

Legislative Analysis



BUILDING CODE REVISIONS: CREATE ADVISORY COMMITTEES

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House Bill 5376 (reported from committee as substitute H-2)

Sponsor: Rep. Brandt Iden

Committee: Regulatory Reform

Complete to 6-12-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5376 would amend the Stille-DeRossett-Hale Single State Construction Code Act to require the director of the Department of Licensing and Regulatory Affairs (LARA), before promulgation of a new edition of a building trades code, to appoint an advisory committee for each building trade. The bill would also, among other things, prescribe the membership of each trade's advisory committee, prescribe the duties of the advisory committees, require a meeting of an advisory committee to be posted online, and require a report of the advisory committee's recommendations.

The Michigan construction code consists of the International Building Code, International Residential Code, International Mechanical Code, International Plumbing Code, International Existing Building Code, and the International Energy Conservation Code, published by the International Code Council, and also the National Electrical Code, published by the National Fire Prevention Association. Michigan's construction code authorizes the director of LARA to adopt all or any part of the international and national building codes or the standards contained within the codes by reference.

Currently, Michigan's code is required to be divided into sections as the director considers appropriate (e.g., building, plumbing, electrical, and mechanical sections). The boards¹ are required to work with the director's staff in the preparation of parts relating to their functions. Before an amendment to a code is promulgated, the boards whose functions relate to the code being amended may draft and recommend proposed language to the director. The director is required to consider all submissions by the boards, but has final responsibility for the promulgation of the code. The bill would delete this provision and instead create advisory committees that would review and compare the new edition of their assigned model code to the existing Michigan code, as well as considering any proposal submitted for revision or amendment to the newest edition of the model code.

Advisory committees

The bill would require the director, before promulgation of a new edition of any of the seven listed codes that make up the state construction code, to appoint separate advisory committees for each of those codes. The director would also appoint the members of each of the seven separate advisory committees, as prescribed in the bill. An individual could serve on more than one advisory committee. The seven advisory committees would be:

- Advisory Committee for the International Building Code
- Advisory Committee for the National Electrical Code

¹ State Plumbing Board, Board of Mechanical Rules, Electrical Administrative Board, and Barrier Free Design Board

- Advisory Committee for the commercial chapters of the International Energy Conservation Code
- Advisory Committee for the International Existing Building Code
- Advisory Committee for the International Mechanical Code
- Advisory Committee for the International Plumbing Code
- Advisory Committee for all chapters of the International Residential Code

Meetings

A notice of the date, time, and place of an advisory committee's meeting, along with an agenda, would be required to be posted on LARA's website at least 5 business days before the scheduled date. Meetings would have to be held in a place available to the general public, and all persons would be permitted to attend. All persons would have to be afforded a reasonable opportunity to present their views on the matters before the committee prior to any vote on the matter.

Each committee would be required to vote publicly and by roll call on each proposed revision or amendment. Approval of a revision or amendment would be by a majority vote of those present. All votes would have to be posted on the LARA website within 48 hours of the meeting. Members of an advisory committee could participate in the meetings in person or through the use of electronic means or by telephone as determined by the director.

Report

Each advisory committee would be required to prepare and submit a report to the director containing the committee's recommendations for changes to the existing Michigan code in effect at the time of the review. The report would have to include the adoption of any new language or requirements from the latest edition of the relevant model code and be submitted to the director within 45 days of the completion of the committee's deliberations on the proposed revisions or amendments. In making recommendations, the advisory committee would have to consider the following:

- The reason, and the demonstrated need in Michigan, for each proposed revision or amendment.
- The impact that the revision or amendment could have on the health, safety, and welfare of the public.
- The economic reasonableness and financial impact of the revision or amendment.
- The technical feasibility of the revision or amendment.

All submissions and recommendations from the advisory committees would have to be considered by the director. However, the director, as now, would have final responsibility for the promulgation of the code.

MCL 125.1504

BRIEF DISCUSSION OF THE ISSUES:

For about 30 years, when the codes for various building trades were updated at the national or international level, review committees of technical experts in that trade were appointed to review the updated code and any suggested amendments. These meetings were open to the public, the public could give input, and recommendations and proposed changes were

submitted to the director of the Department of Licensing and Regulatory Affairs (LARA). The review committee was then disbanded. Reportedly, the process could take as long as 36 weeks to complete and for the report to be submitted to the director.

Recently, LARA adopted a new code promulgation process. In an attempt to streamline the process and reduce the time for code changes to be reviewed and recommendations and amendments drafted for submission to the director, appointment of a review committee was replaced by the appointment of two individuals with subject knowledge of the code being amended. These individuals are tasked with reviewing the updated code and making recommendations. A public hearing is then held for the public to comment on the recommendations and provide input. The two-member review team reviews the comments submitted by the public before submitting the recommended changes to the director.

House Bill 5376 would restore the review process to how it had been done, with some modifications, and would enact the process into law. To make the advisory committee process more efficient, committee members could participate in meetings via Skype or FaceTime or by phone. Members are volunteers, and most still work full-time. Allowing participation by telephone or electronically could result in fewer meetings missed when members cannot get off work in time to drive to Lansing and eliminate time spent getting meeting information to those who could not attend and waiting for their feedback. The makeup of each advisory committee also allows for the inclusion of various members of an industry. This not only enables diversity of experience but also mitigates the chance of bias in the committee. It would also give an opportunity for the various industry members to inform the committee how the updated code or amendments proposed by other committee members will affect a particular sector. All of these meetings are public, so the bill ensures industry members the opportunity to weigh in. Further, the bill would establish a time limit for writing up the recommendations and amendments and submitting them to the director.

Still, some in the building trades would like to give the new process time to see if it is an improvement. Reportedly, the two-person review team was seen as avoiding the subjective selection of review committee members, especially as many served on committees through several code cycles, potentially bringing their biases with them. According to committee testimony, the changes proposed by the two-person review team would be made available as a draft to industry members—for instance, to those licensees affected by the code under review. Anyone in the industry or community, even before the public hearing was scheduled, could provide input to the review team by filling out a form with recommendations and suggestions. It is believed that this new process will actually *encourage* greater participation by interested industry and community members. According to LARA, few people submitted suggestions because of the assumption that others in the industry were attending the public meetings and so their concerns were likely being addressed by others. The first time the new review process was utilized, at least a dozen recommendations were submitted by the public, which apparently was more than generally received.

FISCAL IMPACT:

House Bill 5376 would not have a significant fiscal impact on any unit of state or local government. None of the changes made by the bill would require additional expenditures or create additional revenues.

POSITIONS:

Representatives of the following entities testified in support of the bill:

- Home Builders Association of Michigan (5-23-18)
- Michigan Plumbing and Mechanical Contractor's Association (MPMCA) (5-23-18)
- Huron Valley Association of Code Officials (HuVACO) (5-23-18; and indicated support 6-6-18)
- Green Oak Township (5-23-18; and indicated support 6-6-18)
- Grand Rapids Area Chamber of Commerce (5-23-18)
- National Federation of Independent Business (NFIB) (5-23-18)
- Tiseo Architects (5-23-18)
- Pleune Service Company (5-23-18)

The following entities indicated support for the bill:

- Michigan Concrete Association (6-6-18)
- Michigan Association of Fire Chiefs (5-23-18)
- Southeastern Michigan Association of Fire Chiefs (5-23-18)
- Northern Michigan Fire Chiefs Association (5-23-18)
- Michigan Forest Products Council (*support with amendments*) (5-23-18)
- Associated General Contractors of Michigan (5-23-18)
- Code Officials Conference of Michigan (5-23-18)
- Associated Builders and Contractors of Michigan (5-23-18)
- Michigan Air Conditioning Contractors Association (5-23-18)
- Burglar and Fire Alarm Association of Michigan (5-23-18)
- Mechanical Inspectors Association of Michigan (MIAM) (5-23-18)
- APA—The Engineered Wood Association (5-23-18)
- American Wood Council (5-22-18)

Representatives of the following entities testified in opposition to the bill:

- Department of Licensing and Regulatory Affairs (LARA) (5-23-18; and indicated opposition 6-6-18)
- Michigan Bureau of Construction Codes (5-23-18)
- Michigan Chemistry Council (5-23-18)
- International Association of Electrical Inspectors (IAEI) (5-23-18)
- Schneider Electric (5-23-18)

The following entities indicated opposition to the bill:

- Dow Chemical Company (5-23-18)
- American Chemistry Council (5-23-18)
- BASF (5-23-18)

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