

CONSTRUCTION INSPECTOR CONFLICTS OF INTEREST

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4206 (Substitute H-3)
House Bills 4207-4209 as introduced
Sponsor: Rep. John Stakoe
Committee: Local Government and Urban Policy

First Analysis (4-11-05)

BRIEF SUMMARY: The bills would set standards and provide an administrative process to prevent conflicts of interest among inspectors in the building trades.

FISCAL IMPACT: There is no fiscal impact on the State of Michigan government. Local units of government in remote rural areas may experience increased costs if they encounter difficulty finding building trades inspectors without the conflicts of interest defined in House Bill 4206. However, the amount of any such increased costs is not determinable.

THE APPARENT PROBLEM:

After new structures have been constructed, and often before they are occupied or insurable, they must pass inspection by government officials who are responsible for the quality of the work. Those inspections are regulated under various state and local codes to ensure the work meets standards specified in plumbing, electrical, mechanical, and building codes.

Many units of government in rural areas of the state employ local inspectors on a part-time basis. And, because population is sparse, government officials often turn to local contractors to perform the inspections. At times, these local inspectors are assigned to inspect building projects undertaken by close friends or family—sometimes even projects on which they themselves have subcontracted for work. There is currently no provision in the laws that govern the inspectors' work to prohibit this practice. Consequently, conflicts of interest arise but cannot be settled by the rule of law.

Legislation has been introduced to define and prohibit conflicts of interest, as well as to provide a complaint reporting and resolution system.

THE CONTENT OF THE BILLS:

The bills would amend various acts to set standards and provide an administrative process to prevent conflicts of interest among inspectors in the building trades. House Bill 4206 is tie-barred to House Bills 4207, 4208, and 4209, and each of those is tie-barred to House Bill 4206, so that no bill could become law unless all were enacted.

House Bill 4206 (H-3) would amend the Building Officials and Inspectors Registration Act (MCL 338.2310) to describe conflicts of interest. Under the bill, a registrant under the act would be prohibited from performing any activities on any project if there was a conflict of interest. Each of the following circumstances would be considered a conflict of interest:

** a registrant was directly or indirectly connected with a business and he or she was employed or acting as an inspector, plan reviewer, or building official regarding that business.

** a registrant had an interest directly or indirectly in any written or oral contract affecting the construction of any building or structure or the furnishing of materials, applicants, equipment, or labor affecting the construction of the building or structure [where the registrant was acting as an inspector].

** a registrant had a personal ownership interest in all, or a portion of, the business entity performing the work in the construction of a building or structure for which the registrant was making code enforcement and administration decisions.

** a registrant conducted inspections for a construction project and the registrant or the construction company employing the registrant had sought work on the project.

Within 30 days after a conflict of interest had been identified by, or reported to, an enforcing agency, that agency would be required to report the claim to the chief elected official of the governmental subdivision (or to a designee) and request an investigation of the claim. (An enforcing agency is a code enforcement agency within a local unit of government that has assumed code administration and enforcement duties.) Within 30 days after receipt of a report, the official would be required to conduct an investigation and file a report of the findings with the State Bureau of Construction Codes and Fire Safety. If the investigation by the enforcing agency determined the existence of a conflict of interest, the agency would be required to remove the registrant from the responsibility of code enforcement on the specific project.

Upon receiving information that an enforcing agency had failed to investigate a facially valid claim of conflict of interest, or had failed to take appropriate action within 30 days, the Bureau of Construction Codes and Fire Safety would be required to conduct a performance evaluation of the enforcing agency and report its findings, in writing, to the State Construction Code Commission.

If a person alleged that an enforcing agency had failed to investigate a facially valid claim of conflict of interest, or failed to remove the registrant from the responsibility of code enforcement on a project when a conflict of interest had been determined to exist, that person could file a complaint with the bureau requesting a performance evaluation. Upon receipt of a facially valid complaint of this kind, the bureau would be required to conduct a performance evaluation and report the findings in writing to the code commission. If the commission determined that an enforcing agency had failed to

investigate a facially valid claim or failed to take appropriate action against a registrant, the commission would issue a notice of intent to withdraw code enforcement responsibility from the enforcing agency. An agency could appeal the decision of the commission.

House Bill 4207 (MCL 338.3549), House Bill 4208 (MCL 338.887a), and House Bill 4209 (MCL 338.988) would amend the State Plumbing Act, the Electrical Administrative Act, and the Forbes Mechanical Contractors Act, respectively, to require licensed plumbers, electrical contractors, and mechanical contractors who conduct inspections to register under the Building Officials and Inspectors Registration Act. In addition, the bills also would prohibit inspectors and contractors who conduct inspections from engaging in activities considered to be conflicts of interest under Section 10 of the Building Officials and Inspectors Registration Act (Section 10 being the revised section of law that would go into effect if House Bill 4206 were enacted).

Under each bill, the term "governmental subdivision" would be imported from Section 2a of the Stille-DeRossett-Hale Single State Construction Code Act, where it refers to a county, city, village, or township which has assumed responsibility for code administration and enforcement.

ARGUMENTS:

For:

In order to protect the health, safety, and financial interest of consumers, a clear definition of conflict of interest should be part of the laws that govern those who inspect the work of people skilled in the building trades. The law also should provide a complaint process so that suspected conflicts of interest may be investigated. Unless conflicts of interest are prohibited to insure that an inspector does not inspect a project in which he has a financial or family interest, there is a risk that projects will fall short of quality standards.

Against:

Local units of government in sparsely populated areas of the state oftentimes employ inspectors part-time. When doing so they turn to the few local residents who are skilled in the building trades. This legislation could make the current practice of small local governments illegal and drive up their personnel costs, because local officials would be required to hire inspectors from outside the construction region.

POSITIONS:

The Department of Labor and Economic Growth supports the bills. (3-23-05)

The Michigan State Building Trades support the bills. (3-23-05)

The Michigan Association of Home Builders supports the bills. (3-23-05)

The Michigan Townships Association supports the concept of the bills but remains neutral. (3-23-05)

The Mechanical Inspectors Association is neutral on the bills. (3-23-05)

The Independent Association of Electrical Inspectors is neutral on the bills. (3-23-05)

The Plumbing Inspectors Association of Michigan is neutral on the bills. (3-23-05)

Legislative Analyst: J. Hunault
Fiscal Analyst: Richard Child

■ 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.