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CREATE THE 'STATE PLUMBING ACT

House Bill 4003 as passed by the House Second Analysis (7-23-02)

Sponsor: Rep. Judith Scranton
Committee: Regulatory Reform

THE APPARENT PROBLEM:

Michigan has had plumbing statutes for over 100 years, the first of which was Public Act 222 of 1901. The act provided for the regulation of plumbing inspections, examinations, licensing and registration, and the regulation of plumbing and drainage work by local boards of examiners. This act only applied to cities.

In 1929, plumbing regulations were amended by the enactment of Public Act 266. Though this act conflicts with the 1901 act, the 1901 act was never repealed. Public Act 266 regulates the installation, alteration, maintenance, improvement, and inspection of plumbing fixtures. In addition, the act provides for the licensure of individuals to engage in plumbing work in cities and villages with a population of greater than 5,000. The act also provides for the issuance of permits allowing plumbing work to be done. The act also created the state plumbing board, which makes recommendations for plumbing code rules; licenses plumbers; and makes all orders, rules and regulations necessary for the enforcement of the act.

According to committee testimony, since the enactment of the 1929 law, there have been few substantial amendments to the act. As a result, the act has failed to keep up with current industry and marketplace practices and technical advancements. It is believed that the current laws pertaining to plumbing are antiquated and are often confusing and inconsistent. Since 1983, the State Plumbing Board, and later the Michigan Plumbing & Mechanical Contractors Association, has sought to update the law. As such, legislation has been introduced to update and recodify current plumbing provisions.

THE CONTENT OF THE BILL:

The bill would create the State Plumbing Act and recodify licensure provisions for plumbers. Under current law, plumbing is regulated by Public Act 222

of 1901 and Public Act 266 of 1929. In enacting the bill, these two acts would be repealed.

Under the bill, "plumbing" would be defined as: "the practice, materials, and fixtures, in or adjacent to a building, structure, or premises, used in the installation, maintenance, extension, or alteration of all piping, fixtures, plumbing appliances, plumbing appurtenances, as defined by the code, in connection with the sanitary drainage or storm drainage facilities, plumbing venting systems, medical gas systems, backflow preventers, and public or private water supply systems."

State Plumbing Board. The bill would retain provisions similar to those in Public Act 266 that pertain to the state plumbing board. The board would consist of five gubernatorial appointees, each confirmed by the Senate. Appointed members of the board would include two licensed plumbing contractors who possess a master's license; a licensed master plumbing securing permits and a licensed journey plumber, each with at least 10 years of experience; and an individual representing the general public. This differs from current law, which specifies that the five appointees consist of three licensed master plumbers, a licensed journeyman plumber, each with substantial experience, and a representative of the general public. The board would also include the director of the Department of Environmental Quality (DEQ) or his or her designee, and a member or employee of the Drinking Water and Radiologic Protection Division within the DEQ. The board would be required to meet at least four times per year.

Under the bill, the board would recommend to the state construction code commission the promulgation of any rules necessary for the safe design, construction, installation, alteration, and inspection of plumbing. The board could also recommend that the commission issue certificates of acceptability under the code for a material, product, method of

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manufacturing, method of construction, or installation of plumbing equipment. As under Public Act 266, the board would be subject to the Open Meetings Act (Public Act 267 of 1976) and the Freedom of Information Act (Public Act 442 of 1976).

The Department of Consumer and Industry Services (DCIS), in consultation with the board, would promulgate rules necessary for the implementation of the bill, as well as for the standards for licensure, examinations, and registration. The board and the DCIS would jointly review and administer the examinations required for licensure as a master plumber or a journey plumber.

License or Registration Required. Under Public Act 266, with certain exceptions regarding city populations, no person shall engage in or work at the business of a master plumber or journeyman plumber unless licensed to do so by the plumbing board. Under the bill, a person would not be able to engage in or work at a business of a plumbing contractor, master plumber, journey plumber, or apprentice plumber without a license or registration issued by the DCIS. Any plumbing work would have to be performed by a licensed master or journey plumber. A licensed master plumber would be responsible for the proper installation, and would ensure that the work complied with the state construction code. Plumbing work could not be performed unless the responsible plumbing contractor secured a permit from the state or an authorized governmental subdivision.

A license would not be required for the following type of plumbing work:

- Minor repair work.
- The installation of a building sewer or water service pipe (as long as a permit is obtained, inspections are performed, and the work complies with the proper code).
- The connection of domestic type water conditioning and filtering equipment, which requires modification to an existing cold water distribution system supply and associated waste piping in buildings (as long as a permit is obtained, inspections are performed, and the work complies with the proper code).

In addition, a homeowner would be allowed to install his or her own plumbing, building sewer, or private sewer if he or she obtains a permit. However, the bill

would not prohibit a person from performing any of the activities within the scope of licensure under any other licensure act or applicable codes for that licensed professional adopted pursuant to law.

Examinations. The plumbing contractor's exam would have to consist of, though would not be limited to, questions pertaining to knowledge of the law, any rules promulgated under the bill, the Stille-DeRossett-Hale Single State Construction Code Act, and the administration and enforcement procedures of the bill.

The examination for a master plumber would cover, at least, the science and practice of plumbing; knowledge of state plumbing code, laws, rules, regulations; the interpretation of charts and blueprints; and plumbing installation plans. This is similar to the content of the examination set forth in Public Act 266.

The examination for the journey plumber's license would cover, at least, the theory and practice of plumbing and knowledge of state plumbing codes, laws, rules, and regulations. This too is similar to the content of the examination set forth in Public Act 266.

Applicants for any of the exams would be able to take an exam after both filing an application with the DCIS and establishing the requisite experience, or its equivalent, for the particular license through a notarized statement of current and past employers and master plumbers. Applications to take any of the exams would have to be submitted at least 20 days prior to the date of the exam. Each exam would be held in March, June, September, and December of each year in the Lower Peninsula and at least once each year in the Upper Peninsula.

Plumbing Contractor. The bill adds provisions pertaining to a plumbing contractor, which would be defined to mean a licensed master plumber or a person who employs a master plumber full-time to directly supervise the installation of plumbing as his or her representative engaged in the business of plumbing for compensation. To obtain a plumbing contractor license, a person would have to either possess a master plumber license or employ someone who possesses a master plumber license as his or her representative. To be issued a plumbing contractor license, a person would have to complete an application, pass the examination, and pay the fees for the exam and the license. A plumbing contractor could operate more than one branch office in the state bearing the same firm name, as long as a master

plumber were in charge and had supervisory responsibility at each branch office.

If a licensed master plumber represented a licensed plumbing contractor, both the contractor and the plumber would be jointly and severally responsible for the supervision and control of the plumbing operations. If the master plumber no longer represented the contractor, the contractor would have 30 days to designate another licensed master plumber as his or her representative.

A person applying for a plumbing contractor license would be required to pay any amount required under the construction lien act (Public Act 497 of 1980), which would be paid to the DCIS for deposit in to the homeowner construction lien recovery fund.

If a person who is licensed by Public Act 266 of 1929 on the bill's effective date, or a person who employs a licensed master plumber, applies within six months of the effective date, pays the plumbing contractor license fees, and provides the DCIS with evidence showing that he or she has been engaged in business as a master plumber for at least three of the previous five years preceding the effective date of the bill, he or she would be granted a plumbing contractor license without taking the required examination.

Master Plumber. A "master plumber" would be defined to mean a person who possesses the requisite skills and qualifications to plan and supervise the installation of plumbing equipment. Under Public Act 266, a person applying for a master plumbing license is required to submit a fee, pass the examination, and pay any amount required by the Construction Lien Act. Under the bill, a person applying for a master's plumbing license would have to follow the requirements under the act, but also hold a journey plumber license and have 4,000 hours of experience working as a journey plumber over a period of at least two years immediately prior to the date of the application. The bill also specifies that the person would have to be at least 18 years of age. Under the bill, a master plumber could have his or her license renewed if he or she successfully completes a course that pertains to any updates or changes in the state construction code within 12 months after the update or change occurs. In addition, a license master plumber would be able to only represent one plumbing contractor at a given time. If a master plumber were to also be a plumbing contractor, he or she would also be liable for paying the plumbing contractor license fee. If the master plumber no longer represented the contractor, the master plumber would have 30 days to designate

another licensed master plumber as his or her representative.

Journey Plumber. A "journey plumber" would be defined to mean a person, other than a plumbing contractor or a master plumber, who is qualified to engage in the practical installation of plumbing. Under Public Act 266, a person applying for a journeyman license is required to submit a fee and pass the examination. Under the bill, the DCIS would issue a journey plumber's license to a person, at least 18 years of age, who files a completed application, passes the examination, pays the examination and license fees, and has at least 6,000 hours of experience as an apprentice in the practical installation of plumbing under the supervision of a master plumber over at least three years. A journey plumber could have his or her license renewed if he or she successfully completes a course that pertains to any updates or changes in the state construction code within 12 months after the update or change occurs. A person would not be allowed to simultaneously possess an active master license and a journey license. However, a person with a master license could be employed as a journey plumber.

Apprentice Plumber. A person employed as an apprentice plumber would be required to register with the DCIS within 30 days after employment. The registration would be invalid five years after the date of the initial registration unless the person were to apply and take the exam for a journey license. The registration would be valid until the journey license is issued or the person fails to take the exam. The board could extend the apprentice registration at the person's request. An apprentice plumber would be engaged in learning and assisting in the installation of plumbing under the direct on-site supervision of a journey or master plumber.

Plumbing Inspector. A person licensed as a plumbing inspector would not be allowed to engage in, or be connected with, the plumbing business including, but not limited to, the furnishing of labor, materials, or appliances, or the preparation of plans or specification for the construction, alteration, or maintenance of a building. In addition, the plumbing inspector would not be allowed to engage in any work that conflicts with his or her official duties.

Inactive Master Plumber License. A person licensed as a master plumber could request that his or her license be retained by the DCIS as an inactive license for a period of up to three years. An inactive license would be issued as an active license upon the person's request, if he or she pays the reinstatement

fee, and as long as the journey plumber license has been renewed each year.

Licenses and Fees. The DCIS could issue a license for up to three years. A master plumber or plumbing contractor license would be renewable for periods of three years. The fee for these two licenses would be \$200, as under current law. A license not renewed within 60 days of the expiration date could be reinstated if the person were to apply to the board, pay the renewal fee, and pay a reinstatement fee of \$85. Public Act 226 does not contain any provision pertaining to a reinstatement fee.

The cost of an initial or renewed journey license would continue to be \$20. The cost for an apprentice registration would be \$5. A journey license not renewed within 60 days after the renewal date would be reinstated only after the person applies to the board for reinstatement, pays the annual fee, and pays a \$25 reinstatement fee. Again, there is not a provision in the current law pertaining to a reinstatement fee. For an apprentice plumber, registration not renewed within 60 days of the renewal date would be reinstated only after the person applies to the board for reinstatement, pays the annual fee, and pays a \$10 reinstatement fee.

A person requesting that his or her license be renewed within three years after the license has expired would not be required to take the examination, but would be required to pay the reinstatement fee and the annual renewal fee for each year the license is not renewed. A person who fails to renew a license for more than three consecutive years would be required to meet the experience and other requirements, and take the proper exam. The examination fee would be as follows:

- Plumbing Contractor: \$50
- Master Plumber: \$50
- Journey Plumber: \$50

All fees and money received by the DCIS for the plumbing licenses along with any other income received by the board would be deposited into the state construction code fund.

Licensee of Other States. The board could issue, without an examination, a license to a person licensed under the laws and regulations of another state, which the board determines to be equivalent to the requirements of this state. This would be conditional on the other state offering reciprocity. This provision

is similar to a provision in Public Act 266 [see MCL 338.908(6)].

Lost or Destroyed Licenses. If a license or registration were lost or destroyed, a new license or registration could be issued without an exam. To be issued a new license, the person would have to provide a \$20 fee and a written statement that the license or registration has been lost or destroyed.

Issuance of Plumbing Permits. The state or a governmental subdivision could issue a plumbing permit only to a licensed plumbing contractor. If a business required the full-time employment of a licensed master plumber, that plumber would be authorized to obtain permits for plumbing installations on premises owned or occupied and used by the business as long as the master plumber physically supervised the plumbing work and represented only that business or industrial employer.

A licensed plumbing contractor would have to register his or her license with proper enforcing agency which issue permits and provides inspection services. Registration would have to be granted by all governmental subdivisions when the contractor pays a fee not exceeding \$15.

A local government could not exempt itself from the licensing requirements of the bill, and could not require local licensing.

An owner of a particular property could issue a permit if the plumbing work is performed without compensation by a licensed individual for or on behalf of a charitable organization. However, this would only apply to the reconstruction, renovation, or remodeling of a one-family to four-family dwelling. This provision is similar to MCL 338.904a.

DCIS Investigations. The DCIS could investigate the related activities of a licensed or registered person. Under Public Act 266, the plumbing board is authorized to conduct investigations. Similar to current law, after conducting a hearing, the board could impose sanctions on the person for any of the following reasons:

- Obtaining the license or registration through deceit or fraud.
- Performing deceitful or fraudulent work.
- Gross negligence.
- Incompetence.

- False advertising.
- Violating the act or a rule promulgated under the act.

After finding evidence of an above violation, the person could be subject to any of the following sanctions:

- Suspension of a license or registration.
- Denial of a license or registration.
- Denial of a renewal license or registration.
- Censure.
- Probation.
- Revocation of the license or registration.
- Restitution. (The person could be suspended until restitution is made.)

Similar to current law (see MCL 338.911a), the board would be required to suspend or revoke the license of a person whose failure to pay a lien claimant results in a payment being made from the Homeowner Construction Lien Recovery Fund. The license would not be renewed, nor would a new license be issued until the person made full restitution to the fund, including any litigation and interest costs.

Also similar to current law (MCL 338.911b), the plumbing board would be required to review the license of a person upon notice by the Department of Consumer and Industry Services that the person has violated the Asbestos Abatement Contractors Licensing Act, and could suspend or revoke that person's license for a knowing violation of the act.

Under current law, a person working as a master or journeyman plumber without a license or who violates the act or fails to obey an order, rule, or regulation of the board is guilty of a misdemeanor punishable by a fine of not less than \$10 and not more than \$50, imprisonment of not more than 30 days, or both. Under current law, each day the violation occurs is considered to be a separate offense. The bill would increase the penalty to a fine of not less than \$1,000 for each day the violation occurs, though not more than \$5,000, or imprisonment not exceeding 90 days, or both.

The attorney general, a prosecutor, or an attorney representing a local government could initiate an action to enforce the bill or its rules.

Other provisions. The bill would also add a provision that states that the Stille-DeRossett-Hale Single State Construction Code Act takes precedence over any provision of the bill that is inconsistent with the act. In addition, any proceedings pending before the plumbing board under the authority of Public Act 266 of 1929 would have to be continued, conducted, and determined according to that act. A person licensed or registered under that act on the date immediately preceding the bill's effective date would be considered to be licensed or registered until the license or registration expires under that act.

Further, the bill states that it could not be construed to relieve any person from liability for defects in plumbing, and that the state of Michigan could not be held to assume any liability by reason of the inspections or examinations authorized under the bill. In addition, any reference to Public Act 266 of 1929 or Public Act 222 of 1901 would be considered to be a reference to the bill. Also, any rules promulgated by either of those two acts would remain in effect.

BACKGROUND INFORMATION:

According to current administrative rules (338.921 and 338.923) any person who is at least 19 years of age and possesses the requisite qualifications may apply for the journey plumber's examination. To qualify, a person must have at least three years experience as an apprentice in the practical installation of plumbing under the supervision of a master plumber, though up to one year of credit may be counted upon graduation of a recognized trade school.

To be eligible to take the master plumber's examination, a person must be at least 21 years of age, and must be able to "read and write English". In addition, a person must have at least two years as a state-licensed journey plumber immediately preceding the date of the exam.

If the number of applications warrant an exam to be held, exams are given by the state plumbing board in March, June, September, and December of each year in the Lower Peninsula and at least once each year in the Upper Peninsula (see ORR 338.926). This year exams in the Lower Peninsula will be held on March 27, June 5, September 11, and December 4 in East Lansing. The exam in the Upper Peninsula will be held July 18 in Escanaba.

To qualify for a license, an applicant must score at least 70 percent on the exam. If a person fails an exam, his or her application is cancelled and fees are forfeited. A person is allowed to retake the exam on the next available date.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Current provisions in Public Act 266 of 1929 and Public Act 222 of 1901 are antiquated. The acts provide for the licensure of plumbers, though certain exemptions based on city populations are allowed. Current language is inconsistent and confusing. A person could be licensed, locally, under either act, depending on the city's population. By repealing these acts and enacting updated language, the bill would require licensure throughout the state, and extends other provisions to all parts of the state. In doing so, the bill protects all consumers throughout the state and does not adversely impact legitimate licensed plumbers.

The bill also expands the definition of "plumbing", to include plumbing fixtures and appliance such as backflow preventers, medical gas systems, and water conditioning equipment. As a result of the updated definition, the installation and inspection of these new technologies would be regulated and protected.

The bill would also add a new class of licensed persons – "plumbing contractors". A plumbing contractor could be a person who owns a plumbing business, but is not a licensed plumber. In today's business world nothing prevents an unlicensed plumber from establishing a business or hiring a licensed plumber. Licensing these individuals would be an added consumer protection.

The bill also adds that, as a condition of license renewal, plumbers must take a course on any updates pertaining to the Still-DeRossett-Hale Single State Construction Code Act. This ensures that plumbers are aware of current requirements and industry practices.

Under current law, if a person violates a provision of the act, the board can only revoke that person's license. The board is given very little discretion, and revoking a license could irreparably harm the licensee. The bill would allow the board to suspend a

license, deny a renewal or initial granting of a license, or have the options of censure, probation, and restitution. These added abilities would better suit the board, the licensee, and the consumer.

Finally, the bill updates punishments for a violation of the act. Under current law, if a person were to violate the act, he or she would be subject to a fine of not less than \$10 and not more than \$50 or imprisonment of 30 days, or both. By today's standards, this does not serve as a effective deterrent, nor does it serve as a proper punishment. The bill would increase the fine to not less than \$1,000 and not more than \$5,000, or imprisonment not more than 90 days, or both.

Response:

Under both current law and the bill, individuals working as city plumbing inspectors are prohibited from engaging in any plumbing work, even outside the jurisdiction in which they work. This is an unfair restriction that does not apply to other similar local government inspectors, such as building inspectors who hold builder's licenses.

Against:

While the intent of the bill may be to update certain provisions relating to plumbing, the bill places greater restrictions on plumbers. The bill adds "reinstatement fees" for individuals who do not renew their licenses in a timely manner, and increases the amount of fines that may be levied against a person. For a master plumber the reinstatement fee would be \$85 in addition to the costs of the actual license itself (\$200).

POSITIONS:

The Department of Consumer and Industry Services supports the bill. (7-23-02)

The Michigan Plumbing and Mechanical Contractors Association supports the bill. (6-27-02)

The Plumbers and Pipe Fitters Local 333 supports the bill. (6-28-02)

The Michigan Water Quality Association supports the bill. (6-27-02)

Analyst: M. Wolf

■ 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.