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SFA



BILL ANALYSIS

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House Bill 4003 (Substitute H-2 as passed by the House)
Sponsor: Representative Judith Scranton
House Committee: Regulatory Reform
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 12-3-02

CONTENT

The bill would create the "State Plumbing Act" to do the following:

- Repeal Public Act (P.A.) 222 of 1901 and P.A. 266 of 1929, which presently govern plumbers, but retain rules promulgated under those statutes and re-enact some provisions of P.A. 266.
- Establish requirements for State licensure of plumbing contractors, master plumbers, and journey plumbers, and State registration of apprentice plumbers.
- Require examinations for licensure to be held in both the Lower and the Upper Peninsulas.
- Allow currently licensed master plumbers to apply for a plumbing contractor license without examination.
- Prohibit a person from simultaneously holding an active master plumber license and a journey plumber license.
- Require journey and master plumbers to take a course in changes to the State Construction Code as a condition of license renewal.
- Require apprentices to be directly supervised on site.
- Prescribe license fees and require a reinstatement fee for licensees who failed to renew on time.
- Provide that the State or a governmental subdivision could issue a plumbing permit only to a licensed plumbing contractor, subject to several exceptions.
- Allow governmental subdivisions to charge a maximum fee of \$15 for registering a licensed plumbing contractor.

- Specify sanctions and criminal penalties that could be imposed for violations of the proposed Act.
- Prohibit a governmental subdivision from exempting itself from the Act's licensing requirements, or engaging in or requiring local licensure.

The bill also provides that the Single State Construction Code Act would supercede the proposed Act to the extent of any inconsistency.

Current Plumbing Law

Public Act 222 of 1901 provides for plumbing inspection, examinations, licensing and registration, as well as the regulation of plumbing and drainage work by local boards of examiners. This Act applies only to cities and was superseded by P.A. 266 of 1929 to the extent that P.A. 222 was inconsistent with the 1929 law.

Public Act 266 of 1929 requires the State licensure of master plumbers and journeyman plumbers and the registration of plumbers' apprentices. This Act also created the State Plumbing Board, requires a local permit for plumbing work, requires plumbers to register locally, and prescribes penalties. Public Act 266 applies to plumbing work done in cities and villages with a population of 5,000 or more and on multiple dwellings anywhere in the State.

In addition, the practice of plumbing is governed by the Single State Construction Code Act, which also provides for the issuance of building permits to plumbers. As updated in 2001, the plumbing code is contained in R

408.30701 to 408.30796 of the Michigan Administrative Code. The Single State Construction Code Act does not address the licensure of plumbers.

As promulgated under P.A. 266 of 1929, the rules governing licensure of plumbers are found in R 338.921 to 338.932 of the Administrative Code.

Plumbing Board

The bill would recreate the State Plumbing Board within the Department of Consumer and Industry Services. The board would have to be appointed by the Governor with the advice and consent of the Senate. The board would include two members who were licensed plumbing contractors holding a master's license, one licensed master plumber securing permits (for a plumbing contractor), and one licensed journey plumber. Each of these members would have to have 10 years' experience. The board also would include one person representing the general public, the Director of the Department of Environmental Quality (DEQ) or his or her authorized representative, and a member or employee of the Drinking Water and Radiologic Protection Division of the DEQ.

The board would have to meet as often as necessary but at least four times a year. At its first meeting, the board would have to elect a chairperson, a vice chairperson, and a secretary, from its appointed members, as well as other officers it determined appropriate. The board would be subject to the Open Meetings Act and the Freedom of Information Act, and the per diem compensation of members (except ex officio members) and the schedule of reimbursement of expenses would have to be established by the Legislature. The DCIS would have to maintain physical possession of the board's files and ensure that applicable laws concerning public access to them were met.

The board would have to recommend to the State Construction Code Commission the promulgation of rules necessary for the safe design, construction, installation, alteration, and inspection of plumbing. The board also could recommend, after testing and evaluation, that the Commission issue certificates of acceptability under the State Construction Code for a material, product,

method of manufacturing, or method of construction or installation of plumbing equipment.

In consultation with the board, the DCIS would have to promulgate rules for the administration of the proposed Act and to effectuate its purposes, including standards for license classifications, the examination and licensure of plumbing contractors, master plumbers, and journey plumbers, and the registration of apprentice plumbers. Each examination for a license would have to be conducted jointly by the board and the DCIS.

Licensure Requirement

A person could not engage in or work at the business of a plumbing contractor, master plumber, journey plumber, or apprentice plumber unless licensed or registered by the DCIS. Subject to the exceptions described below, plumbing would have to be performed by a licensed master or journey plumber. A licensed master plumber would have to be in charge of and responsible for proper installation and conformance with the State Construction Code.

(A plumbing contractor would be a licensed master plumber or a person who employed a licensed master plumber full-time to supervise directly the installation of plumbing as the contractor's representative, engaged in the business of plumbing for a fixed sum, price, fee percentage, valuable consideration, or other compensation, and who was licensed as a plumbing contractor.)

A license would not be required for the following work:

- Minor repair work.
- The installation of a building sewer or water service pipe, if a permit were secured from the responsible enforcing agency, inspections were performed, and the installation complied with the applicable code.
- The installation of domestic water treatment and filtering equipment that required modification to an existing cold water distribution supply and associated waste piping in buildings, if a permit were secured, required inspections performed, and the installation complied with the applicable code.

("Minor repair" would mean a repair that involved only the clearance of stoppages, repair, or replacement of a faucet, valve, reinstallation of the same plumbing fixture provided that no modifications were made to the plumbing system, or residential domestic water treatment and filtering equipment. Minor repair would not include the installation, replacement, or repair of a water heater; the repair or replacement of a backflow preventer and air admittance valves; or a repair or replacement that was only part of a larger or major renovation or repair.)

A homeowner could install his or her own plumbing, building sewer, or private sewer in his or her single-family dwelling if a permit were secured.

The installation of medical gas piping would have to be performed under the supervision of a licensed plumbing contractor.

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

Licensure Examinations

The DCIS would have to arrange for plumbing contractor examinations, master plumber examinations, and journey plumber examinations to be held in the Lower Peninsula during March, June, September, and December each year, and in the Upper Peninsula at least once each year.

Applicants for an examination would have to file an application with the DCIS, including the appropriate nonrefundable examination fee, and establish, to the board's satisfaction, the experience requirement or an equivalent of that requirement for the particular class of licensure by a notarized statement from current and past employers and master plumbers.

License or Registration Criteria

Plumbing Contractor. To qualify for a plumbing contractor license, an applicant either would have to hold a master plumber license or would have to employ the holder of a master plumber license as his or her representative. Only an owner of a sole proprietorship or partnership, or an officer of

a corporation or limited liability corporation, could apply for a plumbing contractor license. An applicant would have to file a completed application containing information specified by the bill.

A licensed plumbing contractor could operate one or more branch offices in the State bearing the same firm name, provided a licensed master plumber was in charge and had supervisory responsibility at each branch.

When a license was issued to a plumbing contractor represented by a master plumber, they would be jointly and severally responsible for exercising the supervision or control of the plumbing operations necessary to secure full compliance with the proposed Act, the rules promulgated under it, and all other laws and rules related to the plumbing installation. Also, both the master plumber and a person other than a plumbing contractor would be jointly and severally responsible for the exercise of this supervision and control.

A person applying for a plumbing contractor license would have to pay any amount required under the Construction Lien Act. The DCIS would have to deposit this amount in the Homeowner Construction Lien Recovery Fund. An assessment imposed upon a master plumber would be considered sufficient to fulfill any assessment obligation that could exist for a plumbing contractor.

A person licensed as a master plumber under P.A. 266 of 1929 on the bill's effective date, would have to be granted a plumbing contractor license without examination, upon paying the plumber contractor license fee and giving the DCIS satisfactory evidence of having been engaged in a business as a master plumber for at least three of the five years immediately preceding the bill's effective date, if the person applied within six months after that date.

A licensed plumbing contractor would have to display, conspicuously at the entrance to a place of business, a sign bearing the company name and the name of the licensed master plumber and license number.

Master Plumber. To obtain a master plumber license, a person would have to hold a journey plumber license issued under the proposed Act or P.A. 266 and have 4,000 hours' experience in work as a journey plumber over a period of

at least two years immediately before the date of his or her application.

A master plumber could represent only one plumbing contractor at any given time. A master plumber who also was a plumbing contractor would be liable for paying only the contractor license fee.

A licensed master plumber could request that the DCIS retain his or her license as an inactive license for up to three years. An inactive master plumber license would have to be issued as active upon the licensee's request and payment of the reinstatement fee, as long as the individual held a journey plumber license that had been renewed each year.

A person could not simultaneously hold an active master plumber license and a journey plumber license, although a person holding an active master plumber license could work as a journey plumber.

Journey Plumber. To become licensed as a journey plumber, a person would have to have at least 6,000 hours' experience gained over at least three years as an apprentice plumber in the practical installation of plumbing under the supervision of a master plumber.

Apprentice. An individual employed as an apprentice plumber would have to register with the DCIS within 30 days after employment. A registration would be invalid after five years from the date of initial registration, unless the registered apprentice applied for and took the examination for a journey license. The registration would remain valid until a license was issued or the apprentice failed to take the exam. Upon request, the board could grant an extension of an apprentice registration for a period of time the board determined appropriate.

As his or her principal occupation, an apprentice plumber would have to be engaged in learning and assisting in the installation of plumbing under the direct on-site jobsite supervision of a journey or master plumber.

Renewal

The DCIS could issue licenses for up to three years in duration. A license or apprentice registration would have to be renewed within 60 days after the renewal date. Renewal would be the responsibility of the licensee or

registrant. The DCIS would have to send a renewal application to the last known address of a licensee or registrant on file with the Department. Every holder of a license or registration would have to notify the DCIS promptly of a change in his or her business or residence address. A person's failure to notify the DCIS of a change of address would not extend the expiration date or a license or registration.

As a condition of license renewal, a master plumber or journey plumber would have to demonstrate the successful completion of a board-approved course concerning any update or change in the State Construction Code within 12 months after the update or change. This requirement would apply only during or after those years in which the Code was updated or changed.

Fees

The annual fees for initial licensure, apprentice plumber registration, or license or registration renewal would be \$20 for a journey plumber and \$5 for an apprentice plumber.

A person requesting renewal of a journey plumber license within three years after it expired would not be subject to examination but would have to pay the reinstatement fee and the annual renewal fee for each year the license was not renewed. A person who failed to renew a license for more than three consecutive years would have to meet the experience and other requirements and take an examination for the class of license sought.

Examination fees would be \$50 for a journey plumber, master plumber, or plumbing contractor.

The DCIS would have to issue an initial master plumber and plumbing contractor license for a period of up to three years. The initial and renewal fee for either license would be \$200. A master plumber and a plumbing contractor license would be renewable for three-year periods. If a person applied for initial or reinstatement licensure at a time other than between April 30 and June 30 of the year in which the DCIS issued renewal licenses, the Department would have to compute and charge the license fee on a yearly prorated basis beginning the year of application until the last year of the three-year license period.

All licenses and registrations not renewed within 60 days of expiration could be reinstated only upon application to the board and payment of the annual renewal fee and a reinstatement fee. The reinstatement fee would be as follows:

Apprentice plumber	\$10
Journey plumber	\$25
Master plumber	\$85
Plumbing contractor	\$85

When the required fee was paid, the board could license without examination applicants licensed under the laws of another state having requirements for licensing plumbers and for regulating plumbing that the board determined were equivalent to this State's requirements, if the other state offered reciprocity.

If a license or registration were lost or destroyed, a new one could be issued without examination, upon payment of a \$20 fee and the licensee's or registrant's written statement that the license or registration had been lost or destroyed.

All money received by the DCIS from licensing plumbers and any other income the board received under the proposed Act would have to be paid into the State Construction Code Fund.

Plumbing Permit & Registration

Plumbing could not be performed unless the responsible plumbing contractor had secured a permit from the State or a governmental subdivision authorized to issue permits. The State or a governmental subdivision could issue a plumbing permit only to a licensed plumbing contractor (except in cases in which a license would not be required, or as provided below). A licensed plumbing contractor would have to designate one or more licensed master plumbers employed full-time, who directly supervised the installation of plumbing, to obtain permits using the contractor's license number. Both the contractors' and the master plumber's license number would have to be recorded on the permit application.

If business or professional procedure required the regular employment of a full-time master plumber, a licensed master plumber would

have to be authorized to secure permits for installation of plumbing on the premises owned or occupied and used by the business, as long as the master plumber physically supervised the plumbing work and represented only the business or industrial employer. Both the employer and the master plumber would have to sign an annual affidavit containing information specified by the bill. The DCIS would have to furnish the affidavit and keep it on file, as well as determine the filing fee for an affidavit. If the master plumber's employment were terminated, a new affidavit would have to be filed before permits could be issued.

A licensed plumbing contractor who performed work in a governmental subdivision would have to register his or her license with the enforcing agency that issued permits and provided inspection services, if required by the enforcing agency. The registration would be valid until the contractor's license expired. All governmental subdivisions in the State would have to grant registration to a licensed plumbing contractor upon payment of a maximum fee of \$15.

The owner of the property on which the work was to be done could obtain a plumbing permit, if the plumbing, reconstruction, alteration, or repair of pipes, tanks, or fixtures would be performed without compensation by a licensed person for or on behalf of a charitable organization. This provision would apply only to the reconstruction, renovation, or remodeling of a one-family to four-family dwelling. "Charitable organization" would mean a not-for-profit tax-exempt religious, educational, or humane organization.

Enforcement; Sanctions

The DCIS could investigate the activities of a licensee or registrant that were related to the person's licensure or registration as a plumbing contractor, master plumber, journey plumber, or apprentice plumber. The DCIS could hold hearings pursuant to the Administrative Procedures Act and would have to report its findings to the board.

After an administrative hearing, the board would have to impose sanctions prescribed by the bill if it found one or more of the following:

- The practice of fraud or deceit in obtaining a license or registration under the proposed Act.
- The practice of fraud or deceit in performing work for which a license or registration would be required.
- An act of gross negligence.
- False advertising.
- An act that demonstrated incompetence.
- A violation of the proposed Act or a rule promulgated under it.

After finding the existence of such a violation and after an opportunity for a hearing, the board would have to impose one or more of the following sanctions:

- Suspension of the license or registration.
- Denial of the license or registration.
- Denial of renewal of a license or registration.
- Censure.
- Probation.
- Revocation of the license or registration.
- Restitution.

If restitution were required, the person's license or registration could be suspended until restitution was made.

Notwithstanding the sanctions listed above, the board, upon recommendation of the DCIS, would have to suspend or revoke the license of a person whose failure to pay a lien claimant resulted in a payment from the Homeowner Construction Lien Recovery Fund. The license could not be renewed and a new license could not be issued until the person had made full restitution to the Fund, including the costs of litigation and interest.

The board would have to review a person's license upon notice by the DCIS that he or she had violated the Asbestos Abatement Contractor's Licensing Act, and could suspend or revoke the license for a knowing violation of that Act.

A person whose license or registration had been suspended or revoked or had expired could not perform activity regulated under the proposed Act.

A licensee or registrant who violated the proposed Act, or a person not licensed or registered who was performing an activity regulated by the Act and was not exempt from licensure or registration, would be guilty of a

misdeemeanor punishable by a minimum fine of \$1,000 per day for each day the violation occurred (but not more than \$5,000 in total per violation), or imprisonment for up to 90 days, or both.

The Attorney General, a local prosecuting attorney, or an attorney representing a governmental subdivision could initiate an action to enforce the proposed Act or rules promulgated under it.

Existing Laws

Any proceedings pending before the plumbing board under the authority of P.A. 266 of 1929 would be continued and would have to be conducted and determined in accordance with that statute.

A person licensed or registered under P.A. 266 on the day immediately before the bill's effective date would be considered licensed or registered until the expiration of the license or registration under that Act.

Any reference in any other act to P.A. 222 of 1901 or P.A. 266 of 1929 would be considered a reference to the proposed Act. The rules promulgated under the 1901 and 1929 Acts would remain in effect.

Other Provisions

A licensed individual employed or acting as a plumbing inspector could not engage in, or be directly or indirectly connected with, the plumbing business, including the furnishing of labor, materials, or appliances for the construction, alteration, or maintenance of, or the preparation of plans or specifications for, the construction, alteration, or maintenance of a building, and could not engage in any work that conflicted with his or her official duties.

The bill states that the State Plumbing Act could not be construed to relieve from or lessen the responsibility or liability of any person owning, operating, controlling, or installing plumbing, for damages to persons or property caused by any defect in the plumbing, and the State could not be held as assuming any such liability by reason of the inspection or examination authorized in that plumbing, the certificate of approval, or the license and certificate issued under the Act.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill includes a new \$85 reinstatement fee for licensees more than 60 days late in applying for a renewal license. There are no data available regarding the rate of delinquency among these licensees, but it is anticipated that the additional revenue generated would be negligible.

The bill also would allow a uniform local registration fee of not more than \$15, consistent with electrical and mechanical licenses. Currently, the fee under P.A. 266 of 1929 is \$.50 for journeymen plumbers and \$1 for master plumbers.

The bill would have no fiscal impact on the State's criminal justice system, but the criminal penalties would have an indeterminate impact on local governments. Because no statewide data on misdemeanors are available, there are no data to indicate how many offenders currently are convicted of violating the plumbing statutes. Offenders would receive up to 90 days' imprisonment rather than 30 (as provided in P.A. 266 of 1929). Local units would incur the additional cost of incarceration in a county jail, which may vary by county from \$27 to \$65 per day. To the extent that it would raise penal fines, the bill would increase funds available to 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.