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## BILL ANALYSIS

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Senate Bills 450 through 453 (as introduced 4-26-07)  
Sponsor: Senator Raymond E. Basham (S.B. 450 & 451)  
Senator Nancy Cassis (S.B. 452 & 453)  
Committee: Economic Development and Regulatory Reform

Date Completed: 5-16-07

**CONTENT**

**Senate Bills 450 and 452** would amend Article 6 (Violations and Penalties) and Article 24 (Residential Builders) of the Occupational Code to do the following:

- Establish increased criminal penalties for a person who operated as a residential builder or a residential maintenance and alteration contractor without a license.
- Provide that restitution would have to be required for any violation of the Code.
- Allow the Department of Labor and Economic Growth (DLEG), the Attorney General, and a county prosecutor to use forfeiture as a remedy.
- Revise the time period to file a complaint against a licensed residential builder or contractor.

**Senate Bill 452** also would:

- Require the completion of a prelicensure course of study by applicants for an initial residential builder or contractor license.
- Establish continuing competency requirements for licensed residential builders and contractors.
- Allow a licensed builder or contractor to apply for inactive status.
- Require DLEG to issue three-year residential builder and contractor licenses.

**Senate Bill 450** also would:

- Include aiding or abetting another person in the unlicensed practice of

an occupation as a violation of the Code subject to administrative sanctions.

- Allow a prosecuting attorney and the Attorney General to bring a civil action against a person not licensed under Article 24 for practicing without a license; and require the court to order a fine payable to the prosecuting attorney or the Attorney General.
- Require a licensed residential builder, as part of a contract, to provide information relating to his or her individual license and to any license issued to the person as a qualifying officer.
- Prohibit a person not licensed under Article 24 from imposing a lien on real property.

**Senate Bill 451** would amend the Revised Judicature Act to require a court to notify DLEG of the entry of a judgment for damages against a licensed residential builder for certain violations; and include a violation of the Occupational Code's licensure and registration requirement as a crime for purposes of the seizure and forfeiture of the proceeds of a crime.

**Senate Bill 453** would amend the State License Fee Act to do the following:

- Increase the per-year license fee for a builder or contractor from \$40 (or \$30 after September 30, 2007) to \$60 for one license cycle, and prescribe a \$50 fee for subsequent years.

- **Create the "Builder Enforcement Fund" and require it to be used for the enforcement of Article 24 of the Occupation Code regarding unlicensed activity, and the prosecution of unlicensed practice.**
- **Allocate to the Fund one time only \$30 from the \$60 license fee received during a single three-year license cycle.**
- **Allocate to the Fund \$5 of the \$50 license fee until the Fund balance reached \$3.0 million, and reinstate the allocation when the balance fell below \$750,000.**

The bills all are tie-barred to each other.

### **Senate Bills 450 and 452**

#### Licensing Violations

License/Registration Requirement. Section 601(1) of the Occupational Code prohibits a person from engaging in or attempting to engage in the practice of an occupation regulated under the Code or using a title designated under the Code unless the person possesses a license or registration issued by DLEG for the occupation. Under Section 601(2), a school, institution, or person may 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 bills specify that a person whose license or registration was suspended, revoked, or lapsed, as determined by DLEG records, would be considered unlicensed or unregistered.

(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.)

Criminal Penalties. Currently, a person, school, or institution that violates the licensure or registration requirement 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.

Under the bills, in the case of a person not licensed or registered under Article 24 as a residential builder or residential maintenance and alteration contractor, a first offense would be punishable by a fine of not less than \$5,000 or more than \$25,000 and/or imprisonment for up to one year. The fine for a second offense would be the same, but the maximum term would be two years. A first or second offense would continue to be a misdemeanor. A third offense would be a felony punishable by the same fine and/or imprisonment for up to four years.

The bills would require a court entering a conviction for a violation of Section 601 to notify the DLEG Bureau of Commercial Services by mail, facsimile, or e-mail.

The bills specify that any violation of the Code would have to include a requirement that restitution be made, based upon proofs submitted to and findings made by the trier of fact as provided by law.

Additional Sanctions. A person, school, or institution that violates 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.
- An administrative fine to be paid to DLEG, not to exceed \$10,000.
- Censure.
- Probation.
- A requirement that restitution be made.

Under the bills, the administrative fine payable to DLEG would apply in the case of a person licensed or registered under the Code. A requirement for restitution would have to be based upon proofs submitted to

and findings made by the hearing examiner after a contested case.

Senate Bill 450 would allow the Attorney General and a prosecuting attorney to bring a court action for a civil violation against a person not licensed under Article 24 who had violated the licensing requirement. The court would have to assess a civil violation judgment, to be paid to the Attorney General or the prosecuting attorney, of at least \$5,000 but not more than \$25,000, aside from any civil damages or restitution.

Other Provisions. Senate Bills 450 and 452 would allow DLEG, the Attorney General, or a county prosecutor to use forfeiture as a remedy in a manner provided for in Section 606. Senate Bill 450 would add that section to authorize DLEG, the Attorney General, and a county prosecutor to use the forfeiture provisions of Chapter 47 of the Revised Judicature Act for items seized and determined to be proceeds of a crime, substituted proceeds of a crime, or the instrumentality of a crime, as those terms are defined in Chapter 47 (which Senate Bill 451 would amend).

The Code authorizes DLEG to bring an appropriate action in the name of the people of the State to carry out and enforce the Code, and authorizes the Attorney General to intervene in and prosecute all cases arising under the Code. Under Senate Bills 450 and 452, an "appropriate action" could include mediation or other alternative dispute resolution. These provisions would not prohibit the Department from bringing any civil, criminal, or administrative action for the enforcement Section 601.

The bills specify that DLEG would have standing to bring an administrative action or directly to bring an action in court regarding unlicensed practice of an occupation.

Under the Code, an affected person may bring an injunctive action to restrain or prevent a person from violating the Code's licensing requirements. If successful, the affected person is entitled to actual costs and attorney fees. "Affected person" means a person directly affected by the actions of a person suspected of violating the Code's licensing requirements. The term includes, among others, a board established under the Code, and a person who has used the services of the unlicensed or unregistered

person. Under the bills, the term also would include DLEG.

### Residential Builders' Board

The Code creates the Residential Builders' and Maintenance and Alteration Contractors' Board, and requires that four of the members be licensed residential builders and two be licensed maintenance and alteration contractors. The Board also includes three public members. Under Senate Bill 452, 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

Under Article 24, 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 Senate Bill 452, an applicant also would have to submit a copy of an operator's license or State personal identification card, to be used by DLEG only for proof of the applicant's identity.

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. An applicant for a renewal license would have to state that he or she had a current copy of the Michigan Residential Code and had fulfilled the appropriate requirements regarding continuing competency.

A licensee would have to maintain documentation, for at least five years, of activities meeting the continuing competency requirements.

Senate Bill 450 would require a licensee, as part of a contract, to provide information relating to his or her individual license and to any license issued to that person as a qualifying officer of another entity.

#### Prelicensure & Continuing Competency

Beginning on the effective date of Senate Bill 452, applicants for initial licensure as either a residential builder or a residential maintenance and alteration contractor would have to complete successfully a prelicensure course of study. Licensees holding a residential builder or contractor license on the bill's effective date who were renewing a license in the capacity of an individual or qualifying officer, or both, would be exempt from this requirement.

The Department 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.
- Construction safety standards promulgated under the Michigan Occupational Safety and Health Act.

Beginning the calendar year after the bill's effective date, a person obtaining initial licensure as a residential builder or residential maintenance and alteration contractor would have to complete successfully at least three hours of activities demonstrating continuing competency each calendar year, during the first six years of licensure, and 21 hours per three-year time period since the issuance of his or her license. At least three hours would have to be devoted to activities designed to develop a licensee's understanding of and ability to apply State building codes and laws relating to the licensed occupation, safety, and changes in construction and business management laws. If a license had held a license for more than six years or had not been determined by DLEG in a final order to have violated the Code or a rule adopted under it, he or she would have to complete

successfully at least three hours of activities demonstrating continuing competency per license cycle, including one hour each of codes, safety, and legal issues.

In the case of a licensee who had been determined by DLEG in a final order to have violated the Code or a rule, he or she would have to complete successfully, during the next complete license cycle, up to 21 hours of activities demonstrating the development of continuing competency, as determined appropriate by DLEG order, including one hour each of codes, safety, and legal issues.

As activities that demonstrated the development of continuing competency, the education courses described on specific pages of the January 2005 edition of the publication "NAHB University of Housing, Blueprint for Success", published by the National Association of Home Builders, and taught by instructors meeting the requirements of that publication, would be considered approved and appropriate for fulfilling the bill's prelicensure and continuing competency requirements, and would be incorporated by reference. A license could take any courses equivalent to those incorporated by reference.

Updates to these or equivalent courses would be acceptable unless DLEG determined that the courses did not provide a means of developing and maintaining continuing competency for the applicants or licensees who successfully fulfilled the course requirements. Any construction code update courses approved by the Bureau of Construction Codes as well as fire safety or workplace safety courses approved or sponsored by DLEG also would be considered appropriate for fulfilling the continuing competency requirements. The Department could, by rule, amend, supplement, update, substitute, or determine equivalency regarding any courses or alternative activities for developing continuing competency described in these provisions.

The Department could waive the requirement of membership in a local, state, or national trade association contained in the NAHB instructor standards incorporated by reference. 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 competency activities could be offered by a high school, intermediate school district (ISD), community college, university, or trade association, the Bureau of Construction Codes, the Michigan Occupational Safety and Health Administration, or a proprietary school licensed by DLEG as meeting the subject matter and instructional qualifications described above.

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

- Requirements other than those listed above for determining that a course met the minimum criteria for developing and maintaining continuing competency.
- Requirements for acceptable courses offered at seminars and conventions by trade associations, research institutes, risk management entities, manufacturers, suppliers, governmental agencies other than those named above, consulting agencies, or other entities.
- Approval of distance learning.

The Department also would have to promulgate rules providing for alternative forms of competency, including comprehensive testing, participation in mentoring programs, research, participation in code hearings conducted by the International Code Council, and publication of articles in a trade journal or regional magazine as an expert in the field. The alternative forms would have to be designed to maintain and improve a licensee's ability to perform the occupation with competence and would have to prescribe proofs that were necessary to demonstrate that the licensee had fulfilled the requirements of continuing competency.

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 competency requirements. Alternative forms of continuing competency could be earned and documented as promulgated in DLEG rules.

The Department could audit a predetermined percentage of licensees who renewed in a year for compliance with the bill's prelicensure and continuing competency requirements. Failure to comply with the audit or the requirements would have to result in the investigation of a complaint initiated by DLEG, and the licensee would be subject to the penalties prescribed in the Code.

#### Inactive Status

Under Senate Bill 452, a licensed residential builder or residential maintenance and alteration contractor could apply for inactive status by completing an application made available by DLEG. In the application, the licensee would have to declare that he or she was no longer actively engaged in the practice authorized by his or her license and temporarily intended to suspend authorized activity. When a completed application was submitted, DLEG would have to designate the licensee as inactive and note that status on records available to the public.

A licensee designated as inactive would have to have a current copy of the Michigan Residential Code. He or she would be exempt from the bill's continuing competency requirements, but still would have to pay the per-year license fee. An inactive licensee could activate his or her license by submitting an application to DLEG. Upon activation of a license, the licensee would have to complete at least one credit hour of continuing competency for that calendar year.

#### 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 Senate Bills 450 and 452, in the case of a maintenance and alteration contract, a complaint would have to be made within 18 months after the latest of the following: completion, occupancy, or purchase. In the case of a project requiring an occupancy permit, a complaint would have to be made within 18 months after the later of closing or issuance of the certificate of occupancy or temporary certificate of occupancy.

In any case in which the licensee or respondent failed to appear, participate, or defend any action, the Board would have to issue an order granting by default the relief requested, based upon proofs submitted to and findings made by the hearing examiner after a contested case.

Currently, 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 bills, 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.

Under Article 24, upon receiving a building inspection report that verifies or confirms the substance of a complaint, DLEG must send a copy of the verified complaint by certified mail to the complainant and the licensee. Under the bills, DLEG would have to send a copy of the verified complaint only to the licensee. Currently, "verified complaint" means a complaint in which all or a portion of the allegations have been confirmed by the building inspection report. The bills would refer to a complaint in which all or a portion of the allegations had been confirmed by an affidavit of the State or local building official.

#### Qualifying Officer

Under Article 24, 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 meeting all other requirements of Article 24, will be entitled to a license to act for the corporation, partnership, or association. Senate Bills 450 and 452 would require the qualifying officer also to obtain and maintain a license under Article 24 as an individual.

In addition, if an individual licensee were also a qualifying officer, his or her name and license number would have to be listed on any license issued to the individual as a qualifying officer.

In the case of a license issued under these provisions, each officer, partner, member, or managing agent, whether or not he or she was the qualifying officer, would have to provide a copy of his or her operator's license or State personal ID card to DLEG for use by the Department only for identification purposes.

Currently, a suspension, revocation, or denial of a license by DLEG may suspend, revoke, or deny any other license held or applied for under Article 24 by the qualifying officer of a corporation, partnership, or association whose license is suspended, revoked, or denied. Under the bills, the suspension, revocation, or denial of any other license would be mandatory.

Senate Bill 452 specifies that a licensee granted inactive status would not be eligible to serve as a qualifying officer.

Both bills would include references to a limited liability company or other entity in the provisions for licensure of a corporation, partnership, or association.

#### Lien on Real Property

Under Senate Bill 450 a person or qualifying officer for a corporation or a member of a residential builder or residential maintenance and alteration contractor could not impose or take any legal or other action to impose a lien on real property unless that person were licensed under Article 24 during the performance of the act or contract.

#### **Senate Bill 451**

Under Chapter 47 of the Revised Judicature Act, property that is the proceeds or instrumentality of a crime is subject to seizure by, and forfeiture to, a local unit of government or the State. The bill would amend the definition of "crime" in Chapter 47 to include a violation of Section 601 of the Occupational Code (which prohibits a person from engaging in a regulated occupation or using a designated title without being licensed or registered under the Code).

The bill also provides that, upon entry of a judgment for damages against a licensee under Article 24 of the Occupational Code on the basis of a violation of Section 2411(2), the court would have to notify the Bureau of

Commercial Services in DLEG of the entry of that judgment and would have to convey to DLEG a copy of that judgment. (Under Section 2411(2), a licensee or applicant under Article 24 who commits a violation listed in that section is subject to the penalties set forth in Article 6 of the Code. The listed violations include, for example, diversion of funds received for a construction project, a willful, unauthorized departure from the specifications in a material respect, a willful violation of State or local building laws, and filing a bankruptcy action. Article 6 contains the penalties described in Senate Bills 450 and 452.)

### **Senate Bill 453**

Currently, the per-year license fee for a residential builder or residential maintenance and alteration contractor, salesperson, or branch office is \$40 through September 30, 2007, or \$30 after that date. The bill would increase the fee to \$60 for the first cycle of an initial or renewal license following the bill's effective date, and \$50 for each subsequent year.

The Builder Enforcement Fund would be created in the State Treasury and would have to be administered by DLEG. A one-time-only \$30 allocation from a residential builder's or contractor's \$60 license fee during a single three-year license cycle would have to be deposited into the Fund. The Department could make the \$30 allocation only once per licensee. In the case of the \$50 license fee, \$5 would have to be allocated to the Builder Enforcement Fund.

If on December 1 of any year following 2010 DLEG determined that the balance in the Fund was more than \$3.0 million, the \$5 allocation from the \$50 renewal fee due after January 1 of the following year could not be made. If on any subsequent December 1 DLEG determined that the balance in the Fund was less than \$750,000, the \$5 allocation would resume for any renewal fee due after January 1 of the following year.

Notwithstanding Section 3 of the Act (which requires fees to be used for DLEG's operating costs), the Department could use the Fund only for the enforcement of Article 24 of the Occupational Code regarding

unlicensed activity as further described in Sections 601(1) and 601(2), and to reimburse the Attorney General or prosecuting attorney for expenses incurred in prosecuting that unlicensed practice. Any unspent balance in the Fund at the end of a fiscal year would carry forward to the next fiscal year.

MCL 339.601 et al. (S.B. 450 & 452)  
600.4701 et al. (S.B. 452)  
338.2239 (S.B. 453)

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

#### **Senate Bills 450 and 452**

The proposed criminal penalties under Senate Bills 450 and 452 would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many people would be convicted of practicing as a residential builder or contractor without a license. To the extent that the bills would increase incarceration time for offenders, local governments would incur the costs of incarceration in local facilities, and misdemeanor probation, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

To the extent that the bills would increase restitution orders, local governments would incur increased administrative costs. To the extent that the bills would increase probation time for offenders who were unable to complete restitution payments during their sentence, or increase incarceration time for offenders whose probation was revoked for not making a good faith effort to comply with a restitution order, the State and local governments would incur increased corrections costs.

Due to the reporting requirement in Senate Bill 450, the courts also would incur increased administrative costs.

In addition, Senate Bill 452 would create continuing education requirements for licensed builders and contractors of at least three hours per license cycle. The

Department would be required to approve all courses and could conduct an audit to ensure the licensees were in compliance. An allocation of \$5 of the increased renewal fee included in Senate Bill 453 would be used to cover the Department's costs associated with these additional responsibilities. This additional revenue is estimated to generate \$1.2 million over the three-year license cycle.

### **Senate Bill 451**

Due to the notification requirement, the bill could result in increased administrative costs for the courts.

### **Senate Bill 453**

The bill would increase the fees paid by licensed builders and contractors from \$30 to \$60 for the first license cycle and from \$40 to \$50 annually for any renewals. The bill also would create the Builder Enforcement Fund, which would receive a one-time \$2.4 million through the earmarking of \$30 from first license fee covered under the bill. In addition, the \$10 annual increase on the renewal fees would be allocated with \$5 being deposited into the Builder Enforcement Fund and \$5 being used to cover administrative expenses. This increase would generate another \$2.4 million over the three-year license cycle. The \$5 earmarked to the enforcement fund could be allocated only until the balance of the Fund reached \$3.0 million, and then it would not be allocated until the balance fell below \$750,000. These funds would be used to cover the administrative and regulatory costs that would be incurred by the Department of Labor and Economic Growth and to reimburse the Attorney General or prosecuting attorney for his or her expenses in prosecuting unlicensed activity. The bill also would provide carry-forward authorization for the balance in the Fund, which would prevent these funds from being deposited into the General Fund.

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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.