

May 23, 2022

To: Department of Licensing and Regulatory Affairs  
Bureau of Construction Codes  
Administrative Services Division  
LARA-BCC-Rules@michigan.gov

From: Phil Forner  
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Written Comment for the following proposed Skilled Trades rules (Skilled Trades Rules):  
Skilled Trades (ORR# 2019-101 LR)  
Plumbing Board (ORR# 2019-106 LR)  
Electrical Administrative Board (ORR# 2019-110 LR)  
Boiler Rules (ORR# 2019-115 LR)  
Board of Mechanical Rules (ORR# 2019-126 LR)  
Building Officials, Plan Reviewers, and Inspectors (ORR# 2019-109 LR)

To whom it may concern;

Please accept the following written comments pursuant to the attached public notice emailed on May 11, 2022. Please feel free to contact me if you have any comments, questions, or if you need anything additional.

Comment No. 1 – Failure to consult with appropriate Skilled Trades Regulation Act, 2016 PA 407 (STRA), boards.

The Bureau in its request for this proposed Skilled Trades rulemaking, dated June 24, 2019, cited MCL 339.5207<sup>1</sup> as authority, however the Bureau of Construction Codes (Bureau) has not

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<sup>1</sup> MCL 339.5207 Rules.

Sec. 207. (1) The department, in consultation with the appropriate board, shall promulgate any rules it considers necessary and appropriate to implement and administer articles 1 to 6 and to enable the department to fulfill its responsibilities under this act.

(2) The department, in consultation with the appropriate board, shall promulgate rules to establish the fees for licenses, examinations, and inspections. The fees shall reflect the actual costs and expenses of the department in issuing licenses and conducting inspections. The fees in effect on the day immediately preceding the effective date of this act shall continue in effect until the department promulgates rules under this subsection. This subsection does not apply to any specific fee if the amount of that fee is established in this act.

(3) The department, in consultation with the appropriate board, shall promulgate rules to establish the fee schedules for other items, including, but not limited to, variance requests, product approvals, or special inspections. The fees shall reflect the actual costs and expenses of the department for those items.

(4) The department may promulgate rules to set the minimal standards of acceptable practice for an occupation.

consulted with the appropriate STRA boards as required by statute. The Bureau must follow the law and first consult with the industry experts who are appointed to the Plumbing Board, Electrical Board, the Board of Boiler Rules and Board of Mechanical Rules, before holding a public hearing on these proposed Skilled Trades Rules or adoption by the Bureau.

Furthermore, this type of consulting with the appropriate board is also supported by MCL 125.1504(4). Given that these proposed Skilled Trades Rules affect the trades, the Bureau should also, consult the applicable Plumbing Board, Electrical Board, the Board of Boiler Rules and Board of Mechanical Rules regarding their respective area of expertise.

Additionally, MCL 339.5907<sup>2</sup> has a specific requirement for any proposed rules relating to boilers, and rightfully so given the potential for catastrophic damage. The Bureau has not consulted with the Board of Boiler Rules about the proposed Skilled Trades Rule 171 through Rule 253, being R 339.5171 through R 339.5253. These proposed boiler rules must not be adopted until the Bureau consults with the Board of Boiler Rules.

Comment No. 2 – Failure to consult with Construction Code Commission (Commission).

The Bureau has not consulted with the Commission, nor received the Commission's approval, regarding the proposed Skilled Trades Rules as required by or MCL 125.1507(1)(c)<sup>3</sup>. The Commission, which is made up of industry experts from the various trades and boards must be consulted on these proposed Skilled Trades Rules.

Even though the Bureau has not cited MCL 125.1507(1)(c) in its June 24, 2019 request for rulemaking, the Bureau cannot ignore the statutory requirement that the Commission must be consulted and the Bureau must obtain the approval from the Commission for these proposed Skilled Trades Rules. Once the proposed Skilled Trades Rules are approved by the Commission, only then can the proposed Skilled Trade rules be adopted by the Bureau.

Comment No. 3 – Insufficient public notice of hearing time.

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<sup>2</sup> 339.5907 Promulgation of rules; boiler of special design or construction; use of title.

Sec. 907. (1) The department, in consultation with the board, shall promulgate rules for the safe construction, installation, inspection, alteration, servicing, operation, and repair of boilers in this state. For purposes of this subsection, the department by rule may adopt or amend all or any part of an existing published codification or national standards and any amendments and interpretations of the codification or standards.

<sup>3</sup> MCL 125.1507 (1) **After consultation and with the approval of the commission**, the director may do the following:

- (a) Subject to civil service requirements, appoint subordinate officers and employees of the commission, including legal counsel, and prescribe their duties and fix their compensation.
- (b) Appoint or use experts, consultants, technical advisers, and advisory committees for assistance and recommendations relative to preparation and promulgation of the code and to assist the commission and the director in carrying out this act.
- (c) Subject to the advice of the commission, do those things necessary or desirable to effectuate the general purposes and specific objectives of this act. (Emphasis added.)

The May 11, 2022 Notice of Public Hearing for the above proposed Skilled Trades Rules did not have the time of the public hearing in the notice. This along with the above could be evidence that the Bureau is not really interested in receiving public comment. Given the potential consequences to STRA licensees, the promulgation of these proposed Skilled Trades Rules should be above reproach.

Comment No. 4 – STRA licensees must be afforded due process for cited code violations.

The STRA provides for the Michigan codes and given the number of governmental agencies who have assumed responsibility for administering and enforcing the Michigan codes along with the Bureau’s current practice of “choosing”<sup>4</sup> not to conduct any performance evaluations of an enforcing agency on which a written complaint is filed, the proposed Skilled Trades Rules must make clear when a cited violation of the Michigan codes becomes an act of “demonstrating incompetence”. The proposed Skilled Trades Rule 115, being R 339.5115, does not specify when an alleged code violation may be deemed as an act “demonstrating incompetence”. Given that MCL 339.5603<sup>5</sup> and MCL 339.5607<sup>6</sup> could have severe adverse consequences for a STRA

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<sup>4</sup> 125.1509b Performance evaluation of enforcing agency.

Sec. 9b. (1) The director, as prescribed in this section, may conduct a performance evaluation of an enforcing agency to assure that the administration and enforcement of this act and the code is being done pursuant to either section 8a or 8b. A performance evaluation may only be conducted either at the request of the local enforcing agency or upon the receipt of a written complaint. ...

<sup>5</sup> MCL 339.5603 Violation of act, rule, or order; penalties.

Sec. 603. If a person violates this act or a rule or order promulgated or issued under this act, the department shall assess 1 or more of the following penalties:

- (a) Placement of a limitation on a license.
- (b) Suspension of a license.
- (c) Denial of a license or renewal of a license.
- (d) Revocation of a license.
- (e) If the person is licensed under this act and except as otherwise provided in this act, an administrative fine to be paid to the department of not more than \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement for the payment of restitution, based on proof submitted to and findings made by the hearing examiner after a contested case hearing.

<sup>6</sup>MCL 339.5607 Violation of article or commission of certain acts.

Sec. 607. A person that violates 1 or more of the provisions of a specific article of this act or that commits 1 or more of the following is subject to the penalties described in section 603:

- (a) Practices fraud or deceit in obtaining a license.
- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
- (c) Violates a rule of conduct of an occupation.
- (d) Demonstrates a lack of good moral character.
- (e) Commits an act of gross negligence in practicing an occupation.
- (f) Practices false advertising.
- (g) Commits an act that demonstrates incompetence.
- (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.

licensee, all steps for providing appropriate due process must be made clear in these proposed Skilled Trades Rules. To make clear that STRA licensees and others are given appropriate due process when an enforcing agency cites a code violation before being deemed as an act of “demonstrating incompetence”, below is a requested change to be made to proposed Skilled Trades Rule R 339.5115:

R 339.5115 Minimal standards.

Rule 115. (1) The minimal standard of acceptable practice is the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531. A licensee who ~~deviates from~~ **fails to correct a cited code violation after exhausting all appeal provisions provided for in MCL 125.1514, MCL 125.1516, and or MCL 125.1518, fails to obtain a variance for a cited code violation pursuant to MCL 125.1517, or is found guilty, after a formal complaint proceeding, for not complying with** the minimal standard of acceptable practice or the specified requirements of the codes adopted pursuant to the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, its rules, these rules, or any acts by which the licensee operates may be considered to have committed an act demonstrating incompetence as described in section 607(g) of the act, MCL 339.5607.

Comment No. 5 – Provide complainants an opportunity to perfect a complaint.

MCL 339.5507<sup>7</sup> does not set any standards for when the Bureau must determine that a filed written complaint demonstrates evidence of a violation of the STRA or rule exists and therefore

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- (i) Fails to comply with a subpoena issued under this act.
  - (j) Fails to respond to a citation under section 539.
  - (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.
  - (l) Aids or abets another person in the unlicensed practice of an occupation.

<sup>7</sup> MCL 339.5507 Investigation; report; closing of complaint; action.

Sec. 507. (1) The investigative unit of the department, within 30 days after the department receives the complaint, shall report to the director on the results of the investigation. If, for good cause shown, an investigation cannot be completed within 30 days, the director may extend the time in which a report may be filed. The total number of extensions granted under this section shall be included in the report required under section 217.

(2) If the report of the investigative unit of the department does not disclose a violation of this act or a rule promulgated or an order issued under this act, the department shall close the complaint. The department shall forward the reasons for closing the complaint to the respondent and complainant, who then may provide additional information to reopen the complaint.

(3) If the report of the investigative unit made under subsection (1) discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the department or the department of attorney general shall prepare the appropriate action against the respondent which may be any of the following:

- (a) A formal complaint.
- (b) A cease and desist order.

the Bureau has broad discretion to make determinations that a filed written complaint does not disclose a violation and then close the complaint. The STRA provides no administrative means to appeal the Bureau's determination to close a complaint; whether that Bureau determine was appropriate or not.

The proposed Skilled Trades rule 131, being R 339.5131, would limit a complainant's time to perfect a written complaint that the Bureau claimed did not disclose a violation. Absent a statutory right to appeal the Bureau's determination to close a complaint, a complainant must be allowed to perfect its written complaint after the Bureau claims there is insufficient evidence to disclose a violation. To provide for reasonable opportunity to perfect a complaint after it has been initially closed by the Bureau, below is a requested change to be made to proposed Skilled Trades Rule R 339.5131:

R 339.5131 Complaints.

Rule 131. A complaint filed under the act must be made within 12 months after the latest of the following:

- (a) Last day at jobsite.
- (b) Final approval from the inspector.
- (c) Payment or partial payment tendered.

**(d) The department closes a complaint under MCL 339.5507(2) that is related to the same activity.**

Evidence that this change is needed is found in the Bureau's handling of BCC Complaint No. COMPL-LIC1900459, where the Bureau continued the investigation for more than 30 days and once the Bureau was able to destroy<sup>8</sup> the referenced complaint evidence that was contained in Bureau Formal Complaint No. 21-18-336575 and 21-18-336576 Consent Order<sup>9</sup>; the Bureau closed BCC Complaint No. COMPL-LIC1900459, citing that this written complaint did not disclose a violation of the STRA.

Further evidence of how the Bureau is using or misusing its discretionary authority of MCL 339.5507(2), can be gleaned from the Bureau's fiscal year annual reports<sup>10</sup>; where the Bureau published 2018, 2019, and 2020 Fiscal Year Annual Report indicates that out of the 377 Bureau STRA investigations undertaken by the Bureau, only 1 enforcement action in electrical was initiated by the Bureau and as of the 2019 Fiscal Year Annual Report there were 39 STRA investigations pending<sup>11</sup>.

Comment No. 6 – Boiler installer licensees complying with CSD-1 when installing a boiler.

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(c) A notice of summary suspension.

(d) A citation.

<sup>8</sup> The Bureau is only required to keep compliant records for one year, after which the Bureau may destroy the records.

<sup>9</sup> Where the builder admitted to remodeling a bathroom without obtaining permits and complying with code.

<sup>10</sup> Located at: <https://www.michigan.gov/lara/bureau-list/bcc/leg-report>.

<sup>11</sup> The Bureau's 2020 Annual Fiscal Year Report did not disclose how many STRA related investigations were pending.

The proposed Skilled Trades Rule 206, being R 339.5206, does not make clear that the STRA licensed boiler installer, when performing a boiler installation under a Bureau issued boiler permit, must also comply with Bureau adopted standards. It makes absolutely no sense for a boiler to be installed by a Bureau licensed boiler installer, under a Bureau issued permit, only to have the Bureau require the owner after-the-fact to comply with the adopted CSD-1 standard.

MCL 339.5939 requires that boiler installations only be performed by a licensed individual who was issued a permit to install the boiler. The proposed Skilled Trades Rules must make it clear that in addition to the owner and user of a boiler, the licensed boiler installer must to comply with the Skilled Trades Rules designed for the safe installation and operation of boilers in Michigan. To provide for such consistency and uniformity, below is a requested change to be made to proposed Skilled Trades Rule R 339.5206:

R 339.5206 Adoption; ASME code CSD-1.

Rule 206. (1) An owner, ~~or~~ user of a boiler, **or a licensee performing an installation** shall ensure that the installation, maintenance, operation, and testing of controls and safety devices is pursuant to manufacturer's instructions and ASME code CSD-1, 2018 edition. The code is adopted by reference as amended in these rules and available for inspection and purchase at the Michigan Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, 611 W. Ottawa, Lansing, Michigan 48933 or for purchase from the ASME International, Two Park Avenue, New York, New York 10016-5990, (800) 843-2763, <https://www.asme.org>, at a cost as of the time of adoption of these rules of \$103.00 for each code book.

Comment No. 7 – Owner's of boilers are typically not licensed to install boilers.

The proposed Skilled Trades rule 208, being R 339.5208, imposes a requirement on the entity that is usually not licensed by the Bureau to install boilers, being the owner of the boiler.

MCL 339.5939 requires that boiler installations only be performed by a licensed individual who was issued a permit to install the boiler. The proposed Skilled Trades Rules must make it clear that the licensed boiler installer must to comply with the Skilled Trades Rules designed for the safe installation and operation of boilers in Michigan. To provide for such consistency and uniformity, below is a requested change to be made to proposed Skilled Trades Rule R 339.5028:

R 339.5208 Installation and reinstallation of boilers.

Rule 208. (1) An owner **and licensee performing a boiler installation** shall ensure that the installation of a new boiler or a reinstalled boiler meets the requirements of these rules; the ASME boiler and pressure vessel code, 2019 edition, the NBIC 2019 edition, and ASME CSD-1 2018. The ASME code requirement for the completion of a P4B data report for the installation of mechanically assembled boiler external piping is not required. Witnessing of the pressure test required by the NBIC part 1, section 2, paragraph 2.10.2, is not required.

(2) Where applicable, the boiler installation must comply with, R 408.30901 to R 408.30998; R 408.30701 to R 408.30796; and R 408.30801 to R 408.30880.

(3) The NBIC code, part 1, section 2, paragraph 2.4.4, is enforced by R 408.30701 to R 408.30796.

(4) The NBIC code, part 1, section 3, paragraph 3.6.1, is enforced by R 408.30901 to R 408.30998.

Comment No. 8 – The licensed boiler installer performing a new boiler installation under a Bureau issued boiler permit must receive a Bureau issued notice of violation.

The proposed Skilled Trades Rule 221, being R 339.5221, of not including the permit holder in the list of to whom the notice of violation must be issued to violates MCL 339.5601(8)<sup>12</sup> and MCL 125.1512(3)<sup>13</sup>. The law requires that a permit holder be issued the notice of violation issued by the Bureau, the proposed Skilled Trades Rule 221 exceeds the authority of the Bureau to adopt a rule that does not issue its notice of violation to the holder of the boiler installation permit.

Currently on permitted boiler installations, the Bureau only issues its written notice of violation regarding a new boiler installation to the owner of the boiler and not the boiler permit holder. The proposed Skilled Trades Rules must make clear that for work relating to a Bureau

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<sup>12</sup> MCL 339.5601(8) If construction is being undertaken contrary to a building permit, this act, or other applicable laws or ordinances, **the enforcing agency shall give written notice to the person that holds the building permit**, or if a permit has not been issued then to the person doing the construction, notifying that person of the violation of this act, or other applicable laws and ordinances, and that the person should appear and show cause why the construction should not be stopped. If the person doing the construction is not known, or cannot be located with reasonable effort, the enforcing agency may 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 fails to appear and show good cause within 1 full working day after notice is delivered, the enforcing agency shall cause a written order to stop construction to be posted on the premises. ... (Emphasis added.)

<sup>13</sup> MCL 125.1512(3) If construction is being undertaken contrary to a building permit, this act, or other applicable laws or ordinances, the enforcing agency shall give written notice to the holder of the building permit, or if a permit has not been issued then to the person doing the construction, notifying him of the violation of this act, or other applicable laws and ordinances, and to appear and show cause why the construction should not be stopped. If the person doing the construction is not known, or cannot be located with reasonable effort, the notice may be delivered to the person in charge of, or apparently in charge of, the construction. If the holder of the permit or the person doing the construction fails to appear and show good cause within 1 full working day after notice is delivered, the enforcing agency shall cause a written order to stop construction to be posted on the premises. A person shall 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 an order to stop construction is not obeyed, the enforcing agency may apply to the circuit court for the county in which the premises are located for an order enjoining the violation of the stop construction order. This remedy is in addition to, and not in limitation of, any other remedy provided by law or ordinance, and does not prevent criminal prosecution for failure to obey the order.

issued boiler permit, the notice of violation must at a minimum be issued to the holder of the boiler installation permit.

To provide for language that would allow the Bureau to comply with the law when there is a boiler installation permit holder and in the absence of a boiler installation permit holder, provide for a notice to be issued to the owner or user of a boiler, below is a required change to be made to proposed Skilled Trades Rule R 339.5221:

R 339.5221 Notice of violation.

Rule 221. (1) A written notice of violation containing the code deficiencies must be sent to, or served upon, **the licensee performing an installation or in the absence thereof**, the owner or user by the chief inspector, deputy inspector, or special inspector advising of the existing conditions and stating a compliance date when the violation must be corrected. If the code deficiencies are not corrected by the compliance date, the violation notice serves as a suspension of the certificate.

(2) When the notice of violation is issued as certificate blocking, the inspection certificate is suspended, and a written notice must be given to the owner or user at the time of the notice of violation is issued. The certificate blocking violation continues in effect until the boiler conforms to these rules and the certificate has been reinstated.

(3) A fee must be charged pursuant to R 339.5176 for all follow-up visits by the chief inspector or deputy inspector.

Comment No. 9 – Clearance according to manufacturer’s instructions.

The proposed Skilled Trades Rule 233, being R 339.5233, does not acknowledge the current Bureau practice of allowing a Bureau permitted boiler installation to be done in accordance with the boiler manufacturer’s installation requirements (see existing Boiler Division permit application). The Bureau has not provided any justification for why a listed and labeled boiler cannot be installed with clearance as specified by the manufacturer of the boiler, who must also comply with CSD-1.

To provide for such consistency and uniformity, below is a requested change to be made to proposed Skilled Trades Rule R 339.5233:

R 339.5233 Clearance between boilers and other objects.

Rule 233. (1) A licensee performing an installation shall ensure the installation is made pursuant to the **manufacturer’s instructions or** NBIC part 1 section 2.3.3 and 3.3.4, except for the requirement that the minimum clearance of 24 inches is provided between a boiler, its controls, firing equipment, and appurtenances and the building walls and partitions or other boilers or machinery.

(2) The licensee shall ensure that clearances are pursuant to the manufacturer’s instructions where required clearances are greater than the

minimum required by this rule. The boiler owner shall ensure that the clearances are maintained for the life of the boiler and not infringed upon by items in storage.

(3) The elevation of a boiler above the floor must be as specified in R 408.30901a to R 408.30996.

~~(4) A licensee may request a deviation from the requirements of this rule by submitting a drawing and the manufacturer's installation requirements to the chief inspector for review and approval before installation of the boiler. The licensee shall be notified by the chief inspector of the approval or denial of the request.~~

~~(5)~~ (4) Where applicable, the boiler installation clearances must comply with R 408.30801 to R 408.30880.

#### Comment No. 10 – Protection of potable water for new boiler installations.

The proposed Skilled Trades Rule 236, being R 339.5236, would require all existing boilers to modify their existing connections to the potable water supply, not just on new boiler installations. The Bureau has not provided any evidence or justification as to why existing connections to the potable water supply must be upgraded to comply with the current Michigan Plumbing Code.

It should also be noted that the 2015 Michigan Plumbing Code, R 408.30701 to R 408.30796, in Sec. 102.2<sup>14</sup> provides that systems that are lawfully in existence shall be allowed to continue. The Bureau has not provided any evidence that lawfully in existence plumbing connections on existing boilers create a health and safety hazard that needs to be abated by these proposed Skilled Trades Rules

Therefore, this proposed Skilled Trades Rule 236 should be modified to limit its application to only new boiler installations. To provide for such clarity, below is a requested change to be made to proposed Skilled Trades Rule R 339.5236:

R339.5236 Prevention of contamination of potable water supply.

Rule 236. **A The new boiler installation owner shall ensure that a permitted boiler installation, when connected to a potable water supply system, has proper connections to the potable water supply system to prevent contamination. The connections must be as specified in R 408.30701 to R 408.30796.**

#### Comment No. 11 – Provide for lift test of pressure relief valves

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<sup>14</sup> Sec. 102.2 of the 2015 Michigan Plumbing Code, R 408.30701 to R 408.30796, states:  
102.2 Existing Installations

Plumbing systems lawfully in existence at the time of the adoption of this code shall be permitted to have their use and maintenance continued if the use, maintenance or repair is in accordance with the original design and hazard to life, health or property is not created by such plumbing system.

The existing Boiler Rule 56615, being Administrative Rule R 408.4566, allows for the qualified individual performing the Bureau required CSD-1 inspection to perform a “lift test” on the safety pressure relief valve, as opposed to increasing the pressure in the boiler until the pressure exceeds the pressure relief valve rating. For the safety of the technician performing the CSD-1 inspection, allowing lift test practice must be allowed to continue. To provide for such clarity, below is a requested change to be made to proposed Skilled Trades Rule R 339.5246:

R 339.5246 Safety valves ~~on connected boilers of different pressures.~~

Rule 246. **(1)** When 2 or more boilers operating at different pressures and safety valve settings are interconnected, the lower pressure boilers or interconnected piping must be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum amount of steam that can flow into the lower pressure system.

**(2) Inspection and testing of pressure relief devices shall be conducted pursuant to the NBIC. The manual lift test addressed in the NBIC part 2, paragraph 2.5.7 (e) may be used instead of the pressure test required by NBIC part 2, paragraph 2.5.7 (a) through (d).**

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<sup>15</sup> Existing Administrative Rule R 408.4566 Inspection and testing of pressure relief devices. Rule 566. Inspection and testing of pressure relief devices shall be conducted pursuant to the NBIC. The manual lift test addressed in the NBIC part 2, paragraph 2.5.7 (e) may be used instead of the pressure test required by NBIC part 2, paragraph 2.5.7 (a) through (d).

**From:** LARA-BCC-Rules <LARA-BCC-Rules@michigan.gov>  
**Sent:** Wednesday, May 11, 2022 9:55 AM  
**Subject:** Skilled Trades Notice of Public Hearing

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS BUREAU OF CONSTRUCTION CODES

**NOTICE OF PUBLIC HEARING**

Skilled Trades (ORR# 2019-101 LR)  
Plumbing Board (ORR# 2019-106 LR)  
Electrical Administrative Board (ORR# 2019-110 LR)  
Boiler Rules (ORR# 2019-115 LR)  
Board of Mechanical Rules (ORR# 2019-126 LR)  
Building Officials, Plan Reviewers, and Inspectors (ORR# 2019-109 LR)

The Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, will hold a public hearing on the Skilled Trades rules and the following repealed acts State Plumbing Board Act; Electrical Administrative Board Act ; Boiler Act; Board of Mechanical Act and Building Officials, Plan Reviewers, and Inspectors Act. The public hearing will be held on Monday May 23, 2022, at the 1<sup>st</sup> Floor Forum in the Michigan Library & Historical Center, 702 W. Kalamazoo St., Lansing, MI 48915.

The Skilled Trades Regulation Act, 2016 PA 407, repeals the State Plumbing Board Act, 2002 PA733, MCL 338.3511 to 338.3569; Electrical Administrative Board Act, 1956 PA 217, MCL 338.881 to 338.892; Boiler Act, 1965 PA 290, MCL 408.751 to 408.776 ; Board of Mechanical Act, 1984 PA 192, MCL 338.971 to 338.988; and the Building Officials and Inspectors Registration Act, 1986 PA 54, MCL 338.2301 to 338.2313. The repealed Acts are outdated and do not provide uniform licensing, complaint investigation, and enforcement provisions for skilled trades licenses. This places a burden on the bureau administering the Acts and creates an inefficient use of resources. Additionally, many licensees who are cross licensed in multiple trades have expressed dissatisfaction with conflicting provisions, such as electronic communication and third-party continuing education tracking options and specifies violations for unlicensed activity as provided to other regulated professions. Because these Acts were repealed, the bureau plans to rescind the licensing rules regulated under the Skilled Trades Regulation Act. The Skilled Trades Regulation Act, 2016 PA 407, streamlines the processes for all license types included while providing for modernized provisions, such as electronic communication and third-party continuing education tracking options, and specifies violations for unlicensed activity as provided to other regulated professions. While the Skilled Trades Regulation Act repealed the five Acts that regulated certain skilled trades, this new Act includes provisions to regulate those same skilled trades

The proposed rules will be published in the May 15<sup>th</sup>, *Michigan Register*. You may download a free copy of the proposed amendments by visiting the Bureau's website at [www.michigan.gov/bcc](http://www.michigan.gov/bcc).

Oral or written comments may be presented in person at the hearing May 23, 2022, or submitted in writing by email no later than 5:00 p.m., May 23, 2022, to the following email address [LARA-BCC-Rules@michigan.gov](mailto:LARA-BCC-Rules@michigan.gov). If your presentation at the public hearing is in written form, please provide a copy to the Rules Analyst, at the conclusion of your testimony at the hearing.

Department of Licensing and Regulatory Affairs  
Bureau of Construction Codes  
Administrative Services Division  
Telephone (517) 582-5519  
[LARA-BCC-Rules@michigan.gov](mailto:LARA-BCC-Rules@michigan.gov)



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May 23, 2022

Department of Licensing and Regulatory Affairs  
Bureau of Construction Codes  
Administrative Services Division  
Via Email: [LARA-BCC-Rules@michigan.gov](mailto:LARA-BCC-Rules@michigan.gov)

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Good Afternoon;

Please find the Michigan Air Conditioning Contractors Association's (MIACCA) written comments pursuant to the public notice emailed on May 11, 2022:

Comment No. 1 – Failure to consult with appropriate Skilled Trades Regulation Act (STRA) boards.

The Bureau in its request for this proposed Skilled Trades rule-making, dated June 24, 2019, cited MCL 339.5207 as authority, however the Bureau of Construction Codes (Bureau) has not consulted with the appropriate boards as required by statute. The Bureau must follow the law and first consult with the industry experts who are appointed to the Plumbing Board, Electrical Board, the Board of Boiler Rules and Board of Mechanical Rules, before holding a public hearing on these proposed Skilled Trades rules or adoption by the Bureau.

Furthermore, this type of consulting with the appropriate board is also supported by MCL 125.1504(4). Given that these proposed Skilled Trades rules affect the trades, the Bureau should also, consult the applicable Plumbing Board, Electrical Board, the Board of Boiler Rules and Board of Mechanical Rules regarding their respective area of expertise.

Additionally, MCL 339.5907 has a specific requirement for any proposed rules relating to boilers, and rightfully so given the potential for catastrophic damage. The Bureau has not consulted with the Board of Boiler Rules about the proposed Skilled Trades rules Rule 171 through Rule 253, being R 339.5171 through R 339.5253. These proposed boiler rules must not be adopted until the Bureau consults with the Board of Boiler Rules.

Comment No. 2 – Failure to consult with Construction Code Commission (Commission).

The Bureau has not consulted with the Commission, nor received the Commission’s approval, regarding the proposed Skilled Trades rules as required by or MCL 125.1507(1)(c). The Construction Code Commission, which is made up of industry experts from the various trades and boards, must be consulted on these proposed Skilled Trades rules.

Even though the Bureau has not cited MCL 125.1507(1)(c) in its June 24, 2019 request for rulemaking, the Bureau cannot ignore the statutory requirement that the Commission must be consulted and the Bureau must obtain the approval from the Commission for these proposed Skilled Trades rules. Once the proposed Skilled Trades rules are approved by the Commission, only then can the proposed Skilled Trade rules be adopted by the Bureau.

Comment No. 3 – Insufficient public notice of hearing time.

The May 11, 2022 Notice of Public Hearing for the above proposed Skilled Trades rules did not have the time of the public hearing in the notice. This along with the above could be evidence that the Bureau is not really interested in receiving public comment. Given the potential consequences to STRA licensees, the promulgation of these proposed Skilled Trades rules should be above reproach. The time was finally sent, after business hours, at 5:53 p.m. Friday, May 20, 2022 for the hearing stating the start time at 9:00 a.m. on May 23, 2022.

Comment No. 4 – STRA licensees must be afforded due process for cited code violations.

The STRA provides for the Michigan codes and given the numerous governmental agencies have assumed responsibility for administering and enforcing the Michigan codes along with the Bureau’s current practice of “choosing” not to conduct any performance evaluations of an enforcing agency on which a written complaint is filed, the proposed Skilled Trades rules must make clear when a cited violation of the Michigan codes becomes an act of “demonstrating incompetence”. The proposed Skilled Trades Rule 115, being R 339.5115, does not specify when an alleged code violation may be deemed as an act “demonstrating incompetence”. Given that MCL 339.5603 and MCL 339.5607 could have severe adverse consequences for a STRA licensee, all steps for providing appropriate due process must be made clear in these propose Skilled Trades rules. To make clear that STRA licensees and others are given appropriate due process when an enforcing agency cites a code violation before being deemed as an act of

“demonstrating incompetence”, below is a requested change to be made to proposed rule R 339.5115:

R 339.5115 Minimal standards.

Rule 115. (1) The minimal standard of acceptable practice is the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531. A licensee who ~~deviates from~~ **fails to correct a cited code violation after exhausting all appeal provisions provided for in MCL 125.1514, MCL 125.1516, and or MCL 125.1518, fails to obtain a variance for a cited code violation pursuant to MCL 125.1517, or is found guilty, after a formal complaint proceeding, for not complying with** the minimal standard of acceptable practice or the specified requirements of the codes adopted pursuant to

the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, its rules, these rules, or any acts by which the licensee operates may be considered to have committed an act demonstrating incompetence as described in section 607(g) of the act, MCL 339.5607.

Comment No. 5 – Provide complainants an opportunity to perfect a complaint.

MCL 339.5507 does not set any standards for when the Bureau must determine that a filed written complaint demonstrates evidence of a violation of the STRA or rule exists and therefore the Bureau has broad discretion to make determinations that a filed written complaint does not disclose a violation and then close the complaint. The STRA provides no administrative means to appeal the Bureau’s determination to close a complaint; whether that Bureau determine was appropriate or not.

The proposed Skilled Trades rule 131, being R 339.5131, would limit a complainant’s time to perfect a written complaint that the Bureau claims but the written complaint does not disclose a violation. Absent a statutory right to appeal the Bureau’s determination to close a complaint, a complainant must be allowed to perfect its written complaint after the Bureau claims that the evidence submitted does not disclose a violation. To provide for a complaint’s ability to perfect a complaint, below is a requested change to be made to proposed rule R 339.5131:

R 339.5131 Complaints.

Rule 131. A complaint filed under the act must be made within 12 months after the latest of the following:

(a) Last day at the jobsite.

(b) Final approval from the inspector.

(c) Payment or partial payment tendered.

**(d) The department closes a complaint under MCL 339.5507(2) that is related to the same activity.**

Evidence that this change is needed is found in the Bureau's handling of BCC Complaint No. COMPL-LIC1900459, where the Bureau continued the investigation for more than 30 days and once the Bureau was able to destroy the referenced evidence contained in Bureau Formal Complaint No. 21-18-336575 and 21-18-336576 Consent Order, the Bureau closed BCC Complaint No. COMPL-LIC1900459, citing that this written complaint did not disclose a violation of the STRA.

Further evidence of how the Bureau is using or misusing its discretionary authority of MCL 339.5507(2), can be gleaned from the Bureau's fiscal year annual reports; where the Bureau published 2018, 2019, and 2020 Fiscal Year Annual Report indicates that out of the 377 Bureau STRA investigations undertaken by the Bureau, only 1 enforcement action in electrical was initiated by the Bureau and as of the 2019 Fiscal Year Annual Report there were 39 STRA investigations pending.

**Comment No. 6 – Boiler installer licensees complying with CSD-1 when installing a boiler.**

The proposed Skilled Trades rule 206, being R 339.5206, does not make clear that the STRA licensed boiler installer, when performing a boiler installation under a Bureau issued boiler permit, must also comply with Bureau adopted standards. It does not make sense for a boiler to be installed by a Bureau licensed boiler installer, under a Bureau issued permit, only to have the Bureau require the owner after-the-fact to comply with the adopted CSD-1 standard.

MCL 339.5939 requires that boiler installations only be performed by a licensed individual who was issued a permit to install the boiler. The proposed Skilled Trades rules must make it clear that in addition to the owner and user of a boiler, the licensed boiler installer must comply with the Skilled Trades rules designed for the safe installation and operation of boilers in Michigan. To provide for such consistency and uniformity, below is a requested change to be made to proposed rule R 339.5206:

R 339.5206 Adoption; ASME code CSD-1.

Rule 206. (1) An owner, ~~or~~ user of a boiler, **or a licensee performing an installation** shall ensure that the installation, maintenance, operation, and testing of controls and safety devices is pursuant to manufacturer's instructions and ASME code CSD-1, 2018 edition. The code is adopted by reference as amended

in these rules and available for inspection and purchase at the Michigan Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, 611 W. Ottawa, Lansing, Michigan 48933 or for purchase from the ASME International, Two Park Avenue, New York, New York 10016-5990, (800) 843-2763, <https://www.asme.org>, at a cost as of the time of adoption of these rules of \$103.00 for each code book.

Comment No. 7 – Owner’s of boilers are typically not licensed to install boilers.

The proposed Skilled Trades rule 208, being R 339.5208, imposes a requirement on the entity that is usually not licensed by the Bureau to install boilers, being the owner of the boiler.

MCL 339.5939 requires that boiler installations only be performed by a licensed individual who was issued a permit to install the boiler. The proposed Skilled Trades rules must make it clear that the licensed boiler installer must comply with the Skilled Trades rules designed for the safe installation and operation of boilers in Michigan. To provide for such consistency and uniformity, below is a requested change to be made to proposed rule R 339.5028:

R 339.5208 Installation and reinstallation of boilers.

Rule 208. (1) An owner **and licensee performing a boiler installation** shall ensure that the installation of a new boiler or a reinstalled boiler meets the requirements of these rules; the ASME boiler and pressure vessel code, 2019 edition, the NBIC 2019 edition, and ASME CSD-1 2018. The ASME code requirement for the completion of a P4B data report for the installation of mechanically assembled boiler external piping is not required. Witnessing of the pressure test required by the NBIC part 1, section 2, paragraph 2.10.2, is not required.

(2) Where applicable, the boiler installation must comply with, R 408.30901 to R 408.30998; R 408.30701 to R 408.30796; and R 408.30801 to R 408.30880.

(3) The NBIC code, part 1, section 2, paragraph 2.4.4, is enforced by R 408.30701 to R 408.30796.

(4) The NBIC code, part 1, section 3, paragraph 3.6.1, is enforced by R 408.30901 to R 408.30998.

Comment No. 8 – The licensed boiler installer performing a new boiler installation under a Bureau issued boiler permit must receive a Bureau issued notice of violation.

The proposed Skilled Trades Rule 221, being R 339.5221, of not including the permit holder in the list of to whom the notice of violation must be issued violates MCL 339.5601(8) and MCL 125.1512(3). The law requires that a permit holder be issued the notice of violation issued by the Bureau, the proposed Skilled Trades Rule 221 exceeds the authority of the Bureau to adopt a rule that does not issue its notice of violation to the holder of the boiler installation permit. To provide for language that would allow the Bureau to comply with the law when there is a permit holder and in the absence of a permit holder provide for a notice to be issued to the owner or user of a boiler, below is a required change to be made to proposed rule R 339.5221:

R 339.5221 Notice of violation.

Rule 221. (1) A written notice of violation containing the code deficiencies must be sent to, or served upon, **the licensee performing an installation or in the absence thereof**, the owner or user by the chief inspector, deputy inspector, or special inspector advising of the existing conditions and stating a compliance date when the violation must be corrected. If the code deficiencies are not corrected by the compliance date, the violation notice serves as a suspension of the certificate.

(2) When the notice of violation is issued as certificate blocking, the inspection certificate is suspended, and a written notice must be given to the owner or user at the time that the notice of violation is issued. The certificate blocking violation continues in effect until the boiler conforms to these rules and the certificate has been reinstated.

(3) A fee must be charged pursuant to R 339.5176 for all follow-up visits by the chief inspector or deputy inspector.

Comment No. 9 – Clearance according to manufacturer’s instructions.

The proposed Skilled Trades Rule 233, being R 339.5233, does not acknowledge the current Bureau practice of allowing a licensed boiler to install a boiler in accordance with the boiler manufacturer’s installation clearance (with reference to the current Boiler Division permit application). The Bureau has not provided any justification for why a listed and labeled boiler cannot be installed with clearance as specified by the manufacturer of the boiler who must also comply with CSD-1.

To provide for such consistency and uniformity, below is a requested change to be made to proposed Skilled Trades rule R 339.5233:

R 339.5233 Clearance between boilers and other objects.

Rule 233. (1) A licensee performing an installation shall ensure the installation is made pursuant to the **manufacturer's instructions or** NBIC part 1 section 2.3.3 and 3.3.4, except for the requirement that the minimum clearance of 24 inches is provided between a boiler, its controls, firing equipment, and appurtenances and the building walls and partitions or other boilers or machinery.

(2) The licensee shall ensure that clearances are pursuant to the manufacturer's instructions where required clearances are greater than the minimum required by this rule. The boiler owner shall ensure that the clearances are maintained for the life of the boiler and not infringed upon by items in storage.

(3) The elevation of a boiler above the floor must be as specified in R 408.30901a to R 408.30996.

~~(4) A licensee may request a deviation from the requirements of this rule by submitting a drawing and the manufacturer's installation requirements to the chief inspector for review and approval before installation of the boiler. The licensee shall be notified by the chief inspector of the approval or denial of the request.~~

~~(5)~~ (4) Where applicable, the boiler installation clearances must comply with R 408.30801 to R 408.30880.

#### Comment No. 10 – Protection of potable water for new boiler installations.

The proposed Skilled Trades Rule 236, being R 339.5236, would require all existing boilers to modify their existing connections to the potable water supply, not just on new boiler installations. The Bureau has not provided any evidence or justification as to why existing connections to the potable water supply must be upgraded to comply with the current Michigan Plumbing Code. Therefore, this proposed Skilled Trades Rule 236 should be modified to limit its application to only new boiler installations. To provide for such clarity, below is a requested change to be made to proposed Skilled Trades rule R 339.5236:

R339.5236 Prevention of contamination of potable water supply.

Rule 236. ~~A~~ **The new boiler installation owner** shall ensure that a **permitted boiler installation, when connected to a potable water supply system**, has proper connections to the potable water supply system to prevent contamination. The connections must be as specified in R 408.30701 to R 408.30796.

#### Comment No. 11 – Provide for lift test of pressure relief valves

The existing Boiler Rule 566, being Administrative Rule R 408.4566, allows for the qualified individual performing the Bureau required CSD-1 inspection to perform a “lift test” of the safety pressure relief valve as opposed to increasing the pressure in the boiler until the pressure exceeds the pressure relief valve rating. For the safety of the technician performing the CSD-1 inspection, allowing lift test practice must be allowed to continue. To provide for such clarity, below is a requested change to be made to proposed Skilled Trades rule R 339.5246:

R 339.5246 Safety valves ~~on connected boilers of different pressures.~~

Rule 246. **(1)** When 2 or more boilers operating at different pressures and safety valve settings are interconnected, the lower pressure boilers or interconnected piping must be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum amount of steam that can flow into the lower pressure system.

**(2) Inspection and testing of pressure relief devices shall be conducted pursuant to the NBIC. The manual lift test addressed in the NBIC part 2, paragraph 2.5.7 (e) may be used instead of the pressure test required by NBIC part 2, paragraph 2.5.7 (a) through (d).**

Your consideration of our comments are greatly appreciated. Should you have any questions, or need additional information, please feel free to contact me.

Best Regards,



M.J. D'Smith  
Executive Director

My name is William Hordyk. I am a registered Building Inspector and Plans Examiner in the State of Michigan. I also hold 20 national certifications with the International Code Council including that of Master Code professional. I come to you duly elected by the Metro Building Inspectors Association of Greater of Grand Rapids to speak on their behalf regarding this matter. The Metro association is a group of over 130 registered building officials and inspectors performing their duties for over 70 delegated authorities in the state of Michigan.

In review of the proposed Skilled Trades Regulations Rules, I would like to bring the following to light:

- 1- The creation of multiple plan review classifications within part 10 of the proposed rules is in violation of the language and intent of PA 407
  - a. Within article 10 of PA 407 "Plan reviewer" is defined as  
"Plan reviewer" means an individual who is engaged in the practice of examining construction documents for the purpose of determining compliance with applicable codes. Here "plan reviewer" is identified as "an individual" meaning one person. The term "construction documents" and "applicable codes" are plural. The definition clearly calls for a single person to review documents for compliance with multiple codes.
  - b. Further, the term "fire protection system plan reviewer" is defined  
"Fire protection system plan reviewer" means an individual who meets the qualifications established under this article and is responsible for the review of fire protection system plans in accordance with the design and installation standards referenced by the Michigan building code.

In such, the Act creates two, and only two, classifications of an individual responsible for reviewing construction documents. It only goes to reason, and can be assumed, that if the authors of the Act intended to create separate review categories for Mechanical plan reviewers, Electrical plan reviewers and Plumbing plan reviewers, as the rules proposed by the bureau do, that the legislature would have established definitions for such terms within the language of the Act.

The result of requiring multiple plan reviewer categories will be to over-burden plan reviewers with so many continuing education requirements that to currently registered persons could maintain their certifications. For example, as a Master Code Professional, I am required to maintain 60 hours of CE within a 3 year period. The proposed rules would require me to obtain 160 hours of CE in that period, and that only for my plan review categories.

Lastly I find it in error that the Bureau has already implemented the additional financial burden on plan reviewers, without substantiation in the rules, to increase our registration fees from \$75 per three year cycle to \$300.

Apart from the refusal of the Bureau of Construction Codes to follow the legal requirements for promulgation of rules established in PA 407 and their attempt at expanding their powers beyond that granted to them, the language of the proposed rules is confusing and ill-conceived.

Thank you for your time today.