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**BILL ANALYSIS**

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Senate Bills 631 and 632 (as introduced 6-22-05)

Sponsor: Senator Nancy Cassis

Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 4-26-06

CONTENT

Senate Bill 631 would amend the State License Fee Act to increase from \$40 to \$60 per year the license fee for a residential builder or residential maintenance and alteration contractor, salesperson, or branch office; implement a \$50 code book fee per license cycle; and provide for the distribution of the license fee revenue to the "Builder Education Fund" and the "Builder Enforcement Fund", which the bill would create.

Senate Bill 632 would amend the Occupational Code to do the following:

- **Require an unlicensed or unregistered person who practiced an occupation regulated under the Code, or operated a barber college, school of cosmetology, or real estate school, to pay a civil fine of \$5,000 to \$25,000 to the person bringing the action.**
- **Make it a misdemeanor punishable by imprisonment for 93 days to one year, and/or a fine of \$5,000 to \$25,000, to practice without a license as a residential builder or residential maintenance and alteration contractor.**
- **Increase the membership of the Residential Builders' and Maintenance and Alteration Contractors' Board from six to nine members.**
- **Require the Department of Labor and Economic Growth (DLEG) to issue three-year residential builders licenses.**

-- **Provide for a course of study that would have to be completed before a residential builder license was issued.**

The two bills are tie-barred to each other.

Senate Bill 631

The Act lists the fees for a person seeking licensure as a residential builder or residential maintenance and alteration contractor, salesperson, or branch office under Article 24 of the Occupational Code (licensing residential builders). The annual fee is \$40 until September 30, 2007, after which it will revert to \$30 (the amount assessed before October 1, 2003). Under the bill, the license fee, per year, would be \$60 and the proposed code book fee, per license cycle, would be \$50.

The Builder Education Fund and the Builder Enforcement Fund would be established in the State Treasury and would be administered by DLEG. Of each license fee received by DLEG during the three-year license cycle, \$30 would have to be deposited with the State Treasurer to the credit of the Builder Education Fund and \$30 would have to be deposited into the Builder Enforcement Fund.

The Department could use the Builder Education Fund only for the operation of DLEG programs related to education required of all licensees or applicants for licensure under Article 24 of the Occupational Code. The Department could use the Builder Enforcement Fund only for the enforcement of Article 24 regarding

unlicensed activity and to reimburse the Attorney General for expenses incurred in conducting prosecutions of unlicensed practice.

Any unspent balance in either Fund at the end of a fiscal year would have to be carried forward to the next fiscal year.

A person who was licensed as a residential builder or a residential maintenance and alteration contractor under Article 24 as an individual and in the capacity of a qualifying officer, or who was licensed as a qualifying officer more than once, would be obligated to pay the code book fee only once per license cycle. (Under the Code, if a corporation, partnership, or association applies for a license, the applicant must designate one of its officers, partners, members, or managing agent as a qualifying officer who, upon taking and passing the examination, and upon meeting all other requirements, will be entitled to a license to act for the corporation, partnership, or association.)

Senate Bill 632

Licensing Violations

Under the Code, a person must not engage in or attempt to engage in the practice of an occupation regulated under the Code or use a title designated under the Code unless the person possesses a license or registration issued by DLEG for the occupation. A school, institution, or person must not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by DLEG.

(The Code governs the licensure of the following: public accounting; collection practices; personnel agencies; barbers; cosmetology; hearing aid dealers; mortuary science; architects, professional engineers, and land surveyors; foresters; landscape architects; community planners; residential builders; real estate brokers and salespersons; real estate appraisers; and ocularists.)

A person, school, or institution that violates these provisions is guilty of a misdemeanor, punishable by a maximum fine of \$500, imprisonment for up to 90 days, or both. A second or subsequent violation is a

misdemeanor punishable, except as otherwise provided, by a maximum fine of \$1,000, imprisonment for up to one year, or both.

In addition, a person, school, or institution that violates a section of the Code or a rule or order promulgated or issued under it must be assessed one or more of the following penalties:

- Placement of a limitation on a license or certificate of registration.
- Suspension of a license or certificate of registration.
- Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- Revocation of a license or certificate of registration.
- A civil fine to be paid to DLEG, not to exceed \$10,000.
- Censure.
- Probation.
- A requirement that restitution be made.

Under the bill, the civil fine of up to \$10,000 would apply in the case of a person licensed or registered under the Code. In the case of a person not licensed or registered under the Code who violated its licensure provisions, the person would have to be assessed a civil fine payable to the person bringing the action of not less than \$5,000 or more than \$25,000.

Under the Code, DLEG may bring an appropriate action in the name of the people of the State to carry out and enforce the Code. The bill specifies that this provision would not prohibit the Department from bringing any civil, criminal, or administrative action for the enforcement of the section that prohibits a person from engaging in the practice of an occupation regulated under the Code without a license.

Under the bill, notwithstanding the Code's criminal penalty, a person not licensed under Article 24 as a residential builder or a residential maintenance and alteration contractor who violated the Code's licensing provisions would be guilty of a misdemeanor punishable by imprisonment for not less than 93 days or more than one year and a fine of not less than \$5,000 or more than \$25,000, or both.

Residential Builders' and Maintenance and Alteration Contractors' Board

The Code creates the Residential Builders' and Maintenance and Alteration Contractors' Board. Four of the members must be licensed residential builders and two members must be licensed maintenance and alteration contractors. Under the bill, the board would have nine members and, of the members representing the general public, at least one would have to be registered under the Building Officials and Inspectors Registration Act.

The bill would require DLEG to post on its website any final order of the Board and the date it was issued. The posting would have to occur within 30 days after the final order was issued. The Department annually would have to post on its website the number of final orders of the Board.

Builders License Application

Under Article 24 of the Code, DLEG may require an applicant, licensee, or each partner, trustee, director, officer, member, or shareholder to submit evidence of good moral character and financial stability. Before a license is issued, an applicant must submit any amount required to be paid under the Construction Lien Act. Under the bill, an applicant also would have to submit the following:

- A copy of an operator's license or State personal identification card, to be used by DLEG only for proof of identity of the applicant.
- In the case of a license renewal, proof of successful completion of continuing education.
- In the case of a license issued to a corporation, partnership, or association, each officer, partner, member, or managing agent, whether or not he or she was a qualifying officer, would have to provide a copy of his or her operator's license or State personal identification card to DLEG for use by the Department only for identification purposes.

Beginning the license cycle after the bill's effective date, DLEG would have to issue the license of a residential builder and residential maintenance and alteration contractor for a period of three years in duration.

Builders: Prelicensure & Continuing Education

Beginning after the bill's effective date, applicants for initial licensure either as a residential builder or as a residential maintenance and alteration contractor would have to complete specifically a prelicensure course of study. Licensees holding a residential builder or a residential maintenance and alteration contractor license on the bill's effective date that were renewing a license in the capacity of an individual or qualifying officer, or both, would be exempt from this requirement.

The Department of Labor and Economic Growth would have to require an applicant who was not exempted to complete successfully 60 hours of approved prelicensure courses consisting of at least six hours of courses in each of the following areas of competency:

- Business management, estimating, and job costing.
- Design and building science.
- Contracts, liability, and risk management.
- Marketing and sales.
- Project management and scheduling.
- The current Michigan Residential Code and construction safety standards promulgated under the Michigan Occupational Safety and Health Act.

Beginning the calendar year after the bill's effective date, a person licensed as a residential builder or a residential maintenance and alteration contractor would have to complete successfully at least three hours of continuing education per calendar year and 21 hours per license cycle since the issuance of his or her license or since the preceding license renewal. The 21 hours would have to be prorated for licensees who obtained licensure in the second or third year of the license cycle. At least one hour of courses in codes, safety, and legal issues would have to be successfully completed each calendar year.

The bill specifies that the education courses described in Section 3, pages 3-6 through 3-58 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the National Association of Home Builders, would be considered approved, would be considered appropriate for fulfilling the

prelicensure and continuing education requirements of the bill, and would be incorporated by reference. The Department could approve any courses it considered to be the equivalent of the courses incorporated by reference. The Department would have to approve any updates to the courses incorporated by reference or equivalent courses unless it determined that they did not meet the quality and standards of the NAHB courses. Any construction code update courses approved by the Bureau of Construction Codes and fire safety and workplace safety courses approved or sponsored by DLEG also would be considered appropriate for fulfilling the continuing education requirements. The Department could, by rule, amend, supplement, update, substitute, or determine equivalency regarding any courses described in these provisions.

The prelicensure and continuing education courses would have to be taught and presented by instructors approved by DLEG. Except as otherwise provided in the bill or by rule of the Department, instructors of prelicensure and continuing education would have to meet the standards of Section 4, pages 4-5 through 4-9 of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success". The Department could waive the requirement of membership in a local, State, or national trade association contained in the NAHB standards. By rule, DLEG could amend, supplement, update, substitute, or determine equivalency regarding these standards and would have to establish instructor qualifications for courses not incorporated by reference.

The subject matter of the prelicensure and continuing education courses could be offered by a high school, intermediate school district (ISD), community college, university, trade association, or other entity approved by DLEG as meeting the subject matter qualifications and the instructional qualifications described above. The Department would have to accept hours or equivalent credits for any courses offered by a high school, ISD, community college, university, trade association, or other entity offering the prelicensure and continuing education courses that were approved by DLEG.

The Department would have to promulgate rules to provide for the following:

- A prepresentation approval of continuing education courses offered by a high school, ISD, community college, university, trade association, or other entity that met or exceeded the course content of the continuing education courses described in the bill.
- Postpresentation approval for courses offered at seminars and conventions by trade associations, research institutes, risk management entities, manufacturers, suppliers, governmental agencies, consulting agencies, or other entities. This would not prohibit applications for the prepresentation approval of these courses.
- Approval of distance learning.

Each licensee could select approved courses in his or her subject matter area or specialty. Service as a lecturer or discussion leader in an approved course would have to be counted toward the continuing education requirements.

Complaints Against Builders

Under Article 24, a complaint must be made within 18 months after completion, occupancy, or purchase, whichever occurs later, of a residential structure or a combination of residential and commercial structure. Under the bill, a complaint would have to be made within 18 months after the latest of the following regarding a residential structure or a combination of residential and commercial structure:

- Its completion.
- Its occupancy.
- Its purchase.
- The last progress payment or draw received from the owner or a lender.

Under the Code, a licensee or applicant is subject to the penalties set forth in the Code for, among other things, poor workmanship or workmanship not meeting the standards of the custom or trade verified by a building code enforcement official. Under the bill, instead, a licensee or applicant would be subject to penalties for workmanship not meeting the standards of the Michigan Residential Code as promulgated under the Stille-Derosset-Hale Single State Construction Code Act.

Currently, "verified complaint" in Section 2411 (which deals with complaints against licensed residential builders) means a complaint in which all or a portion of the allegations have been confirmed by the building inspection report. The bill would refer to an affidavit of the State or local building official, instead of the building inspection report.

MCL 338.2203 & 338.2239 (S.B. 631)
339.601 et al. (S.B. 632)

Legislative Analyst: J.P. Finet

FISCAL IMPACT

Senate Bill 631

According to the Department, there are 80,754 licensed residential builders in Michigan as of March 2006. The amount of restricted revenue that was collected from this occupation for FY 2004-05, which is the last complete fiscal year, was \$3,062,191.

These bills would change the current license fee from \$40 to \$60 and change the license cycle from two years to three years. This fee increase would generate \$180 per licensee every three years and allow for \$30 to be deposited into the Builder Education Fund and \$30 into the Builder Enforcement Fund. The remaining \$120 would be consistent with what is currently generated under the existing fee structure.

Finally, this bill would create a new \$50 fee for the cost of a copy of the code book and mandate that each licensee purchase a code book each fee cycle. Currently, the amount charged by the Department for a copy of this book is approximately \$65.

Senate Bill 632

This bill would create continuing education requirements for licensed builders and contractors up to three hours per year up to a total of 21 hours per license cycle (every three years). The Department would be required to approve all courses, instructors, and participating schools. According to the Department, these additional administrative responsibilities would require it to fund and staff approximately 4.0 FTEs at a cost of approximately \$328,000 annually. This estimate reflects staffing costs only and does not include any information technology,

or other overhead costs that would be attributed to these activities. These costs would be offset by the revenue generated through \$30 of the licensure fee that would have to be deposited into the Builder Education Fund. This \$30 would generate an additional \$2.4 million every three years, or \$807,500 annually if the number of licensees remains constant.

Revenue from these fees is used to support the costs of the Department, and carryforward authorization is currently provided in Public Act 156 of 2005, the appropriation act for the Department of Labor and Economic Growth.

There bill would have no impact on the General Fund.

There are no data to indicate how many offenders would be convicted of the proposed offense. Local governments would incur the costs of incarceration in local facilities and misdemeanor probation, which vary by county. Additional penal fine revenue would benefit public libraries.

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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.