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BILL ANALYSIS

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Senate Bill 577 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Jud Gilbert, II
Committee: Economic Development and Regulatory Reform

Date Completed: 1-7-08

RATIONALE

Michigan law contains various provisions requiring a residential builder to be licensed, but this requirement does not apply to someone who is building his or her own home. Article 24 (Residential Builders) of the Occupational Code generally requires a person to be a licensed residential builder to engage in the business, or act in the capacity, of a residential builder. Article 6 (Violations and Penalties) prohibits a person from practicing or attempting to practice an occupation regulated under the Code unless he or she possesses a license or registration for the occupation, and prescribes criminal penalties for violations. In addition, the Single State Construction Code Act provides that a person who is required to be licensed as a residential builder may not perform work on a residential building or a residential structure without first obtaining a license.

Article 24 of the Occupational Code, however, also allows an unlicensed property owner to engage in the business or act in the capacity of a residential builder, with reference to a structure on the property for the owner's own use and occupancy. This exception to the licensure requirement reportedly has led to situations in which a person claims to be building his or her own home, then decides to sell it as soon as the job is completed. Such a person essentially may make a living as a residential builder by building several homes a year, without ever being licensed as a residential builder. In addition, if the buyer of a home built in this manner discovers construction flaws, it may be difficult for him or her to get the builder to perform repairs, or to recover damages for the cost of repairs, because the builder is

not required to meet the standards of licensure. It has been suggested that a new law be enacted to regulate the sale of owner-built homes.

CONTENT

The bill would create the "Owner Built Residence Transfer Act" to do all of the following:

- Require an "owner-builder" who intended, at the onset of construction, to live in a "residential structure" either to live in it or place it for sale if he or she were unable to live there.**
- Allow an owner-builder to sell only one owner-built residence per year.**
- Prohibit an owner-builder who lived in a new residential structure from selling it or transferring ownership for at least 120 days.**
- Require an owner-builder, when offering a residential structure, to supply a notice that the structure was built by an owner-builder who was not a licensed builder.**
- Specify that an owner-builder who failed to comply with the disclosure requirements would be liable for repair costs and the buyer's temporary shelter costs.**
- Allow the buyer of an owner-builder residential structure to bring an action within 18 months for damages resulting from a violation of the disclosure requirements.**

The bill would take effect 180 days after its enactment.

"Owner-builder" would mean an individual who is not a licensed residential builder (defined below) and who builds, or acts as a general contractor for the construction of, a residential structure in which that person, or a member of his or her family, actually resides or intends to occupy for his or her own use upon the issuance of an occupancy permit.

"Residential structure" would mean premises used or intended to be used for a residence purpose and related facilities appurtenant to the premises used or intended to be used as an adjunct of residential occupancy.

An owner-builder who intended, at the onset of construction, to live in the residential structure would have to do either of the following upon completion of construction and issuance of the occupancy permit regarding a residential structure:

- Live in the residential structure.
- Place the residential structure up for sale in any manner allowed by law if, due to unforeseen circumstances, he or she were unable to live there.

An owner-builder could not use the exception in the second option more than once per calendar year.

An owner-builder who actually lived, full- or part-time, in that residential structure could not sell or transfer ownership of it to another person for at least 120 days after he or she actually began living in the structure.

At the time of offering the residential structure and on a separate sheet of paper, an owner-builder would have to supply an owner-builder notice stating in 12-point font or larger that the residential structure was built by an owner-builder who was not a licensed builder. The owner-builder would have to sign and date the notice. An owner-builder who sold the residential structure, within two years after the date the occupancy permit was issued, would have to note in the owner-builder notice form the fact that the residential structure was built by the owner.

An owner-builder who failed to make the required disclosures would be liable for the following:

- The cost of repair regarding any defects in workmanship for up to 18 months after completion of construction, first occupancy, or purchase, whichever occurred latest.
- The cost of any repairs needed to bring the structure into compliance with the building code in effect at the time the occupancy permit was issued.
- The cost for temporary shelter for the buyer, if the repairs required the buyer to vacate temporarily or if the defects in the residential structure rendered it uninhabitable.

The buyer of an owner-builder residential structure could bring an action for damages resulting from a violation of the required disclosures. The action would have to be brought within 18 months after completion of construction, first occupancy, or purchase, whichever occurred latest. If the buyer prevailed in whole or part in the action, the court would have to award costs and actual attorney fees.

Remedies under the bill would be cumulative and the use of a remedy under the bill would not prevent the use of any other remedies allowed under law.

"Residential builder" would mean a person engaged in the construction of a residential structure or a combination residential and commercial structure who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, wrecking of, or demolition of, a residential structure or combination residential and commercial structure. The term also would mean a person who manufactures, assembles, constructs, deals in, or distributes a residential or combination residential and commercial structure that is prefabricated, preassembled, precut, packaged, or shell housing; or a person who erects a residential structure or combination residential and commercial structure except for the person's own use and occupancy on the person's property.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While the Occupational Code allows property owners who are not licensed residential builders to build their own homes, people should not use that provision as a means of circumventing licensure requirements in order to make a living by building and selling houses. Apparently, some people have avoided the licensure requirements by constructing homes on their own property, with the apparent intent of living there themselves, then deciding to sell the new structures as soon as they are completed. This practice undermines the Code's licensure requirement. Also, a buyer of an owner-built home may not be aware that it was constructed by someone who is not licensed as a home builder. This can hinder the buyer's ability to recover damages or seek repairs if he or she later discovers construction flaws.

The bill should decrease the incidence of unlicensed home building and make the practice less attractive, and would offer consumers a degree of protection when they purchased owner-built homes. By requiring an owner-builder to live in the new residential structure for at least 120 days, and limiting him or her to one sale of such a structure per calendar year, the bill would diminish the appeal of repeatedly building and selling residences without a builder's license. In addition, by requiring an owner-builder to disclose to a potential buyer that the structure was not built by a licensed builder, establishing the liability of an owner-builder who failed to make that disclosure, and authorizing the buyer of an owner-built home to bring an action for damages, the bill would hold unscrupulous or incompetent unlicensed home builders accountable for the quality of their work.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Stephanie Yu

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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.