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SFA**BILL ANALYSIS**

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Senate Bill 463 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Leon Stille
Committee: Local, Urban and State Affairs

Date Completed: 8-25-99

RATIONALE

Under the State Construction Code Act, the State Construction Code Commission is required to prepare and promulgate the State Construction Code, which consists of rules governing the construction, use, and occupation of buildings. The Act specifies that the Code applies throughout the State, except a local government may exempt itself from certain parts of the Act and the Code by adopting a nationally recognized model building code. Model codes include the Building Officials and Code Administrators (BOCA) Code and the Uniform Building Code compiled by the International Conference of Building Officials. Furthermore, a local government that adopts a nationally recognized model code may approve amendments to it. Some people believe, however, that permitting a local government to adopt and amend a nationally recognized model building code has resulted in a lack of uniformity of building codes across the State. It has been suggested, instead, that only one building code be enforced statewide.

CONTENT

The bill would amend the State Construction Code Act to provide for statewide application of the Act and the State Construction Code. The bill specifies, however, that the statewide code would apply to the plumbing, electrical, mechanical, and building codes (in the Administrative Code) only after rules promulgated under the Act to update each code were filed with the Secretary of State after January 31, 2000.

In addition, until the rules to update each code took effect, the Act's definition section (MCL 125.1502), and those sections on the State Construction Code Commission (MCL 125.1503), the statewide application of the Act and the Code and a local government's exemption from certain parts of the Act and the Code (MCL 125.1508), enforcement of the Act and the Code (MCL 125.1509), and performance evaluations (MCL 125.1509a) would apply to the plumbing, electrical, mechanical, and building codes. These sections would be repealed when the last rules updating these codes were filed with the Secretary of State. (The bill would reenact provisions

similar to these, with references to local enforcement deleted.)

Currently, the Commission is required to promulgate the Code, and the Code consists of nationally recognized model building codes, other nationally recognized model codes and standards, and amendments, additions, or deletions to the building code or other codes and standards as the Commission determines appropriate. Under the bill, this would continue to be true until the application of the bill's new provisions on the State Construction Code Commission, the statewide application of the Code, the Code's administration and enforcement, and a performance evaluation of an enforcing agency. (Under the bill, however, the Director of the Department of Consumer and Industry Services, rather than the Commission, would be responsible for promulgating the Code and determining appropriate codes and standards.) After the date that the sections of the Act cited above were repealed, the Code would consist of the International Residential Code, the International Building Code, the International Mechanical Code, the International Plumbing Code published by the International Code Council, the National Electrical Code published by the National Fire Prevention Association, and the Michigan Uniform Energy Code with amendments, additions, or deletions as the Director determined appropriate.

The bill also would make changes to several of the reenacted provisions, as described below. Except in regard to the Construction Code Commission, the amendments described below would take effect upon the bill's enactment.

Construction Code Commission

Currently, the State Construction Code Commission includes, among others, three members representing municipal building inspection, one of whom enforces the Act and the Code, one of whom enforces the Building Officials and Code Administrators (BOCA) building code, and one of whom enforces the international conference of building officials building code. The bill would retain three members

representing municipal building inspection, but would not designate the specific members.

Appeals

The Act currently specifies certain provisions that apply throughout the State without local modifications. The bill would add to this, the Act's provisions on appeals to the State Construction Code Commission (MCL 125.1516), the effect of appeals on stop construction orders (MCL 125.1517), and claims of appeals filed with the Court of Appeals (MCL 125.1518).

Agricultural Buildings

Notwithstanding the Act's provisions on building permit applications, the bill would not require a permit for a building that was incidental to the use for agricultural purposes of the land on which the building was located, if it were not used in the business of retail trade.

The bill also specifies that the term "building" would not include a building, "whether temporary or permanent", incidental to the use for agricultural purposes of the land on which the building was located, if it were not used in the business of retail trade.

Stairwell Geometry

Notwithstanding any provision in the Act and until the promulgation of the complete building code update after January 31, 2000, the bill specifies that a governmental subdivision could not enforce a requirement for stairwell geometry in occupancies in use group R-3 structures and within dwelling units in occupancies in use group R-2 structures that differed from the stairwell geometry described in the bill.

("Stairwell geometry" would refer to the configuration of a stairwell of a building in which the maximum riser height was eight and one-quarter inches (210 mm), the minimum tread depth was nine inches (229 mm), and a one-inch (25 mm) nosing on stairwells with solid risers. "Use group R-2 structures" would mean all multiple-family dwellings having more than two dwelling units including, but not limited to, boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants were primarily not transient in nature and dormitory facilities that accommodated more than five persons over two and one-half years of age. "Use group R-3 structures" would mean all buildings arranged for occupancy as one-family or two-family dwelling units including, but not limited to, not more than five lodgers or boarders per family; multiple single-family dwellings where each unit had an independent means of egress and were separated by a two-hour fire separation assembly; and a child care

facility that accommodated up to five children of any age.)

Cost-Effective Energy Efficiency

The Act specifies that the Code is designed to effectuate the Act's general purposes and certain objectives and standards, including providing standards and requirements for cost-effective energy efficiency that took effect April 1, 1997; and, upon periodic review, continuing to seek ever-improving, cost-effective energy efficiencies.

Under the bill, "cost effective", in reference to the above provisions, would mean using the existing energy efficiency standards and requirements as the base of comparison, the economic benefits of the proposed energy efficiency standards and requirements would exceed the economic costs of the requirements of the proposed rules based on an incremental multi year analysis. The analysis would have to: take into consideration the perspective of a typical first-time home buyer; consider benefits and costs over a seven-year time period; not assume fuel price increases in excess of the assumed general rate of inflation; assure that the buyer who qualified to purchase a home before the addition of the energy efficient standards would still qualify to purchase the same home after the additional cost of the energy-saving construction features; and, assure that the costs of principal, interest, taxes, insurance, and utilities would not be greater after the inclusion of the proposed cost of the additional energy-saving construction features required by the proposed energy efficiency rules as opposed to the provisions of the existing energy efficiency rules.

MCL 125.1502 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since the Act permits local governments to exempt themselves from the State Construction Code and adopt, as well as amend, a nationally recognized model code, a builder who is constructing similar homes in two communities, for example, may be subject to two different construction codes. While a builder may want to construct homes that follow a standard design, modifications often have to be made to comply with various local building codes. The lack of uniform construction requirements has resulted in increased construction costs and delays in the completion of some construction projects. The bill would require a statewide application of the State Construction Code. As a result, builders would have to comply with only one code, regardless of a

development's location in the State. A uniform construction code would provide for more consistent enforcement, and could reduce costs not only for developers but also for local governments. Currently, a local government that elects not to be governed by certain parts of the Act and the Code must review and update its code at least once every three years. Under the bill, the State would be responsible for reviewing and updating the statewide code.

Supporting Argument

Under the Act, a person may appeal a decision of a construction board of appeals to the State Construction Code Commission. The Attorney General ruled in 1998 (Opinion No. 6994) that the Act does not authorize appeals to the Commission from a board of appeals of a local government that exempted itself from enforcing the State Code. Under the bill, the right of appeal to the Commission would apply to builders throughout the State, whether they were working under the State Code or a locally adopted national code.

Opposing Argument

Under the Act, local governments can modify a construction code to address local construction conditions, such as snow loads on roofs. By requiring the statewide application of a construction code, the bill would prohibit local governments from making modifications to a building code that would be appropriate for their communities.

Response: According to officials at the Department of Consumer and Industry Services, many of the changes local governments have made to a national code have not been substantially different from the requirements found in the State Code. In its building foundation requirements, for example, the State Code already takes into consideration the variety of soil conditions found across the State. The State also provides for various winter conditions and snow accumulations in regard to snow load requirements for roofs. In addition, many construction restrictions that builders must follow, such as the use of brick instead of aluminum siding on homes, are not the result of construction code limitations, but are imposed by private developers. Furthermore, the bill would not end local enforcement of construction codes. Local governments still would have the option of creating or maintaining a building department.

Opposing Argument

School facilities, like other types of buildings, should be subject to the State Construction Code, with plans and specifications submitted to the Department of Consumer and Industry Services for review. Currently, however, the Revised School Code prohibits a school board from designing or constructing a school building unless the design or construction complies with Public Act 306 of 1937, which regulates the construction and remodeling of

school buildings. The School Code also specifies that the Superintendent of Public Instruction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of instructional and noninstructional buildings (MCL 380.1263). Public Act 306 also requires that all plans and specifications for school buildings be prepared by and construction be supervised by a State registered architect or engineer. Under Public Act 306, written approval of the State Superintendent must be obtained before construction or remodeling begins. The Superintendent may not issue an approval, however, until he or she has obtained the written approval of the State Police Fire Marshal's office concerning fire safety and of the Department of Public Health concerning water supply, sanitation, and food safety (MCL 388.351). Despite these provisions, the construction of school buildings is exempt from the State Construction Code Act.

Response: Public Act 306 specifies certain construction mandates for school buildings, such as a requirement that walls, floors, and roofs be constructed out of fire-resistant materials and a prohibition against the use of wood lath or flooring in construction. In addition, the Act requires the State Superintendent to publish an information bulletin that sets forth "good school building planning procedures" (MCL 388.351). The bulletin must be prepared in cooperation with the State Fire Marshal and State health officials. Furthermore, the question of whether school construction should be subject to the State Construction Code can be addressed in separate legislation.

Opposing Argument

The three model building code organizations – the International Code Council, the Southern Building Code Conference, and BOCA – are in the process of developing a single model construction code that would be applicable nationwide. The new code is expected to be completed by March 2000. Instead of requiring a Statewide Code, as proposed in the bill, Michigan should allow local governments to use their current codes until the national code is issued. This would minimize any disruptions at the local level and provide for a smooth transition when the new code is completed.

Legislative Analyst: L. Arasim

FISCAL IMPACT

This bill could result in savings at the local level as currently local governments are required to update their codes every three years. This bill would transfer that responsibility to the State, therefore reducing an administrative burden on local governments.

Fiscal Analyst: M. Tyszkiewicz

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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.