

Legislative Analysis



ARCHITECTS, ENGINEERS & SURVEYORS: REQUIRE CONT. ED. FOR LICENSE RENEWAL

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

House Bill 6374 as introduced
Sponsor: Rep. Pam Byrnes
Committee: Regulatory Reform

First Analysis (9-23-10)

BRIEF SUMMARY: The bill would require completion of a program of continuing education for license renewal for architects, professional engineers, and professional surveyors.

FISCAL IMPACT: The bill would have an indeterminate impact on the Department of Energy, Labor, and Economic Growth, as detailed later in the analysis.

THE APPARENT PROBLEM:

For years, the Department of Energy, Labor, and Economic Growth (DELEG) had discouraged occupational licensing boards from requiring continuing education courses as a condition for license renewal in favor of a demonstration of continuing professional competence. Tracking an applicant's completion of acceptable courses can be time consuming and burdensome when budget constraints mean fewer staff to review renewal applications. Plus, there was some concern that continuing education courses did not necessarily translate into increased knowledge or proficiency. By comparison, teaching a course or seminar workshop does demonstrate a level of competency in the subject matter, but doesn't count under a program of continuing education.

However, no program to determine professional competency was ever completed. Moreover, in a tight job market, professionals need to work where the jobs are, even if that means working out of state for awhile. Many states provide reciprocity – meaning they will honor the licenses issued by another state – if the issuing state's licensing requirements are substantially similar to their own. Apparently, the states bordering Michigan require up-to-date continuing education for architects, professional engineers, and professional surveyors. Unless the licensing renewal criteria are changed, Michigan-licensed professionals in these fields cannot take jobs in nearby states.

THE CONTENT OF THE BILL:

Currently, the Occupational Code requires an applicant for license renewal as an architect, professional engineer, or professional surveyor to demonstrate continuing professional competence. The bill would instead require the completion of continuing education courses as a condition for license renewal.

Specifically, House Bill 6374 would amend Article 20, entitled "Architects, Professional Engineers, and Land Surveyors," of the Occupational Code (MCL 339.2009). A demonstration of the completion of a program of continuing education would be required

for renewal of a license issued under Article 20. The Department of Energy, Labor, and Economic Growth would be required to establish the continuing education program by rule. The bill would apply to license renewals beginning the license cycle after those rules took effect.

FISCAL INFORMATION:

Technically speaking, requiring the Department of Energy, Labor, and Economic Growth to promulgate administrative rules establishing continuing education requirements, rather than continue professional competency requirements, for architects, professional engineers, and professional surveyors, would have no fiscal impact on the department, given that the department previously began, but did not finalize, the process to promulgate rules requiring continue professional competency.¹

The rule promulgation process entails some costs to the department (the Bureau of Commercial Services and the State Office of Administrative Hearings and Rules), as it must provide notice of the public hearing required on proposed rules, and publish proposed and final rules in the *Michigan Register* under the Administrative Procedures Act. The department notes that, for a typical rule set, the cost of publishing the set in the *Michigan Register* is about \$225 per page. The expenses that factor into this charge include typical publication expenses such as formatting and editing the *Michigan Register* and preparing it for publication, as well as publishing the *Michigan Register* on the Internet. In addition, this per-page cost also includes expenses related to legal review of rules by SOAHR, as well as SOAHR's review and collection of all required documents for publication from the department, the Executive Office, and the Legislative Service Bureau.

Beyond that, however, any resulting impact on the DELEG-Bureau of Commercial Services relative to the administration and enforcement of the continuing education requirements is indeterminate, depending on the requirements ultimately proposed, and the bureau's method of ensuring compliance. It's unclear, at this point, how DELEG would proceed. For instance, for real estate brokers, the bureau relies on information on CE compliance provided by course sponsors. For other occupations, such as accountants, the bureau conducts random audits of renewal applications, to determine compliance with CE requirements. The hiring of any additional staff (if necessary) is limited by the restrictions on hiring contained in various executive directives and boilerplate sections of the annual DELEG appropriations act, and existing budgetary resources. In any event, the cost implications to the department, governmental units, and regulated entities would be discussed as part of the agency's Regulatory Impact Statement. The Legislature still retains some authority, under the Administrative Procedures Act, to review and disapprove proposed administrative rules.

¹ In 2009, the department was granted a request for rulemaking (RFR) by the State Office of Administrative Hearings and Rules to update its rules concerning architects, professional engineers, and professional surveyors. The RFR included authority to develop rules establishing the continued professional competency requirements under the Occupational Code. See proposed rule sets 2009-065 LG (architects), 2009-032 LG (professional engineers), and 2009-038 LG (professional surveyors). The RFR was the latest formal step in the rulemaking process for these rules, with no draft rules yet having been submitted to SOAHR for review.

The current biennial licensure cycle for architects, professional engineers, and professional surveyors expires on October 31, 2010. Assuming the rules are promulgated in 2011 or early to mid-2012, the proposed CE requirements would be first imposed on licensees during the November 1, 2012-October 31, 2014 license cycle, meaning that licensees who apply for renewal in October 2014 would have to demonstrate compliance with the CE requirements. According to the department, currently there are 5,807 licensed architects, 21,099 licensed professional engineers, and 1,074 professional surveyors.² The bureau's regulatory activities are supported by fees on the regulated professions imposed under the State License Fee Act.³ For the two-year period covering fiscal years 2008 and 2009, the bureau's regulatory costs for these three occupations totaled \$1.2 million, while revenue totaled \$2.2 million.

ARGUMENTS:

For:

House Bill 6374 is needed for a couple of reasons. First, in order to enjoy reciprocity with other states, Michigan needs to include completion of continuing education units in the criteria for license renewal for architects, professional engineers, and professional surveyors. This change will allow these professionals to work for multi-state companies and to take jobs in neighboring states without having to obtain an additional license from an employing state. Secondly, unless the article regulating architects, engineers, and surveyors specifically requires continuing education, DELEG has no authority to promulgate rules to establish such a program.

POSITIONS:

Representatives of the following associations or organizations testified in support or indicated support for the bill on 9-8-10:

AIA Michigan
American Council of Engineering Companies
Department of Energy, Labor, and Economic Growth
Michigan Society of Professional Surveyors
Michigan Society of Professional Engineers
Studio [intrigue] Architects
Michigan Association of Home Builders

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

² In all, the Bureau of Commercial Services regulates more than 320,000 individuals across 30 occupations.

³ See Section 13 of the State License Fee Act, 1979 PA 152, MCL 338.2213. The architect license fee is \$35 per year. The professional engineer license fee is \$40 per year, but reduced to \$20 per year beginning October 1, 2012. The professional surveyor license fee is \$50 per year.