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SFA**BILL ANALYSIS**

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Senate Bill 351 (Substitute S-1 as reported)
Sponsor: Senator Glenn D. Steil
Committee: Human Resources and Labor

Date Completed: 4-25-01

RATIONALE

Article 24 of the Occupational Code provides for the licensure and regulation of residential builders. Article 24 allows a complaint to be filed against a residential builder licensee for any of 13 actions listed in the article; if found in violation, the licensee may be subject to penalties specified in the Code. Complaints may be filed against a licensee for such reasons as abandonment of a construction project; failure to account for or remit money that belongs to others; a willful violation of the State's building laws; and insolvency. In addition, a complaint may be filed against a licensee for "poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official".

Currently, complaints are filed under Article 5 of the Code, which prescribes the powers and duties of the Department of Consumer and Industry Services (DCIS) when complaints are received, and provides for investigations of complaints, administrative hearings in complaint disputes, and determinations of penalties. A complaint must be made within 18 months after completion, occupancy, or purchase, whichever occurs later, of a residential structure or a combination of a residential and commercial structure.

To file a complaint with the DCIS, an individual must contact the Department and obtain a complaint package, which includes a building inspection report. The complainant must give the report to the local building inspector for completion. The building inspection report asks the inspector to enter information regarding the nature of the complaint, location, and whether there is an issue of workmanship, code violations, or no violations. Reportedly, reports completed by inspectors often do not identify specific grounds for a complaint, but instead simply state "poor workmanship". It has been pointed out that such a report leaves the builder, and the DCIS, unsure of how to address the complaint. Some people believe that the complaint

process could be improved if, in questions of workmanship, more specific complaint procedures were required.

CONTENT

The bill would amend Article 24 of the Occupational Code to establish standards and procedures for administrative proceedings regarding workmanship complaints against residential builders.

The bill provides that, notwithstanding Article 5, the following would apply to administrative proceedings regarding workmanship:

- A complaint submitted by an owner would have to describe in writing, to the satisfaction of the DCIS, the factual basis for the allegation and the proposed action necessary to correct or remedy the conditions described in the complaint.
- The DCIS would have to presume the innocence of a licensee throughout the proceeding until the administrative law hearing examiner found otherwise in a determination of findings of fact and conclusions of law under Article 5. The licensee would have the burden of refuting evidence submitted by a person during the administrative hearing, and the burden of proof regarding the reason deficiencies were not corrected.

- Upon receiving a building verification report issued to the DCIS by a local government official under the Single State Construction Code Act, the DCIS would have to mail a verified complaint to both the complainant and the licensee. Failure of the DCIS to send a copy of the verified complaint within 30 days would invalidate the complaint; however, in the case of a mistake by the DCIS, as determined by the Director, relative to the failure to send a copy as required, the DCIS would be granted an additional 30 days for processing and mailing a copy of the verified complaint.
- The DCIS could not initiate a proceeding against a licensee who contractually provided for an alternate dispute resolution procedure that had not been used and completed, unless it was determined that the licensee had not complied with a decision or order issued as a result of that procedure or the procedure was not fully completed within 90 days after the complaint was filed with the DCIS.
- The complainant would have to demonstrate, in a manner acceptable to the DCIS, that the licensee had been given notice describing reasonable times and dates that the residential structure was accessible for any needed repairs, and proof acceptable to the DCIS that the repairs were not made within 60 days after the notice was sent. This provision would not apply if the DCIS determined that there was a necessity to safeguard the structure or to protect the occupant's health and safety; in this case the DCIS could issue a formal complaint or citation to the licensee, issue a cease and desist order; or summarily suspend the residential builder's license.
- If the owner and licensee had agreed contractually on mutually acceptable performance guidelines relating to workmanship, the DCIS would have to consider those guidelines in its evaluation of a complaint.

The bill provides that it would be an affirmative defense to an action brought in a court against a residential builder licensee that the complainant failed to complete a contractually provided alternate dispute resolution.

As currently required for complaints filed under Article 5, a complaint filed under Article 24 would have to be made within 18 months after completion, occupancy, or purchase, whichever occurred later.

MCL 339.2411 & 339.2412

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The

Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Within 18 months of occupancy, if an individual has a complaint about a residential builder or remodeler, he or she can notify the DCIS and obtain a packet of materials, which can be completed and filed with the DCIS as a complaint. Part of the packet includes a building inspection report which the complainant must give to the local building inspector for completion. While the report asks the inspector to cite code violations and describe problems, too often returned reports only state "poor workmanship". The lack of detail leaves the report open to interpretation by DCIS personnel, and leaves the builder in doubt as to how to respond.

Further, it has been pointed out that current procedures give inspectors little incentive to file the reports at all, let alone accurately. Before a dwelling may be occupied, a local building inspector must inspect the premises for compliance with building codes and construction standards. Once approved by the inspector, the premises may be occupied. If a complaint is filed shortly after an individual occupies the premises, the inspector is then asked to cite problems or violations in a dwelling that he or she just approved for occupancy. The bill would help to eliminate these problems, by requiring that complaints include greater specificity. This would allow builders to respond more appropriately and efficiently to complaints, and thus reduce the number of complaints that result in DCIS administrative hearings and procedures.

Supporting Argument

The bill provides that the DCIS could not initiate proceedings against a licensee in cases in which contracted alternate dispute resolution procedures had not been completed. This means that the procedures would have to be followed to completion before the DCIS could act on a complaint. This would encourage builders and owners to settle disputes before involving the DCIS and perhaps would reduce the overall participation of the DCIS in addressing complaints.

Opposing Argument

The bill provides that failure of the DCIS to send a copy of a verified complaint to a complainant and licensee within 30 days would invalidate the complaint. This means that a complainant could be punished for the failure of the DCIS to respond on time.

Response: The bill would allow the DCIS an extra 30 days to respond if the DCIS Director determined that the Department was at fault. Further, if for some reason neither deadline were met, the owner could refile the complaint and restart

the process.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.