials, perhaps even a ten-fold increase in administration and enforcement duties. Further, it is not clear who would have the responsibility to settle disputes between licensed builders and contractors and carpenter contractors. Finally, the bill would require the department to promulgate rules to create a three-tiered classification for carpenter contractors within 180 days of its effective date (about six months), but the average time for a rule to go through the rule-making process is twelve months.

Against:

Occupational licensure and registration statutes generally tend to be promoted by those in the affected profession, and act as economic protection against competition within the profession. The trend in Michigan, as well as across the country, has been to reduce government regulations, not create new regulatory structures.

POSITIONS:

The Michigan Regional Council of Carpenters supports the bills. (1-25-00)

The Michigan State AFL-CIO supports the bills. (1-26-00)

The Department of Consumer and Industry Services does not support the bills. (1-25-00)

The City of Lansing opposes the bills. (1-25-00)

The Michigan Association of Home Builders opposes the bills. (1-26-00)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.