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## BILL ANALYSIS



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Senate Bills 963 through 972 (as introduced 5-18-16)

Sponsor: Senator Ken Horn (S.B. 963, 966, & 970)  
Senator Wayne Schmidt (S.B. 964, 965, & 971)  
Senator Marty Knollenberg (S.B. 967)  
Senator Dale W. Zorn (S.B. 968)  
Senator Peter MacGregor (S.B. 969)  
Senator Tonya Schuitmaker (S.B. 972)

Committee: Regulatory Reform

Date Completed: 5-25-16

### **CONTENT**

**Senate Bill 963** would repeal the Electrical Administration Act, the Mechanical Contractors Act, the State Plumbing Act, the Boiler Act, and the Building Officials and Inspectors Registration Act (referred to below as that "former acts"); and would create the "Skilled Trades Regulation Act" to regulate all of the occupations that are regulated currently under those statutes. Specifically, the bill would do the following:

- Establish separate articles under the proposed Act specific to the occupations regulated under the respective former acts.
- Reenact many of the provisions of the former acts in the applicable articles of the proposed Act.
- Provide that a person who held a license, registration, or certification issued under a former act immediately before the proposed Act took effect would be considered licensed, registered, or certified until the credential expired; and could renew the credential under the proposed Act.
- Provide that a regulatory board created in a former act would continue as a board under the proposed Act; and the members would serve as the initial members of the successor board until their successors were appointed or their respective terms expired, whichever occurred first.
- Provide that rules promulgated by the Department of Licensing and Regulatory Affairs (LARA) or a board under a former act and in effect immediately before the proposed Act took effect would continue in effect to the extent that they did not conflict with the Act; and provide that LARA or a board would have to enforce the rules and could amend or rescind them.

As noted above, the bill would reenact in the proposed Act provisions of the former acts in separate articles applicable to the following occupations: electricians and electrical contractors; mechanical contractors; boiler inspectors, installers, repairers, and operators and stationary engineers; building officials and inspectors; and plumbers and plumbing contractors. The reenacted provisions pertain to the following:

- Definitions of key terms.
- Board membership.

- Examination, license, and license renewal fees.
- Eligibility to sit for a licensing examination.
- Criteria for license and registration issuance.
- The jobsite ratio of apprentices to journeymen or masters.
- The prohibition against doing work without a license, and related exceptions.
- Municipal registration and licensing requirements.
- Liability.

The bill also would establish a number of general provisions that would apply to an occupation regulated under the proposed Act, if no such provisions were prescribed in the article specific to that occupation. Specifically, the bill would do the following:

- Require LARA to promulgate rules to establish fees for licenses, examinations, inspections, and other items, and the expiration date of licenses issued under the proposed Act.
- Require a person to apply for a license by submitting a form and the appropriate fee to LARA.
- Require LARA to renew the license of a person who met prescribed conditions.
- Allow LARA to issue a license to an individual, or renew the license of an individual, who demonstrated that the licensure requirements did not constitute a fair and adequate measure of his or her knowledge and skills or that a required examination did not serve as an adequate basis for determining the individual's competence to perform the occupation.
- Allow LARA, with the approval of the applicable board, to issue a license or renewal license with a limitation; and allow LARA to impose the limitation if the board did not approve or disapprove of the imposition within 60 days after receiving notice from LARA.
- Authorize LARA to promulgate rules to set the minimal standards of acceptable practice for an occupation.
- Prescribe LARA's responsibilities with regard to required licensing examinations.
- Provide that LARA would have control over each board's files, and prescribe LARA's responsibilities in providing office services and staff to each board.
- Require LARA to publish an annual report describing the activities of the Department and each board, and file it with the Governor and the Legislature.
- Allow LARA to grant a nonrenewable temporary license, under certain circumstances.
- Require LARA to grant a temporary license to a person who was married to an individual on active duty in the Armed Forces and met other criteria.
- Prescribe requirements pertaining to the membership, appointment, and operating procedures of a board, if such provisions were not prescribed in a specific article of the proposed Act.
- Require a board to assess penalties after completion of a disciplinary hearing.
- Require a board and LARA to develop a required examination or test.
- Prescribe criteria and procedures for the relicensing of an individual whose license was expired.
- Provide a temporary exemption from the renewal license fee and continuing education requirements for an individual who was on active duty in the Armed Forces.
- Require LARA to waive a licensing or registration fee, as well as an application fee, for an individual who had served in the Armed Forces.
- Require all fees and money received by LARA for licensing people under the proposed Act to be paid into the State Construction Code Fund.
- Allow LARA to enter into an agreement with an entity that was not an agency of a state or the Federal government to provide an electronic continuing education tracking system.

- Provide that amounts owed to LARA for permitting, inspection, and plan review and administrative fines in connection with work performed on real property would become a lien on the property 90 days after issuance if not paid.

Additionally, the bill would replace various provisions of the former acts related to complaints, investigations, administrative proceedings, and penalties for violations. Specifically, the bill would do the following:

- Prescribe procedures for LARA to receive and investigate complaints of violations of the proposed Act.
- Allow LARA to request the Attorney General to petition a court for a subpoena in furtherance of an investigation or a hearing to take action against a person's licensee.
- Require LARA or the Attorney General, if an investigation disclosed evidence of a violation, to prepare a formal complaint, a cease and desist order, a notice of summary suspension, or a citation against the respondent.
- Require LARA to commence administrative proceedings after issuing a summary suspension order to determine what additional administrative action would be appropriate.
- Allow a person whose license was summarily suspended to petition LARA to dissolve the order.
- Provide that a person who was ordered to cease and desist would be entitled to a hearing before LARA upon request.
- Allow the Attorney General to bring an action against a person who violated a cease and desist order.
- Require LARA to offer to a respondent several alternatives for resolving the complaint, and to proceed to a contested case hearing if the respondent did not make a choice within 15 days.
- Allow LARA to bring the parties together for an informal conference to attempt to resolve a complaint.
- Require LARA to hold a hearing to take action against a person's license if a complaint were not resolved; and require a board to meet and make a determination of the penalties to be assessed within 60 days after receiving a report of the hearing.
- Authorize the LARA Director to issue a final order assessing the penalty he or she determined appropriate, if a board did not determine the appropriate penalty within the prescribed time frame.
- Allow a person who did not receive a license or renewal, or who had a limitation placed on his or her license, to petition LARA for a review.
- Authorize LARA to issue a citation to a licensed person who violated the proposed Act.
- Make it a misdemeanor to practice an occupation regulated under the proposed Act without a license, in the case of a first or second violation, and a felony in the case of a third or subsequent violation; and prescribe criminal penalties.
- Allow a person affected by a violation to pursue injunctive relief to prevent the violation.
- Allow an enforcing agency to issue a stop construction order, if construction were being undertaken illegally and the person holding the building permit or doing the construction failed to appear and show cause why it should not be stopped.
- Allow an enforcing agency to apply for a court order enjoining the violation of a stop construction order.
- Allow the Attorney General or a county prosecuting attorney to bring an action in court to enforce the provisions regarding practicing without a license and engaging in illegal construction.

- **Authorize LARA to place a limitation on a license, suspend or revoke a license, deny a license or license renewal, or impose an administrative fine, censure, probation, or payment of restitution if a person violated the proposed Act.**
- **Provide that the administrative penalties also would apply to a person who violated a specific article of the proposed Act or engaged in a prohibited act, such as fraud or deceit.**
- **Allow LARA to bring any appropriate action to carry out and enforce the proposed Act.**
- **Require the Attorney General to intervene in and prosecute a case arising under the proposed Act, if he or she considered it necessary.**
- **Provide that LARA would have standing to bring an administrative or court action regarding the unlicensed practice of a regulated occupation.**
- **Allow the use of statutory forfeiture provisions in the event of a criminal violation of the proposed Act.**

**Senate Bill 972 would amend the Code of Criminal Procedure to include in the sentencing guidelines a third or subsequent offense involving the unauthorized practice of an occupation regulated under the proposed Skilled Trades Regulation Act. The violation would be a class E felony against the public trust punishable by a statutory maximum of five years' imprisonment.**

**Senate Bills 964 through 971 would amend various statutes to replace references to the former acts with references to the proposed Skilled Trades Regulation Act.**

Senate Bill 964 would amend the Housing Law of Michigan. Senate Bill 965 would amend the Single State Construction Code Act. Senate Bill 966 would amend the Mobile Home Commission Act. Senate Bill 967 would amend the Asbestos Abatement Contractors Licensing Act. Senate Bill 968 would amend the Occupational Code. Senate Bill 969 would amend Public Act 306 of 1937, which governs the construction of school buildings. Senate Bill 970 would amend the Appliance Repair Act. Senate Bill 971 would amend the Construction Lien Act.

Each bill would take effect 90 days after enactment. Senate Bills 964 through 972 are tied to Senate Bill 963.

Senate Bill 963 is described below in further detail.

#### License Application & Renewal

A person would have to apply for a license on an application form provided by LARA and include with it appropriate fees established by LARA rules. Except as otherwise provided, LARA would have to issue a license to a person who met the licensure requirements set forth in the proposed Act specific to his or her occupation and in Department rules. The Department would have to establish the expiration date of licenses. The Department could not issue and the rules could not permit the issuance of a permanent license.

Unless otherwise provided in the Act and subject to prescribed limitations, LARA would have to renew the license of a person who fulfilled all of the following requirements:

- Applied to LARA on a form provided by the Department on or before the date prescribed for expiration of the current license.
- Paid the appropriate fees established by LARA rule.
- Met the renewal requirements set forth in a specific article of the Act, or a rule promulgated or order issued under the Act.

The Department could issue an initial license to an individual under a specific article of the proposed Act if he or she demonstrated to the satisfaction of LARA and the appropriate board

that the licensure requirements did not constitute a fair and adequate measure of his or her knowledge and skills or that a required examination for receiving a license did not serve as an adequate basis for determining whether he or she could perform an occupation with competence. A similar provision would apply in the case of an individual seeking renewal of a license; however, if attendance in a continuing education program were a requirement for renewal, LARA could not waive that requirement.

The Department could not issue and a person could not receive an initial or renewal license under the proposed Act until the person paid the appropriate fees established by LARA rule.

Under the Electrical Administrative Act, the Mechanical Contractors Act, the Boiler Act, and the State Plumbing Act, LARA must issue an initial or renewal license within 90 days after receiving a completed application. If an application is incomplete, LARA must notify the applicant within 30 days, describing the deficiency and requesting the additional information. The 90-day period is tolled from the date of notice of a deficiency until LARA receives the requested information. If LARA fails to issue or deny a registration, license, or permit within the 90-day period, the Department must return the fee and reduce it by 15% for the applicant's next renewal application. The LARA Director must submit an annual report to the Legislature concerning the number of initial and renewal applications the Department received and completed within the 90-day time period, the number of applications denied by the Department, and the number of applicants who were not issued a license within 90 days and the amount of money returned to them. The proposed Act would not include these provisions.

#### License Limitation

The Department could issue an initial or renewal license with a limitation. If it intended to impose a limitation on the issuance of a license of a person under a specific article of the proposed Act, LARA would have to notify the appropriate board of its intent, and could impose the limitation only with that board's approval; however, if the board did not approve or disapprove of the imposition of the limitation within 60 days after receiving the notice from LARA, the Department could impose the limitation. A person who received a license with a limitation could receive a review of the decision, as prescribed in the bill.

It would be the licensee's responsibility to renew a license. The Department would have to send a renewal application to a licensee's last known physical or electronic address on file with the Department. A licensee's failure to notify LARA of a change in address would not extend the expiration date of a license, and could result in disciplinary action.

#### LARA Rules

The Department would have to promulgate any rule it considered necessary and appropriate to implement and administer the proposed Act's general articles applicable to licensees and to enable the Department to fulfill its responsibilities.

The Department also would have to promulgate rules to establish fees for licenses, examinations, and inspections. The fees would have to reflect LARA's actual costs and expenses in issuing licenses and conducting inspections. The fees in effect on the day preceding the bill's effective date would continue in effect until LARA promulgated these rules.

The Department would have to promulgate rules to establish the fee schedules for other items, including variance requests, product approvals, or special inspections. The fees would have to reflect the Department's actual costs and expenses for these items.

Additionally, LARA could promulgate rules to set the minimal standards of acceptable practice for an occupation.

## Examinations

Before an examination or other test required under the proposed Act was administered and except as otherwise provided, LARA and the appropriate board, acting jointly, would have to review and approve the form and content. Except as otherwise provided, LARA would have to administer, score, and monitor an examination or test, as well as provide the equipment, examination room, written form, and any other item needed to administer an exam or test. The Department could enter into an agreement with an entity that was not an agency of a state or the Federal government that authorized the entity to fulfill LARA's responsibilities related to exams and tests. The Department would have to promulgate any rules it considered appropriate to implement and administer these provisions.

## LARA Responsibilities to Licensing Boards

The Department would have control over and physical possession of the board files of each board. "Board files" would mean the records, memoranda, opinions, minutes, and similar written materials that were formerly in the physical possession and control of a board abolished by the bill and the records, memoranda, opinions, minutes, and similar written materials of a board created under the proposed Act. The Department would have to ensure that applicable laws concerning public access to the board files were met.

The Department would have to furnish office services to each board; perform managerial, administrative, and budgetary functions for each board; and appoint administrative and secretarial staff, clerks, and employees necessary for the proper exercise of a board's powers and duties.

Subject to any limitations imposed by the Civil Service Commission, LARA could fire, suspend, promote, demote, or transfer an individual who was providing administrative or secretarial service for a board.

The Department would have to provide a comprehensive orientation program for each individual who was appointed and confirmed as a board member.

Additionally, LARA would have to prepare and publish an annual report describing the activities of the Department and each board. The report would have to be filed with the Governor and the Legislature.

## Temporary License

If a person had not previously been denied a license or had a license revoked or suspended, LARA could grant a nonrenewable temporary license to an applicant for licensure under any specific article of the proposed Act. If approved by a board, a temporary license would be valid until one or more of the following occurred:

- The results of the next scheduled examination were available.
- The results of the next required evaluation procedure were available.
- A license was issued.
- The next date of an examination for licensure in the applicable occupation occurred, if the applicant did not take the exam.
- The applicant failed to meet the requirements for a license.
- A change in employment was made.

Additionally, LARA would have to grant a temporary license to an applicant if he or she provided proof acceptable to the Department of all of the following:

- He or she was married to an individual who was serving in the Armed Forces and was on active duty.
- He or she held a current license or registration in good standing in that occupation issued by an equivalent licensing department, board, or authority, as determined by LARA, in another U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, another U.S. territory or protectorate, or a foreign country.
- His or her spouse was assigned to a duty station in Michigan and he or she also was assigned to a duty station in Michigan under the spouse's permanent change of station orders.

A temporary license would be valid for six months and could be renewed for one additional six-month term if LARA determined the temporary licensee continued to meet the proposed Act's requirements and needed additional time to fulfill the requirements for initial licensure in Michigan.

The Department could place a limitation on a temporary license.

#### Foreign Records

If a license applicant's records related to the education or experience required under a specific article of the proposed Act were unavailable from a foreign country, the applicant, with the approval of LARA and the board, could take an examination or apply for a reciprocal license after submitting both of the following to the Department:

- A notarized affidavit approved by LARA that stated the total number of years of education received, the name of the school or schools attended, the dates each school was attended, the degree obtained, the courses taken, the grades received, and the names of each former employer of the applicant.
- A notarized statement approved by LARA from a governmental official testifying to the unavailability of the necessary records.

#### Licensing Boards

Membership. Unless otherwise provided in a specific article of the proposed Act, all of the provisions described below would apply to a board.

A board would consist of nine voting members, as follows:

- Six members would have to be individuals who had a license or registration in the occupation or occupations the board monitored.
- Three members would have to represent the general public.
- The LARA Director would be an ex officio member, but would not be a member for purposes of Article V, Section 5 of the State Constitution (which requires a majority of the members of an appointed examining or licensing board of a profession to be members of that profession) or for determining a quorum.

In addition to fulfilling the requirements set forth in a specific article, a board member would have to be at least 18 years old and a Michigan resident.

Unless otherwise provided in a specific article of the proposed Act, the Governor would have to appoint an individual as a member of the board with the advice and consent of the Senate, including an individual appointed to fill a vacancy. In making an appointment, the Governor would have to seek nominations from a wide range of interested groups and people, including appropriate professional associations, consumer associations, labor unions, and other organizations or individuals.

Unless otherwise provided in a specific article of the proposed Act, the term of an appointed board member would be four years. An individual who was appointed to fill a vacancy that was the result of a member's resignation, death, disability, or removal for cause by the Governor, however, would serve for the balance of the term of the member he or she replaced and could be reappointed for a maximum of two full terms. A vacancy would be filled in the same manner as the original appointment was made. The Governor would have to appoint an individual as a board member, subject to the advice and consent of the Senate, within 60 days after a vacancy occurred and within 60 days after the Senate disapproved an appointment by the Governor. Except as otherwise provided, the Governor could not appoint an individual to serve for more than two consecutive terms.

The Legislature annually would have to fix the per diem compensation of a board member. Travel or other expenses incurred by a board member in the performance of an official function would be payable by LARA under the standardized travel regulations of the Department of Technology, Management, and Budget.

Meetings. Unless otherwise provided in a specific article of the proposed Act, all of the following would apply to the meetings of a board:

- A board would have to meet as often as necessary to fulfill its duties, but would have to meet at least twice per year and at other dates set by the LARA Director.
- A majority of the members appointed and serving on a board would constitute a quorum.
- A board member could not vote by proxy.
- A board would have to conduct its meetings pursuant to the Open Meetings Act.

Annually, a board would have to elect a chairperson, a vice-chairperson, and any other officers the board determined necessary. A board could fill a vacancy in office of the board for the balance of the one-year term.

Board Activities. A board could adopt bylaws for the regulation of its internal affairs, and would have to report its activities to LARA annually and as often as the Director ordered.

Each board created or continued under the proposed Act would be created or continued within LARA.

A board's duties would include the interpretation of a licensure or permit requirement of a specific article of the Act and, if necessary, the provision of aid in an investigation. At the board's discretion, a member could attend an informal conference conducted under the Act. A board would have to assist LARA in implementing the Act.

After the completion of a hearing (described below), a board would have to assess penalties.

Additionally, a board would have to aid LARA in interpreting a licensure or permit requirement that was incomplete or subjective in nature to determine whether the applicant had met the requirements for the issuance or renewal.

Examination Development. Unless otherwise provided in a specific article of the proposed Act, a board and LARA would have to develop an examination or test required in a specific article. In doing so, the board and LARA could adopt an exam or test prepared by another agency if they determined that it served as a basis for determine whether an individual had the knowledge and skills to perform an occupation with competence.

The material required by the board and LARA to develop an exam or test could be considered in a closed session, if the board met the requirements of the Open Meetings Act to call a closed session.



Transition. A board abolished under the proposed Act would have to surrender control over and physical possession of any board files to LARA. Until LARA determined otherwise, the successor board would have to use the personnel, office space, and items or equipment that were used by an abolished board and that were needed for the board to function.

### License Fees

The Department would have to establish by rule the specific amounts of the fees charged for licenses, permits, and other activities.

If a license were lost or destroyed, and if LARA received an application and the applicable fee, the Department would have to issue a new license to replace it, without another examination. (A similar requirement exists currently under the Boiler Act and the State Plumbing Act. The Boiler Act prescribes a fee of \$5 and the Plumbing Act prescribes a fee of \$30 through September 30, 2019, and \$20 after that date.)

If LARA received a written request and the applicable fee, the Department would have to issue a verification for a current license.

If LARA terminated a contract with a person who had been administering a licensing exam to applicants for licensure in a specific occupation, and the Department itself began to administer the exam, LARA could not charge an applicant a fee that was greater than the fee charged under the terminated contract unless the fee were increased by a Department rule.

An applicant would have to include a nonrefundable application processing fee with an application for a license. The Department also could require the applicant to include any fee required for examination or inspection or the fee for the initial license period.

An individual who was required to take an exam would have to pay an examination fee before being scheduled for the exam. An individual who was scheduled for examination or reexamination and failed to appear would forfeit the fee. An individual who failed all or part of an exam could be reexamined, if eligible, after paying the fee for the complete examination or those parts he or she failed, as applicable.

The Department would have to publish in its application instructions the deadline by which it had to receive an application in order for an applicant to be scheduled for a required examination.

Except as otherwise provided, LARA could not issue a license to a person who had completed the requirements for a license or who sought to renew a license until he or she paid the license fee.

The Department would have to establish license fees on a yearly basis. If licenses were established by LARA rules as biennial or triennial renewals, the fee required would have to be two or three times the yearly amount, as appropriate.

Unless otherwise provided under the proposed Act or LARA rules, an applicant would have to complete all requirements for licensure within one year after LARA received the license application or mailed a notice of an incomplete application to the applicant, whichever was later. If the licensure requirements were not completed in that time period, the fees paid would be forfeited to the Department and the application would be void. To obtain a license, a person whose application was voided would have to submit a new application and fees and meet the standards in effect on the date LARA received the new application.

Relicensure after License Expiration. A person who failed to renew a license on or before its expiration date could not practice the occupation, operate, or use the title of that occupation

after that date. A license would lapse on the day after the expiration date. The person could renew the license by payment of the required license fee and a late renewal fee within 60 days after the expiration date. Except as otherwise provided, LARA would have to relicense a person who failed to renew a license within that time period without examination and without meeting additional education or training requirements in force at the time of application for relicensure, if all of the following conditions were met:

- The person applied within three years after the expiration date of the last license.
- The person paid an application processing fee, the late renewal fee, and the per-year license fee for the upcoming licensure period.
- Any penalties or conditions imposed by disciplinary action in Michigan or any other jurisdiction were satisfied.
- The person submitted proof of having completed the equivalent of one year of continuing education within the 12 months preceding the application or as otherwise provided in a specific article of the proposed Act or by rule, if continuing education were required for that license under a specific article.

Except as otherwise provided, LARA would have to relicense a person whose last license expired three years or more before the application for relicensure if the person showed that he or she met the requirements for licensure established by LARA in rules or procedures. The rules or procedures could require that an individual pass all or part of a required exam, complete continuing education requirements, or meet current education or training requirements.

Unless otherwise provided in the proposed Act, a person who sought relicensure would have to file a completed application, on a form provided by LARA, pay the application processing fee, and file with LARA and the appropriate board a petition stating reasons for relicensure and including evidence that he or she could and was likely to serve the public in the regulated activity with competence and in conformance with all other requirements prescribed by law, rule, or an order of LARA or the board. The Department would have to review a petition in the same manner as a petition for review of a license or renewal denial or license limitation (described below). If approved for relicensure, the person would have to pay the per-year license fee for the upcoming license period, if appropriate.

Temporary Exemption. Notwithstanding any provision in the proposed Act to the contrary, an individual or qualifying officer who was a licensee and who was on active duty in the Armed Forces would be temporarily exempt from any renewal license fee, continuing education requirements, or other related requirements applicable to the license. It would be the licensee's obligation to inform LARA of the desire to exercise the temporary exemption. If the licensee were the individual responsible for supervision and oversight of licensed activities, he or she would have to give LARA notice of arrangements for adequate provision of that supervision and oversight. The licensee would have to accompany the request with proof, as determined by LARA, to verify the mobilized duty status. If LARA received a request for a temporary exemption, the Department would have to make a determination of the requestor's status and grant the exemption after verification of active duty status. A temporary exemption would be valid until 90 days after the licensee's release from the active duty on which the exemption was based, but could not exceed 36 months from the date of the license expiration.

Continuing Education Tracking System. The Department could enter into an agreement with an entity that was not an agency of a state or the Federal government to provide an electronic continuing education tracking system that provided an electronic record of the continuing education courses, classes, or programs completed by all of the individuals who were licensed or registered under the proposed Act and were subject to continuing education requirements. All of the following would apply to such a system:

- All tracking provided by the system accurately would have to reflect the continuing education requirements under the Act and rules promulgated under it.
- A confirmation of completion of continuing education requirements generated by the system would be considered verification of completion for renewal of a license or registration and for purposes of any audit of licensees or registrants conducted by LARA.
- The system would have to provide access to continuing education information about an individual who was licensed or registered to the individual, to the appropriate board for the individual's occupation, and to LARA.

Lien on Property for Past-Due Amounts. It would be a condition of licensure, renewal, or relicensure that all fees and fines owed to LARA were paid. Additionally, the payment of all fees and fines owed to LARA, including fees for current and previous permits, inspections, and plan review, and administrative fines, would be a condition of obtaining a permit. The amounts owed for permitting, inspections, plan review, and administrative fines in connection with work performed on real property would become a lien on the property 90 days after issuance if not paid. The lien for those amounts and all interest and penalties on those amounts would continue until paid.

Fee Waiver: Armed Forces. The Department would have to waive the fee for an initial license or registration that was otherwise required, or an application processing fee charged by LARA for an initial license or registration, if the applicant were an individual who served in the Armed Forces and he or she gave LARA a form DD214 or DD215, or any other form satisfactory to the Department that demonstrated that he or she was separated from that service with an honorable character of service or under honorable conditions (general) character of service.

State Construction Code Fund. All fees and money received by LARA for licensing people under the proposed Act, as well as any other income the Department received under the proposed Act, would have to be paid into the State Construction Code Fund. (A similar provision exists in the former acts. Money in the Fund is appropriated by the Legislature for the operation of the Bureau of Construction Codes and indirect overhead expenses in LARA.)

#### Complaints, Investigations, & Administrative Proceedings

Complaint Resolution. If LARA received a complaint, it immediately would have to begin an investigation of the allegations of the complaint and open a correspondence file. Within 15 days after receiving the complaint, LARA would have to make a written acknowledgment to the person who made the complaint. If LARA made a complaint, the Director would have to designate at least one employee to act as the person who made it. The Department would have to conduct the required investigation. In furtherance of the investigation, LARA could request that the Attorney General petition a circuit court to issue a subpoena that required a person to appear before LARA and be examined with reference to a matter within the scope of the investigation and to produce books, papers, or documents pertaining to it.

Within 30 days after LARA received the complaint, the Department's investigative unit would have to report to the Director on the results of the investigation. If an investigation could not be completed within 30 days, for good cause shown, the Director could extend the time in which a report could be filed. The total number of extensions granted would have to be included in LARA's annual report to the Legislature and the Governor.

If the investigative unit's report did not disclose a violation of the proposed Act or a rule promulgated or order issued under it, LARA would have to close the complaint and forward the reasons for closing it to the respondent and the complainant, who could provide additional information to reopen it.

If the investigative unit's report disclosed evidence of a violation, LARA or the Department of Attorney General would have to prepare the appropriate action against the respondent. The

appropriate action could be a formal complaint, a cease and desist order, a notice of summary suspension, or a citation.

After an investigation was conducted, LARA could issue an order summarily suspending a license based on an affidavit by an individual who was familiar with the facts set forth in the affidavit or, if appropriate, based on an affidavit made on information and belief that an imminent threat to the public health, safety, and welfare existed. After an order was issued, LARA promptly would have to begin the administrative proceedings described prescribed in the proposed Act to determine what additional administrative action was appropriate.

If a person's license were summarily suspended, he or she could petition LARA to dissolve the order. If LARA received a petition, it immediately would have to schedule a hearing to decide whether to grant or deny the request. An administrative law hearings examiner would have to grant a request to dissolve an order unless there was sufficient evidence of the existence of an imminent threat that required emergency action and continuation of the order. The record created at the hearing would become part of the record on the complaint at a subsequent contested case hearing.

After an investigation was conducted, the LARA Director could order a person to cease and desist from a violation of the proposed Act or a rule promulgated or order issued under it. A person who was ordered to cease and desist would be entitled to a hearing before the Department if a written request were filed within 30 days after the order took effect. If a cease and desist order were violated, the Department of Attorney General could bring an action in circuit court to restrain and enjoin, temporarily and/or permanently, a person from further violating the order.

A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or permit issued under the proposed Act would be in addition to and not in place of an informal conference; criminal prosecution, or proceeding to deny, revoke, suspend, or place a limitation on a license or permit or any other action authorized under the Act.

After an investigation was conducted and a formal complaint was prepared, LARA would have to serve the formal complaint on the respondent and the complainant. At the same time, LARA would have to serve the respondent with a notice that described the compliance conference and hearing processes and offered the following alternatives to the respondent:

- An opportunity to meet with the Department to negotiate a settlement of the matter.
- If the respondent were a licensee or registrant, an opportunity to demonstrate compliance before a contested case hearing was held.
- An opportunity to proceed to a contested case hearing.

A respondent who was served with notice of a formal complaint could select one of these alternatives within 15 days after receiving the notice. If a respondent did not make a selection within that time period, LARA would have to proceed to a contested case hearing.

At any time during an investigation or administrative process, LARA could bring the parties together for an informal conference to attempt to resolve the issues raised in the complaint. An informal conference could be attended by a member of the applicable board, at that board's discretion, and could result in a settlement, consent order, waiver, default, or other method of settlement agreed on by the parties and LARA. A settlement could include the revocation, suspension, or limitation of a license or registration; censure; probation; restitution; or a penalty, as described below. A board could reject a settlement and require a contested case hearing.

An authorized employee or agent of the Department could represent LARA in any contested case hearing.

The proposed Act would not prevent a person against whom a complaint was filed from showing compliance with the Act or a rule promulgated or order issued under it in a contested case hearing.

If an informal conference were not held or did not result in a resolution of a complaint, LARA would have to hold a hearing under Section 92 of the Administrative Procedures Act (which requires a licensee to be given an opportunity to show compliance with all lawful requirements for retention of a license before an agency begins proceedings for the suspension, revocation, annulment, withdrawal, recall, cancelation, or amendment of a license).

The Department of the Attorney General or LARA could petition a circuit court to issue a subpoena that required the subpoenaed person to appear or testify or produce relevant documentary material for examination at a proceeding.

At the conclusion of a hearing, the administrative law examiner would have to submit a determination of findings of fact and conclusions of law to the Department of the Attorney General and LARA and the appropriate board in the hearing report. The report could recommend the assessment of penalties, as described below. The Department would have to submit a copy of a hearing report to the person who made the complaint and the person against whom the complaint was made.

Within 60 days after a board received an administrative law hearing examiner's hearing report, the board would have to meet and make a determination of the penalties to be assessed. The board would have to make its determination based on the report. A transcript of a hearing or a portion of the transcript would have to be made available to the board upon request. If a transcript were requested, the board would have to make its determination at a meeting held within 60 days after receiving the transcript. If the board did not determine the appropriate penalties to be assessed within that time limit, the LARA Director could determine the appropriate penalty and issue a final order assessing that penalty.

A board member who participated in an investigation of a complaint filed with LARA or who had attended an informal conference could not participate in making a final determination in a proceeding on that complaint.

Petition: Licensure or Renewal. A person who sought a license or renewal could petition LARA and the appropriate board for a review if he or she did not receive the license or renewal. A petition would have to be in writing and set forth the reasons the petitioner believed LARA should issue the license or permit. The Department could issue the license or renewal if, based on a review of the petitioner's qualifications, LARA and the appropriate board determined that the person could perform the occupation with competence.

Petition: License Limitation. If a limitation were placed on a license or license renewal, within 30 days after the limitation was imposed, the licensee could petition LARA in writing for a review of the decision to place the limitation. In reply to a petition, LARA would have to set forth the reasons it determined that the limitation should be placed on the license or renewal. The Department would have to send its reply to the petitioner within 15 days after receiving the petition. The Department and a board could remove a limitation if, based on a review of the petitioner's qualifications, LARA and board determined that the petitioner was able to perform with competence each function of the occupation without the limitation.

Grievance under Former Act. If an oral or written grievance were lodged before the proposed Act's effective date against a person who was licensed under a statute the bill proposes to

repeal, LARA would have to conduct the proceedings on that grievance in the manner prescribed in the repealed statute.

Citation. A LARA employee could issue a citation to a person who was licensed under the proposed Act, or required to obtain a license, if the employee observed or deduced from an investigation, inspection, or complaint the existence of conduct or conditions that violated the Act or rules promulgated or orders issued under it.

Among other information, the citation would have to contain a brief description of the conduct or conditions that the employee considered a violation; the proposed penalties or actions required for compliance, including the payment of a maximum fine of \$100 for each violation; a notice that the respondent had to accept or contest the terms of the citation within 30 days; and a brief description of the hearing process and the process for settlement through an informal conference.

A respondent would have 30 days to notify LARA in writing that he or she accepted the conditions described in the citation or contested that the alleged violation occurred. If the respondent accepted the conditions in the citation, within 30 days after receiving it, he or she would have to sign it and return it to LARA along with any fine or other material he or she was required to submit under the terms of the citation. The Department would have to place the citation and accompanying material in the person's Department records, and include the nature of the violation and that the person accepted the conditions imposed. The citation would have the same force and effect as a final order issued by a board and could be disclosed to the public. If LARA did not take any additional disciplinary action against the person within five years after the citation was issued, LARA would have to remove the citation and accompanying material from its records. If requested by the respondent, LARA would have to place a one-page explanation prepared by the respondent in the Department's files and disclose it each time LARA disclosed the issuance of the citation.

If the respondent did not admit to the violation, he or she could so state on the citation and return one copy to LARA within 30 days after receiving it. If the respondent returned the copy within that time period, the citation would be considered a formal complaint and the administrative process under the proposed Act would apply.

If a citation were signed as an indication that the respondent received it, the signature would be considered a receipt of the citation and not an admission to the alleged violation.

#### Penalties & Remedies

A person could not engage in or attempt to engage in the practice of an occupation regulated under the proposed Act or use a title designated in the Act unless he or she possessed a license issued by LARA for the occupation. A person whose license was suspended, revoked, or lapsed, as determined by LARA records, would be considered unlicensed. A person who violated this prohibition would be guilty of a misdemeanor punishable by a maximum fine of \$500 and/or up to 90 days in prison. A second violation would be a misdemeanor punishable by a maximum fine of \$1,000 and/or up to one year in prison. A third or subsequent violation would be a felony punishable by a maximum fine of \$25,000 and/or up to five years' imprisonment. The remedies or penalties imposed for this violation could include a requirement that restitution be made, based on proofs submitted to and findings made by the trier of fact as provided by law.

Notwithstanding the existence and pursuit of any other remedy or penalty, an affected person also could pursue an action for injunctive relief to restrain or prevent a person from violating the prohibition against unlicensed practice. If successful, the affected person would be entitled to actual costs and attorney fees. "Affected person" would mean a person who is directly affected by the actions of another person who is suspected of a violation, and would include

a licensee, a board, LARA, a person who had used the services of the suspected violator, and a private association composed primarily of members of the occupation in which the person was engaging or attempting to engage or in which the person was using a designated title without a license.

If construction were being undertaken contrary to a building permit, the proposed Act, or other applicable laws or ordinances, the enforcing agency would have to give written notice to the person who held the building permit or, if a permit had not been issued, to the person doing the construction, notifying the person of the violation and that he or she should appear and show cause why the construction should not be stopped. If the person doing the construction were not known or could not be located with reasonable effort, the enforcing agency could deliver the notice to the individual in charge of, or apparently in charge of, the construction. If the holder of the permit or the person doing the construction failed to appear and show good cause within one full working day after notice was delivered, the enforcing agency would have to cause a written order to stop construction to be posted on the premises. A person could not continue, or cause or allow to be continued, construction in violation of a stop construction order, except with permission of the enforcing agency to abate the dangerous condition or remove the violation, or except by court order. If a stop construction order were not obeyed, the enforcing agency could apply to the circuit court for an order enjoining the violation of the order. This remedy would be in addition to, and not in limitation of, any other remedy provided by law or ordinance, and would not prevent criminal prosecution for failure to obey the order.

An investigation could be conducted under the proposed Act to enforce the penalty provisions. A person who violated these provisions would be subject to the provisions regarding a cease and desist order, as well as administrative penalties and other action taken by LARA (as described below).

The remedies under these provisions would be independent and cumulative. The use of one remedy by a person would not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

If a court entered a conviction for practicing an occupation without a license, the court would have to notify LARA by mail, facsimile transmission, or electronic mail.

The Attorney General or a county prosecuting attorney could bring an action in a court of competent jurisdiction to enforce these provisions.

If a person violated the proposed Act or a rule or order issued under it, LARA would have to assess one or more of the following penalties:

- Placement of limitation on a license.
- Suspension of a license.
- Denial of a license or license renewal.
- License revocation.
- Except as otherwise provided, an administrative fine of up to \$10,000 to be paid to LARA, if the person were licensed.
- Censure.
- Probation.
- A requirement for the payment of restitution, based on proof submitted to and findings made by the hearing examiner after a contested case hearing.

(With the exception of the administrative fine, the Mechanical Contractors Act, State Plumbing Act, and Electrical Administrative Act currently contain similar penalties.)

If payment of restitution were required, LARA could suspend a person's license until the person made the restitution. (A similar requirement exists in the Electrical Administrative Act, the State Plumbing Act, and the Mechanical Contractors Act.)

A person who violated one or more provisions of a specific article of the proposed Act or committed one or more of the following would be subject to the penalties imposed by LARA:

- Practiced fraud or deceit in obtaining a license.
- Practiced fraud, deceit, or dishonesty in practicing an occupation.
- Violated a rule of conduct of an occupation.
- Committed an act of gross negligence in practicing an occupation.
- Practiced false advertising.
- Committed an act that demonstrated incompetence.
- Violated any other provision of the proposed Act or a rule promulgated under it for which a penalty was not otherwise prescribed.
- Failed to comply with a subpoena issued under the proposed Act.
- Failed to respond to a citation.
- Violated or failed to comply with a final order issued by a board, including a stipulation, settlement agreement, or citation.
- Aided or abetted another person in the unlicensed practice of an occupation.

If the parties in a contested case agreed to any fact involved in the controversy by stipulation or there were a finding of fact and conclusion of law in an administrative action that a person had violated the Act, the hearings examiner would have to assess costs related to the investigation of the violation and the prosecution of the action. The related costs would include salaries and benefits of personnel, costs related to the time spent by the Attorney General's office and other personnel working on the action, and any other expenses incurred by LARA for the action.

The Department could bring any appropriate action, including mediation or other alternative dispute resolution, in the name of the people of Michigan to carry out and enforce the proposed Act. If the Attorney General considered it necessary, he or she could intervene in and prosecute any case that arose under the Act.

The penalty provisions would not prohibit LARA from bringing any civil, criminal, or administrative action for enforcement of the Act. The Department would have standing to bring an administrative action or directly bring an action regarding the unlicensed practice of an occupation regulated under the Act.

In the event of a criminal violation of the Act, LARA, the Attorney General, and a county prosecutor could use the forfeiture provisions of Chapter 47 of the Revised Judicature Act for items seized and determined to be proceeds of a crime, substituted proceeds of a crime, or the instrumentality of a crime.

MCL 388.881 et al. (S.B. 963)  
125.541c (S.B. 964)  
125.1502a et al. (S.B. 965)  
125.2325 (S.B. 966)  
338.3207 (S.B. 967)  
339.601 et al. (S.B. 968)  
388.851b (S.B. 969)  
445.832 (S.B. 970)  
570.1114 (S.B. 971)  
777.13p (S.B. 972)

Legislative Analyst: Julie Cassidy



## **FISCAL IMPACT**

### **Senate Bill 963**

The bill would have an indeterminate fiscal impact on the State and local government. The bill would prohibit a person from engaging in or attempting to engage in the practice of an occupation regulated under the proposed Act or using a title designated in the Act unless the person possessed a license issued by the Department for the occupation. A first offense would be a misdemeanor punishable by a fine of up to \$500, imprisonment for up to 90 days, or both. A second offense would be a misdemeanor punishable by a fine of up to \$1,000, imprisonment for up to one year, or both. A third offense would be a felony punishable by a fine of up to \$25,000, imprisonment for up to five years, or both.

The bill also would repeal statutes regulating electricians, mechanical contractors, plumbers, and boilers. These statutes include misdemeanor penalties for practicing without a license, as well as other violations such as advertising the use of an unlicensed individual and operating a boiler without a valid inspection certificate. It is not known if repealing the statutes with these penalties and replacing them with the above penalties would result in more or fewer arrests, prosecutions, and fines.

An increase in misdemeanor and felony arrests and prosecutions could increase resource demands on local court systems, law enforcement, community supervision, and correctional facilities. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would increase revenue to public libraries.

Conversely, a decrease in misdemeanor arrests and prosecutions would decrease resource demands on local court systems, law enforcement, community supervision, and jails. Any associated decrease in fine revenue would reduce revenue to public libraries.

The bill would have an indeterminate fiscal impact on the Bureau of Construction Codes (BCC) within the Department of Licensing and Regulatory Affairs. Overall, the bill would recodify the regulation of skilled trades into a new act, but it does not appear that the bill would significantly change the regulatory burden on, and hence costs to, the BCC.

Regulation of skilled trades within the BCC is largely fee-based. The bill would retain nearly all of the fees at their current levels, but would eliminate a September 30, 2019, sunset on fees, which in current law will reduce the fees by varying amounts after that date. The sunsets that the bill would remove were delayed through legislation enacted in 2015. At that time, the amount of revenue maintained by the delay of those sunsets was estimated to be approximately \$1.4 million per year.

The bill would adjust a few fees as follows: increasing the renewal fee for apprentice electricians and specialty apprentice technicians from \$15 per year to \$40 per year; removing the \$25 per-year registration fee for building officials, inspectors, and plan reviewers, and replacing it with a fee determined by LARA; preserving the September 30, 2019, sunset on the relicensure for plumbing, contractors and master plumbers which would reduce the fee to \$85 from \$100; and removing lost license fees of \$30 for plumbers and \$5 for boiler operators and replacing them with fees determined by LARA. In total, it is not clear whether these changes would increase or decrease revenue received by the BCC, but it is anticipated that the impact in either direction would be minor.

## **Senate Bills 963 through 971**

The bills would have no fiscal impact on State or local government.

## **Senate Bill 972**

The bill would have no fiscal impact of local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction would depend on judicial decisions.

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Josh Sefton

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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.