

November 1, 2013

MEMORANDUM

To: House Regulatory Reform Committee members

From: Andy Such, MMA Director of Environmental and Regulatory Policy  
Delaney Newberry, MMA Director of Human Resource Policy

Re: Electrical contractor licensing requirements for manufacturers and mining companies

The issue involves the application of Michigan's Electrical Administrative Act's (MCL 338.881 *et seq.*) licensing requirements for manufacturers and mining companies performing covered electrical work in the manufacturing or mining sector.

**Overview**

Simply put, the Electrical Administrative Act is operating as a protectionist statute that hinders economic growth and jeopardizes the business-friendly environment that Governor Snyder's administration has focused on, and that the state's economy so desperately needs.

The EAA's licensing requirements and statutory scheme were designed to cover skilled electricians working in the construction industry; they have little application in the manufacturing sector.

**Electrical Licensing Issues Facing Manufacturers in Michigan**

There are two principal issues facing manufacturing companies in this context: (1) the Electrical Administrative Act (EAA) and the application of its construction based licensing regulations to electrical work in manufacturing plants; and (2) reliance on apprenticeship training programs that are "identical" to the program of the U.S. Department of Labor. Each is described below.

*Application of a construction regulatory scheme to manufacturing and mining.*

The Electrical Administrative Act was designed and applies mostly to construction industry activities, yet it is applied to manufacturing companies, and in doing so imposes unnecessary and onerous licensing and regulatory burdens on manufacturing employers and employees.

The EAA requires companies with employees performing covered electrical work in their plants to obtain a state electrical contractor's license.

It also requires company electricians to enroll in a U.S. Department of Labor apprenticeship program that is "identical" to one under federal law. Electrical employees at a plant are subject to a 1 to 1 working ratio at each jobsite/plant. In other words, any work done by a company electrician in a plant must be supervised on a 1 to 1 basis.<sup>1</sup>

MMA believes these work requirements and "contractor" licensing mandates are unnecessary, onerous to employers and employees, duplicative, and increase costs for manufacturers in Michigan.

Under the present law there is no general exception for manufacturing plants or facilities. MCL § 338.887(3). There are, however, many other statutory exceptions in the EAA. These include:

- Minor repair work less than \$100 in value;
- Electrical work related to installation or repair of elevators, dumbwaiters, escalators, or man lifts performed under a permit issue by an elevator inspection agency;
- Installation, alteration, or repair of electrical equipment and associated wiring installed on the premises of consumers or subscribers by or for electrical energy supply or communication agencies for use by these agencies;
- Installation, alteration or repair of electrical wiring where such work is an integral part of a system owned and operated by an electrical light and power utility company;
- Any work involved in the manufacture of electrical equipment, including the testing and repairing of such manufactured equipment;
- Electrical work and wiring for the generation or distribution of energy for the operation of signals where such work is in connection with a system owned and operated by a telephone or telegraph company providing services;
- Work performed by licensed mechanical contractors while performing maintenance, service, repair, replacement, alteration, modification, reconstruction, or upgrading of control wiring circuits and electrical component parts for existing mechanical or plumbing systems;
- Wiring associated with a well water pump on a single family dwelling;
- Work installing or servicing burglar/security alarm systems; and
- Installation, maintenance, or servicing of law irrigation equipment or landscape lighting systems that does not include permanent wired connections exceeding 30 volts; and
- Work related to electric signs under the supervision of a licensed sign specialist

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<sup>1</sup> This part of the statute had been enjoined by a federal court from 1992 until 2008. It now applies. *ABC Saginaw Valley Chapter v. Mich. Dep't of Labor and Economic Growth*, 543 F.3d 275 (6th Cir. 2008).

## **Background on the Electrical Administrative Act ("EAA")**

### *The EAA's Passage in 1956.*

Michigan passed the EAA in the mid-1950s. (Public Act 217 of 1956.) The Act targeted construction, and provided for the licensing and regulation of master electricians, journeyman electricians, and electrical contractors in that industry. In short, the Act regulates "electrical contractors" and their skilled laborers.

MMA does not believe, however, that the EAA was ever intended to cover manufacturing companies. In fact, many of the licensing and examination requirements imposed by the Act and the Electrical Administrative Board (EAB) focus on construction code compliance, rather than what manufacturing electricians do on a day-to-day basis. Application of the EAA to manufacturing employers arguably stems from the unintended consequences associated with the broad statutory definition of "electrical wiring." MCL § 338.881(3).

### *The 1990 Amendments: New Apprenticeship Requirements*

The EAA has been amended several times since 1956. The most significant changes for manufacturers came in 1990. In that year, there were two significant additions.

First, the EAA was modified to impose a 1 to 1 ratio of licensed electricians to apprentices on a "jobsite" basis. "Jobsite" was defined to mean "the immediate work area within the property lines of a single construction project, alteration project, or maintenance project where electrical construction or alteration of electrical wiring was in progress." MCL § 338.881(f). In 1973, a Kent County Circuit Court had interpreted the EAA to require a 1 to 1 ratio of apprentices only on a company-wide basis. The 1991 amendments were designed to circumvent that reasonable interpretation.

Second, the equivalency requirement mandated that all apprentices be registered with the state and enrolled in a state-approved apprenticeship training program. MCL § 338.883e(2). The EAA rules now expressly provide that all state-approved training programs must be "identical to the requirements imposed by the United States department of labor bureau of apprenticeship and training." *Id.* Under this provision, every electrical apprentice performing electrical work in Michigan must be enrolled in an apprenticeship program that meets the U.S. Department of Labor's standards and that is registered with the Michigan Electrical Administrative Board.

Although the 1 to 1 ratio and equivalency requirements were passed in 1990, a federal court enjoined their enforcement between 1992 and 2008. As such, the EAA successfully regulated the construction industry for more than 50 years (since 1956) without imposing the 1 to 1 ratio or equivalency requirements. The prior Governor and her administration, however, challenged that injunction; it was overturned by the Sixth Circuit Court of Appeals on September 16, 2008. *Associated Builders & Contractors v. Mich. Dep't of Labor and Economic Growth*, 543 F.3d 275 (6th Cir. 2008). MMA members believe these requirements should be eliminated.

## **Changes to the EAA in Senate Bill 358**

Senate Bill 358 will add an exemption, to the existing list of exemptions, for the installation, alteration, maintenance, repair, or renovation of electrical wiring at or in a property, business location, plant, factory, or facility of a person engaged in manufacturing or mining operations.

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The exemption would be added to the 15 classes of work that are already exempt in Section 7 of the act.

Further, although none of the current listed exemptions in the law have any "conditions" on them, MMA members have agreed to some additional requirements they must meet to qualify for the exemption. These requirements deal with safety and record keeping concerns.

Senate Bill 358 would add the exception for manufacturing and mining if all of the following requirements are met.

1. The company would have to employ or engage a licensed MASTER electrician and designate that person as responsible for:
  - a. code compliance at the company facilities
  - b. obtaining local permits required for electrical work at the facilities and
  - c. Recording the hours worked by an employee as part of an apprenticeship program, if the company has one.
2. The company would have to notify the Department of Licensing and Regulatory Affairs (LARA) of the identity (including license number and contact information) of the licensed MASTER electrician designated as responsible for code compliance, obtaining required permits and keeping track of the hours for apprenticeship.
3. If the company designated a different licensed MASTER electrician as responsible for these duties the company would have to notify LARA within 15 days.

If you have any questions please contact Andy Such or Delaney Newberry at MMA. Thank you for your attention to this matter.