

**2001 DRAFTING REQUEST**

**Bill**

Received: 10/29/2001

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Dan Schooff (608) 266-9967**

By/Representing: **Jason Meeks**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - prof lic**

Extra Copies: **RJM, DAK, JK**

Submit via email: **YES**

Requester's email: **Rep.Schooff@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Regulation of roofers

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

*at introduction*

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Office requested "PDF" via e-mail

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-4144

STATE OF ILLINOIS

THE ILLINOIS ROOFING INDUSTRY LICENSING ACT

&

RULES FOR THE ADMINISTRATION OF  
THE ILLINOIS ROOFING INDUSTRY LICENSING ACT

DEPARTMENT OF PROFESSIONAL REGULATION

(Printed by Authority of the State of Illinois)

2001

Print Date: 04/2001



**Illinois Department of  
Professional Regulation**  
320 W. Washington  
Springfield, IL 62786

THE ILLINOIS ROOFING INDUSTRY LICENSING ACT

225 Illinois Compiled Statutes 1996  
335/1 - 335/12, Inclusive  
(Current through Public Act 91-239)  
**Effective January 1, 2000**

NOTE: This copy of the Illinois Roofing Industry Licensing Act is furnished to you for your convenience. This is not an official copy. If there are any inconsistencies between this version and the current law, the official law, as published by the Secretary of State in the "Laws of Illinois", controls.

THE ILLINOIS ROOFING INDUSTRY LICENSING ACT  
Effective January 1, 1996, as amended

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THE ILLINOIS ROOFING INDUSTRY LICENSING ACT

(The numbers appearing below in parentheses preceding the Section numbers are references to paragraphs of 225 Illinois Compiled Statutes 1996.)

AN ACT to create the Illinois Roofing Industry Licensing Act.  
P.A. 89-387, approved August 18, 1995, effective January 1, 1996.

(335/1. Legislative purpose) Section 1. It is hereby declared to be the public policy of this State that, in order to safeguard the life, health, property, and public welfare of its citizens, the business of roofing construction, reconstruction, alteration, maintenance and repair is a matter affecting the public interest, and any person desiring to obtain a license to engage in the business as herein defined shall be required to establish his or her qualifications to be licensed as herein provided.  
Amended by P.A. 90-0055, effective January 1, 1998.

(335/2. Definitions) Section 2. As used in this Act, unless the context otherwise requires:

- (a) "Licensure" means the act of obtaining or holding a license issued by the Department as provided in this Act.
- (b) "Department" means the Department of Professional Regulation.
- (c) "Director" means the Director of Professional Regulation.
- (d) "Person" means any individual, partnership, corporation, business trust, limited liability company, or other legal entity.
- (e) "Roofing contractor" is one whose services are unlimited in the roofing trade and who has the experience, knowledge and skill to construct, reconstruct, alter, maintain and repair roofs and use materials and items used in the construction, reconstruction, alteration, maintenance and repair of all kinds of roofing and waterproofing, all in such manner to comply with all plans, specifications, codes, laws, and regulations applicable thereto, but does not include such contractor's employees to the extent the requirements of Section 3 of this Act apply and extend to such employees.
- (f) "Board" means the Roofing Advisory Board.  
Amended by P.A. 89-594, Section 335, effective August 1, 1996; P.A. 90-0055, effective January 1, 1998.

(335/2.1. Powers and duties of Department) Section 2.1. The Department may exercise the following powers and duties subject to the provisions of this Act:

- (a) To prescribe forms of application for certificates of registration.
- (b) To pass upon the qualifications of applicant for certificates of registration and issue certificates of registration to those found to be fit and qualified.
- (c) To conduct hearings on proceedings to revoke, suspend or otherwise discipline or to refuse to issue or renew certificates of registration.
- (d) To formulate rules and regulations when required for the administration and enforcement of this Act.

(335/3. Application for certificate) Section 3.

- (1) To obtain a certificate, an applicant shall submit an application in writing to the Department on a form containing the information prescribed by the Department and accompanied by the fee fixed by the Department.
- (2) An applicant for a certificate must submit satisfactory evidence that:
  - (a) he or she has obtained public liability and property damage insurance in such amounts and under such circumstances as may be determined by the Department;

(b) he or she has obtained Workers' Compensation insurance covering his employees or is approved as a self-insurer of Workers' Compensation in accordance with Illinois law;

(c) he or she has an Illinois Unemployment Insurance employer identification number or has proof of application to the Illinois Department of Labor for such an identification number;

(d) he or she has submitted a bond to the Department in the amount of \$5,000.

(3) It is the responsibility of the licensee to provide to the Department notice in writing of any changes in the information required to be provided on the application.

(335/4. Designation of licensee) Section 4.

(1) When an individual proposes to do business in his or her own name, a license, when granted, shall be issued only to that individual.

(2) If the applicant is proposing to qualify a partnership, corporation, business trust, or other legal entity, application shall be made for each such entity and shall state the name of the partnership and of its partners, the name of the corporation and of its officers and directors, the name of the business trust and its trustees, or the name of such other legal entity and its members, and furnish evidence of compliance with any statutory requirements pertaining to such legal entity, including compliance with any laws pertaining to the use of fictitious names, if a fictitious name is used. Such application shall also show that the person applying for licensure is legally qualified to act for the business organization in all matters connected with its roofing contracting business and that he or she has authority to supervise roofing operations undertaken by such business organization.

Amended by P.A. 90-0055, effective January 1, 1998.

(335/5. Display of license number - Advertising) Section 5.

(a) Each State licensed roofing contractor shall affix the license number of his or her license to all his or her contracts and bids. In addition, the official issuing building permits shall affix the roofing contractor license number to each application for a building permit and on each building permit issued and recorded.

(b) In addition, every roofing contractor shall affix the roofing contractor license number and the licensee's name on all vehicles used as part of his business as a roofing contractor.

(c) Every holder of a license shall display it in a conspicuous place in his or her principal office, place of business, or place of employment.

(d) No person licensed under this Act may advertise services regulated by this Act unless that person includes in the advertisement his or her license number. Nothing contained in this subsection requires the publisher of advertising for roofing contractor services to investigate or verify the accuracy of the license number provided by the licensee.

(e) A person who advertises services regulated by this Act who knowingly (i) fails to display the license number in any manner required by this Section, (ii) fails to provide a publisher with the correct license number as required by subsection (d), (iii) provides a publisher with a false license number or a license number of another person, or a person who knowingly allows his or her license number to be displayed or used by another person to circumvent any provisions of this Section, is guilty of a Class A misdemeanor with a fine of \$1,000, and, in addition, is subject to the administrative enforcement provisions of this Act. Each day that an advertisement runs or each day that a person knowingly allows his or her license to be displayed or used in violation of this Section constitutes a separate offense.

Amended by P.A. 90-0055, effective January 1, 1998.

(335/6. Expiration of license) Section 6.

(1) Licenses shall expire biennially at midnight on June 30 of each odd-numbered year.

(2) Failure to renew the license prior to the expiration thereof shall cause the license to become nonrenewed and it shall be unlawful thereafter for the licensee to engage, offer to engage, or hold himself or herself out as engaging, in roofing contracting business under the license unless and until the license is restored or reissued as defined by rule.

Amended by P.A. 90-0055, effective January 1, 1998.

(335/7. Fees) Section 7. Fees.

- (1) The initial application fee for a certificate shall be fixed by the Department by rule.
- (2) All other fees not set forth herein shall be fixed by rule.
- (3) If an applicant for initial certification applies for licensure during the second half of the biennial period, he shall only be required to pay one-half of the amount fixed by the Department for initial application.
- (4) Any change of the license that requires the issuance of a new license shall be completed on a form required by the Department, accompanied by \$10 handling fee.
- (5) The biennial renewal fee shall be fixed by the Department in an amount not to exceed one-half of the fee required by subsection (1).
- (6) All fees and fines collected under this Act shall be deposited into the General Professions Dedicated Fund.

(335/8. Public records) Section 8.

- (1) All information required by the Department of any applicant for licensure shall be a public record, except financial information.
- (2) If a licensee changes his or her name style, address or employment from that which appears on his or her current license, he or she shall notify the Department of the change within 30 days after it occurs.
- (3) All public records of the Department, when duly certified by the Director, shall be received as prima facie evidence in any State administrative or judicial proceedings.  
Amended by P.A. 90-0055, effective January 1, 1998.

(335/9. Licensure requirement) Section 9.

(1) It is unlawful for any person to engage in the business or act in the capacity of or hold himself or herself out in any manner as a roofing contractor without having been duly licensed under the provisions of this Act.

(2) No work involving the construction, reconstruction, alteration, maintenance or repair of any kind of roofing or waterproofing may be done except by a roofing contractor licensed under this Act.  
Amended by P.A. 90-0055, effective January 1, 1998.

(335/9.1. Grounds for disciplinary action) Section 9.1. Grounds for disciplinary action. The Department may refuse to issue or to renew, or may revoke, suspend, place on probation, reprimand or take other disciplinary action as the Department may deem proper, including fines not to exceed \$1,000 for each violation, with regard to any license or license for any one or combination of the following causes:

- (a) Violation of this Act or its rules;
- (b) Conviction of any crime under the laws of any U.S. jurisdiction which is a felony or which is a misdemeanor, an essential element of which is dishonesty, or any crime which directly relates to the practice of the profession;
- (c) Making any misrepresentation for the purpose of obtaining a license;
- (d) Professional incompetence or gross negligence in the practice of roofing contracting;
- (e) Gross malpractice, prima facie evidence of which may be a conviction or judgment of malpractice in any court of competent jurisdiction;
- (f) Aiding or assisting another person in violating any provision of this Act or rules;
- (g) Failing, within 60 days, to provide information in response to a written request made by the Department which has been sent by certified or registered mail to the licensee's last known address;

(h) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(i) Habitual or excessive use or addiction to alcohol, narcotics, stimulants or any other chemical agent or drug which results in the inability to practice with reasonable judgment, skill, or safety;

(j) Discipline by another U.S. jurisdiction or foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth in this Section;

(k) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership, or association any fee, commission, rebate, or other form of compensation for any professional services not actually or personally rendered;

(l) A finding by the Department that the licensee, after having his license placed on probationary status, has violated the terms of probation;

(m) Conviction by any court of competent jurisdiction, either within or without this State, of any violation of any law governing the practice of roofing contracting, if the Department determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(n) A finding that licensure has been applied for or obtained by fraudulent means;

(o) Practicing, attempting to practice, or advertising under a name other than the full name as shown on the license or any other legally authorized name;

(p) Gross and willful overcharging for professional services including filing false statements for collection of fees or monies for which services are not rendered;

(q) Failure to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of any such tax Act are satisfied;

(r) The Department shall deny any license or renewal under this Act to any person who has defaulted on an educational loan guaranteed by the Illinois State Scholarship Commission; however, the Department may issue a license or renewal if the person in default has established a satisfactory repayment record as determined by the Illinois State Scholarship Commission;

(s) Failure to continue to meet the requirements of this Act shall be deemed a violation;

(t) Physical or mental disability, including deterioration through the aging process or loss of abilities and skills that result in an inability to practice the profession with reasonable judgment, skill, or safety;

(u) Material misstatement in furnishing information to the Department or to any other State agency;

(v) The determination by a court that a licensee is subject to involuntary admission or judicial admission as provided in the Mental Health and Developmental Disabilities Code will result in an automatic suspension of his or her license. The suspension will end upon a finding by a court that the licensee is no longer subject to involuntary admission or judicial admission, the issuance of an order so finding and discharging the patient, and the recommendation of the Board to the Director that the licensee be allowed to resume professional practice;

(w) Advertising in any manner that is false, misleading, or deceptive.

The changes to this Act made by this amendatory Act of 1997 apply only to disciplinary actions relating to events occurring after the effective date of this amendatory Act of 1997.

Amended by P.A. 90-0055, effective January 1, 1998.

(335/9.2. Record of proceedings) Section 9.2. The Department, at its expense, shall preserve a record of all proceedings at the formal hearing of any case. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the hearing officer and order of the Department shall be the record of such proceeding. The Department shall furnish a transcript of the record to any person interested in the



hearing upon payment of the fee required under Section 2105-115 of the Department of Professional Regulation Law (20 ILCS 2105/2105-115).  
Amended by P.A. 91-239, January 1, 2000.

(335/9.3. Attendance of witnesses - Production of documents - Contempt) Section 9.3. Any circuit court may, upon application of the Department or its designee or of the applicant or licensee against whom proceedings are pending, enter an order requiring the attendance of witnesses and their testimony, and the production of documents, papers, files, books and records in connection with any hearing or investigation. The court may compel obedience to its order by proceedings for contempt.

(335/9.4. Subpoenas - Oaths) Section 9.4. The Department has power to subpoena and bring before it any person in this State and to take testimony either orally or by deposition or both, or to subpoena documents, exhibits, or other materials with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State.

The Director and the hearing officer have power to administer oaths to witnesses at any hearing which the Department is authorized to conduct under this Act, and any other oaths required or authorized to be administered by the Department under this Act.

(335/9.5. Findings of fact, conclusions of law and recommendations - Order) Section 9.5. At the conclusion of the hearing the hearing officer shall present to the Director a written report of his findings of fact, conclusions of law and recommendations. The report shall contain a finding whether or not the accused person violated this Act or failed to comply with the conditions required in this Act. The hearing officer shall specify the nature of the violation or failure to comply with the conditions required in this Act. The hearing officer shall specify the nature of the violation or failure to comply, and shall make his recommendations to the Director.

The report of findings of fact, conclusions of law and recommendations of the hearing officer shall be the basis for the Department's order. If the Director disagrees in any regard with the report of the hearing officer, the Director may issue an order in contravention to the report. The finding is not admissible in evidence against the person in a criminal prosecution brought for the violation of this Act, but the hearing and findings are not a bar to a criminal prosecution brought for the violation of this Act.

(335/9.6. Temporary suspension) Section 9.6. The Director may temporarily suspend the license of a roofing contractor without a hearing, simultaneously with the institution of proceedings for a hearing provided for in this Act, if the Director finds that evidence in his or her possession indicates that continuation in practice would constitute an imminent danger to the public. In the event that the Director temporarily suspends a license without a hearing, a hearing by the Department shall be held within 30 days after such suspension has occurred.

(335/9.7. Review under Administrative Review Law) Section 9.7. All final administrative decisions of the Department are subject to judicial review pursuant to the Administrative Review Law, as amended, and its rules. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(335/9.8. Violations) Section 9.8. Any person who is found to have violated any provision of this Act is guilty of a Class A misdemeanor. On conviction of a second or subsequent offense the violator is guilty of a Class 4 felony. Each day of violation constitutes a separate offense.

(335/9.9. Administrative Procedure Act) Section 9.9. Administrative Procedure Act. The Illinois Administrative Procedure Act is hereby expressly adopted and incorporated herein as if all of the provisions of that Act were included in this Act, except that the provision of subsection (d) of Section 10-65 of the Illinois Administrative Procedure Act that provides that at hearings the licensee has the right to show compliance with all lawful requirements for retention, continuation or renewal of the license is specifically excluded. For the purpose of this Act the notice required under Section 10-25 of the Administrative Procedure Act is deemed sufficient when mailed to the last known address of a party.

(335/9.9a. Certification of record - Costs) Section 9.9a. Certification of record; costs. The Department shall not be required to certify any record to the court, to file an answer in court, or to otherwise appear in any court in a judicial review proceeding, unless there is filed in the court, with the complaint, a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record. Failure on the part of the plaintiff to file the receipt in court is grounds for dismissal of the action.

(335/9.10. Returned checks - Fines) Section 9.10. Returned checks; fines. Any person who delivers a check or other payment to the Department that is returned to the Department unpaid by the financial institution

upon which it is drawn shall pay to the Department, in addition to the amount already owed to the Department, a fine of \$50. If the check or other payment was for a renewal or issuance fee and the person practices without paying the renewal fee or issuance fee and the fine due, an additional fine of \$100 shall be imposed. The fines imposed by this Section are in addition to any other discipline provided under this Act for unlicensed practice or practice on a nonrenewed license. The Department shall notify the person that payment of fees and fines shall be paid to the Department by certified check or money order within 30 calendar days of the notification. If, after the expiration of 30 days from the date of the notification, the person has failed to submit the necessary remittance, the Department shall automatically terminate the license or deny the application, without hearing. If, after termination or denial, the person seeks a license, he or she shall apply to the Department for restoration or issuance of the license and pay all fees and fines due to the Department. The Department may establish a fee for the processing of an application for restoration of a license to pay all expenses of processing this application. The Director may waive the fines due under this Section in individual cases where the Director finds that the fines would be unreasonable or unnecessarily burdensome.

Amended by P.A. 90-0055, effective January 1, 1998.

(335/9.11.) Section 9.11. Repealed by P.A. 89-387, Section 81, effective January 1, 1996.

(335/9.12. Local ordinances) Section 9.12. Nothing in this Act shall prevent counties, cities, or incorporated areas from making laws or ordinances that are more stringent than those contained in this Act.

(335/9.13.) Section 9.13. Repealed by P.A. 89-387, Section 81, effective January 1, 1996.

(335/9.14. Hearing officers) Section 9.14. The Director has the authority to appoint any attorney duly licensed to practice law in the State of Illinois to serve as the hearing officer for any action for refusal to issue or renew a license, or discipline of a licensee. The hearing officer has full authority to conduct the hearing. The hearing officer shall report his findings of fact, conclusions of law and recommendations to the Director. The Director shall issue an order based on the report of the hearing officer. If the Director disagrees in any regard with the hearing officer's report, he may issue an order in contravention of the hearing officer's report.

(335/9.15. Investigation - Notice - Default) Section 9.15. Investigation; notice; default. The Department may investigate the actions of any applicant or any person or persons holding or claiming to hold a license. The Department shall, before suspending, revoking, placing on probationary status, or taking any other disciplinary action as the Department may deem proper with regard to any license, at least 30 days prior to the date set for the hearing, notify the accused in writing of any charges made and the time and place for a hearing on the charges before the hearing officer, direct him or her to file his written answer with the hearing officer under oath within 30 days after the service on him or her of such notice, and inform him or her that if he fails to file such answer default will be taken against him or her and his or her license may be suspended, revoked, placed on probationary status, or other disciplinary action, including limiting the scope, nature or extent of his or her practice, as the Department may deem proper, taken. This written notice may be served by personal delivery or certified or registered mail to the Department. In case the person fails to file an answer after receiving notice, his or her license, in the discretion of the Department, be suspended, revoked, or placed on probationary status, or the Department may take whatever disciplinary action deemed proper, including limiting the scope, nature, or extent of the person's practice or the imposition of a fine, without a hearing, if the act or acts charged constitute sufficient grounds for such action under this Act. At the time and place fixed in the notice, the Department shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present such statements, testimony, evidence and argument as may be pertinent to the charges or to their defense. The Department may continue such hearing from time to time. At the discretion of the Director after having first received the recommendation of the hearing officer, the accused person's license may be suspended, revoked, placed on probationary status, or other disciplinary action may be taken as the Director may deem proper, including limiting the scope, nature, or extent of said person's practice without a hearing, if the act or acts charged constitute sufficient grounds for such action under this Act.

Amended by P.A. 90-0055, effective January 1, 1998.

(335/10. Enforcement - petition to court) Section 10.

(1) If any person violates the provisions of this Act, the Director through the Attorney General of Illinois, or the State's Attorney of any county in which a violation is alleged to exist, may in the name of the People of the State of Illinois petition for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in such court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin such violation.

and if it is established that such person has violated or is violating the injunction, the Court may punish the offender for contempt of court.

(2) If any person shall practice as a licensee or hold himself or herself out as a licensee without being licensed under the provisions of this Act, then any person licensed under this Act, any interested party or any person injured thereby may, in addition to those officers identified in subsection (1) of this Section, petition for relief as provided therein.

(3) Proceedings under this Section shall be in addition to, and not in lieu of, all other remedies and penalties which may be provided by law.  
Amended by P.A. 90-0055, effective January 1, 1998.

(335/10a. Unlicensed practice - Violation - Civil penalty) Section 10a. Unlicensed practice; violation; civil penalty.

(a) Any person who practices, offers to practice, attempts to practice, or holds himself or herself out to practice roofing without being licensed under this Act shall, in addition to any other penalty provided by law, pay a civil penalty to the Department in an amount not to exceed \$5,000 for each offense as determined by the Department. The civil penalty shall be assessed by the Department after a hearing is held in accordance with the provisions set forth in this Act regarding the provision of a hearing for the discipline of a licensee.

(b) The Department has the authority and power to investigate any and all unlicensed activity.

(c) The civil penalty shall be paid within 60 days after the effective date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and execution had thereon in the same manner as any judgment from any court of record.

(355/11. Application of Act) Section 11.

(1) Nothing in this Act limits the power of a municipality, city or county to regulate the quality and character of work performed by roofing contractors through a system of permits, fees, and inspections which are designed to secure compliance with and aid in the implementation of State and local building laws or to enforce other local laws for the protection of the public health and safety.

(2) Nothing in this Act shall be construed to require a seller of roofing materials or services to be licensed as a roofing contractor when the construction, reconstruction, alteration, maintenance or repair of roofing or waterproofing is to be performed by a person other than the seller or the seller's employees.

(3) Nothing in this Act shall be construed to require a person who performs roofing or waterproofing work to his or her own property, or for no consideration, to be licensed as a roofing contractor.

(4) Nothing in this Act shall be construed to require a person who performs roofing or waterproofing work to his or her employer's property to be licensed as a roofing contractor, where there exists an employer-employee relationship. Nothing in this Act shall be construed to apply to the installation of plastics, glass or fiberglass to greenhouses and related horticultural structures, or to the repair or construction of farm buildings.

(5) Nothing in this Act limits the power of a municipality, city, or county to collect occupational license and inspection fees for engaging in roofing contracting.

(6) Nothing in this Act limits the power of the municipalities, cities or counties to adopt any system of permits requiring submission to and approval by the municipality, city, or county of plans and specifications for work to be performed by roofing contractors before commencement of the work.

(7) Any official authorized to issue building or other related permits shall ascertain that the applicant contractor is duly licensed before issuing the permit. The evidence shall consist only of the exhibition to him or her of current evidence of licensure.

(8) This Act applies to any roofing contractor performing work for the State or any county or municipality. Officers of the State or any county or municipality are required to determine compliance with this Act before awarding any contracts for construction, improvement, remodeling, or repair.

101-6547 cert. of  
responsible contractor

*contracts*

(9) If an incomplete contract exists at the time of death of a contractor, the contract may be completed by any person even though not licensed. Such person shall notify the Department within 30 days after the death of the contractor of his or her name and address. For the purposes of this subsection, an incomplete contract is one which has been awarded to, or entered into by, the contractor before his or her death or on which he or she was the low bidder and the contract is subsequently awarded to him or her regardless of whether any actual work has commenced under the contract before his or her death.

(10) The State or any county or municipality may require that bids submitted for roofing construction, improvement, remodeling, or repair of public buildings be accompanied by evidence that that bidder holds an appropriate license issued pursuant to this Act.

(11) A municipality that requires a building permit or a county that requires a building permit may not issue a building permit to a roofing contractor unless that contractor has provided sufficient proof that he or she is licensed currently as a roofing contractor by the State of Illinois.  
Amended by P.A. 90-0055, effective January 1, 1998.

(355/11.5. Roofing Advisory Board) Section 11.5. The Roofing Advisory Board is created and shall consist of 7 persons, 6 of whom shall have been issued certificates of registration as roofing contractors by the Department and one who is a knowledgeable public member. The public member shall not be licensed under this Act or any other Act the Department administers. Each member shall be appointed by the Director. Members shall be appointed who reasonably represent the different geographic areas of the State.

The Director shall consider the advice and recommendations of the Board. The Director shall notify the Board in writing with an explanation of any deviation from the Board's written recommendation or response. After review of the Director's written explanation of the reasons for deviation, the Board shall have the opportunity to comment upon the Director's decision.

The persons appointed shall hold office for 4 years and until a successor is appointed and qualified. The initial terms shall begin July 1, 1997. Of the members of the Board first appointed, 2 shall be appointed to serve for 2 years, 2 shall be appointed to serve for 3 years, and 3 shall be appointed to serve for 4 years. No member shall serve more than 2 complete 4 year terms.

Within 90 days of a vacancy occurring, the Director shall fill the vacancy for the unexpired portion of the term with an appointee who meets the same qualifications as the person whose position has become vacant. The Board shall meet annually to elect one member as chairman and one member as vice-chairman. No officer shall be elected more than twice in succession to the same office. The members of the Board shall receive reimbursement for actual, necessary, and authorized expenses incurred in attending the meetings of the Board.  
Added by P.A. 89-594, Section 335, effective August 1, 1996; P.A. 90-0055, effective January 1, 1998.

(355/12. Short title) Section 12. This Act shall be known and may be cited as the "Illinois Roofing Industry Licensing Act".

Repeal of Act

Section 4.16 of the Regulatory Agency Sunset Act provides for the repeal of the Illinois Roofing Industry Licensing Act (for provisions of repeal, see 5 ILCS 80/4.16) unless, under 5 ILCS 80/4, the General Assembly enacts legislation providing for its continuation.

RULES FOR THE  
ADMINISTRATION OF THE

ILLINOIS ROOFING INDUSTRY LICENSING ACT  
PART 1460

TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1460  
ILLINOIS ROOFING INDUSTRY LICENSING ACT

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1460.70	Definition of Roofing

**AUTHORITY:** Implementing the Illinois Roofing Industry Licensing Act and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois (20 ILCS 2105/2105-15(7)).

**SOURCE:** Emergency Rules adopted at 10 Ill. Reg. 10284, effective July 1, 1985, for a maximum of 150 days; rules adopted at 10 Ill. Reg. 1237, effective January 3, 1986; amended at 11 Ill. Reg. 6246, effective March 18, 1987; recodified from Chapter I, 68 Ill. Adm. Code 460 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1460 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2946; amended at 25 Ill. Reg. 2085, effective January 22, 2001.

TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1460  
ILLINOIS ROOFING INDUSTRY LICENSING ACT

Section 1460.10 Application for Certification

a) Applications for certification under the Illinois Roofing Industry Licensing Act ("the Act") (225 ILCS 235) shall be submitted to the Department of Professional Regulation (the "Department") on forms provided by the Department, along with the following documentation:

- 1) Proof of liability insurance acceptable to the Department as specified in Section 1460.20 of this Part. Proof shall be a Certificate of Insurance;
- 2) Proof that the applicant has obtained Workers' Compensation Insurance or that the applicant is an approved self-insurer of Workers' Compensation. Proof shall be either the Certificate of Insurance from the insurance provider or the Certificate of Approval as a Self-Insurer issued by the Illinois Industrial Commission;
- 3) Proof that the applicant has obtained, or has applied for, an Illinois Unemployment Insurance employer identification number. Proof shall be either a notarized copy of the quarterly report (Form U-C 1 or U-C 3) issued to the applicant by the Department of Employment Security or a notarized copy of the completed application submitted to the Department of Employment Security for the issuance of an employer identification number;
- 4) Proof of a bond in the amount of \$5000 pursuant to Section 1460.30 of this Part; and
- 5) The required fee of \$100. However, if the application is made subsequent to June 30 of any even number year, the fee shall be \$50. The fee shall not be refundable.

b) If an applicant is a sole proprietorship or partnership and the applicant has no employees, the applicant shall not be required to provide proof of Workers' Compensation Insurance or Illinois Unemployment Insurance. Such applicant shall include with the application a sworn statement that he/she has no employees.

(Source: Amended at 25 Ill. Reg. 2085, effective January 22, 2001)

Section 1460.20 Liability Insurance Requirements

a) Each applicant for a certification as a roofing contractor shall obtain, and maintain for the duration of such certification, public liability and property damage insurance in the minimum amount and form specified below:

- 1) \$100,000 for each occurrence of property damage; and
- 2) \$300,000 for each occurrence of personal injury or bodily harm.

b) Such policy shall provide that it cannot be cancelled except upon written notification to the Department at least 30 days prior to the date of cancellation.

Section 1460.30 Bonding Requirements

a) Each applicant for certification as a roofing contractor shall obtain, and maintain for the duration of the certification, a surety bond in the minimum amount of \$5000. The bond shall be for the performance of all work undertaken by the applicant in the course of the applicant's roofing contracting business and for the payment of damages during the course of such work which may be sustained by reason of negligence, misconduct, or violation of any laws, ordinances, rules, regulations or building codes governing the work.

b) The bond shall be executed on a form provided by the Department or the bond provider.

- c) The bond shall state that it cannot be cancelled except upon written notification to the Department at least 30 days prior to the date of cancellation.

(Source: Added at 25 Ill. Reg. 2085, effective January 22, 2001)

#### Section 1460.40 Renewals

Each certification as a roofing contractor shall expire on June 30 of odd-numbered years and must be renewed prior to that date. Each application for renewal of certification as a roofing contractor shall be made on forms provided by the Department and shall be accompanied by:

- a) a sworn statement that the holder of the certification continues to comply with the requirements for insurance and bonding; and
- b) the required fee of \$50. The fee shall not be refundable.

(Source: Amended at 25 Ill. Reg. 2085, effective January 22, 2001)

#### Section 1460.50 Restoration

Applications for restoration of certifications as roofing contractors shall be made to the Department on forms provided by the Department.

- a) A certification which has lapsed shall be restored upon proof of insurance as required in Section 1460.20, bond as required in Section 1460.30, and payment of a fee of \$20 plus all lapsed renewal fees not to exceed \$170. The fee shall not be refundable.

(Source: Amended at 25 Ill. Reg. 2085, effective January 22, 2001)

#### Section 1460.60 Cancellation of Certification

- a) A certification as a roofing contractor shall be cancelled by the Department upon proof that the holder of the certification has failed to maintain the insurance and bonding requirements. Proof shall be notice to the Department of insurance cancellation.
- b) The holder of a cancelled certification shall have the certification reissued upon application to the Department, on forms provided by the Department, and upon proof that he/she has satisfied the requirements of Section 1460.10 of this Part.

(Source: Amended at 25 Ill. Reg. 2085, effective January 22, 2001)

#### Section 1460.70 Definition of Roofing

"Roofing" means to apply to any roof deck waterproofing materials including all roofing, damp and waterproofing materials and/or systems such as shingles, tile, slate, built up roofing, single ply and spray on roofing. Nothing shall be construed to require sheet metal, electrical, plumbing, refrigeration or mason contractors or carpenters who perform chimney repairs or install soil pipes, electrical jacks, gutters, heating and cooling vents, wood roof decks, or any other kind of roof deck or television antenna to be certified under the Act.

(Source: Added at 11 Ill. Reg. 6246, effective March 18, 1987)



16.855

66.0901

(2)

last sentence

Illinois Roofing Act:

Defines "roofing contractor", which "is one whose services are unlimited in the roofing trade and who has the experience, knowledge and skill to construct, reconstruct, alter, maintain and repair roofs and use materials and items used in the construction, reconstruction, alteration, maintenance and repair of all kinds of roofs and waterproofing, all in such manner to comply with all plans, specifications, codes, laws, and regulations applicable thereto, but does not include such contractor's employees to the extent the requirements of Section 3 of this Act apply and extend to such employees."

Exceptions: 1) seller of roofing materials or services, if construction, etc., is performed by person other than seller or seller's employees; 2) person who performs roofing or waterproofing on his or her own property or for no consideration; 3) employee who performs roofing or waterproofing work for employer; 4) Act does not apply to installation of plastics, glass, or fiberglass to greenhouses and related horticultural structures; and 5) Act does not apply to repair or construction of farm buildings.

Act does apply any roofing contractor who performs work for the state or local government, which must determine compliance with Act before awarding contracts for construction, etc. State and local governments allowed to require bids to include evidence of licensure (is that necessary?).

Does not define "roofing" or "waterproofing":

Prohibits engaging in business or acting in capacity of, or holding himself or herself out in any manner as a roofing contractor unless licensed under Act.

"No work involving the construction, reconstruction, alteration, maintenance or repair of any kind of roofing or waterproofing may done except by a roofing contractor licensed under the Act."

State operates IRS employees  
- not wages tax, but broad

Requirements for certificate: 1) application, fee; 2) public liability and property damage insurance as determined by dept.; 3) worker's comp. for employees or self-insured under Ill. law; 4) has Ill. unemployment insurance identification number; 5) submits bond to dept. in amount of \$5,000. Note that Illinois has promulgated rules requiring minimum public liability and property damage insurance of \$100,000 per occurrence of property damage and \$300,000 per occurrence of personal injury or bodily harm.

Licenses expire June 30 of odd-numbered years.

Responsibility of applicant to advise about changes in info submitted.

If applicant is bus. entity, must identify people comparable to Wis.'s business representatives and proof of compliance with any statutory requirements pertaining to bus. entity (e.g., use of fictitious names). Must also show that person applying for license

is legally qualified to act for bus. entity, etc., and that he or she has authority to supervise roofing operations undertaken by bus. entity.

Display of license number: 1) must affix to all contracts and bids; 2) must affix license number and name on all vehicles used in bus. of roofing contractor; 3) must display in conspicuous place at principal office or place of bus. or employment; 4) advertisement must include license number (publisher of adv. not required to investigate or verify accuracy of no.). Violation is Class A misdemeanor with a fine of \$1,000, plus subject to admin. enforcement of Act. Each day is sep. violation.

License fee requirements specific to Illinois.

Grounds for discipline (including a fine of \$1,000 for each violation): 1) violating Act or rules; 2) comparable to Wis. conviction of crime with substantial relationship, etc.; 3) making misrep. in applying for license; 4) professional incompetence or gross negligence in the practice of roofing contracting; 5) gross malpractice (prima facie evidence of which is conviction or judgment of malpractice); 6) aiding or assisting another in violating Act or rules; 7) failing to reply, within 60 days, to dept. request for info sent by certified or registered mail to licensee's last known address; 8) dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public; 9) additions, etc.; 10) discipline in another jurisdiction that has grounds that are the same or substantially similar to grounds under Act; 11) giving or receiving compensation for professional services not actually or personally rendered; 12) violating term of probationary license; 13) conviction in court (instate or out-of-state) of violating law governing practice of roofing contracting, if dept. determines person not sufficiently rehabilitated; 14) applying or obtaining license by fraudulent means; 15) practicing or advertising under name other than name on license; 16) gross and wilful overcharging; 17) tax delinquency; 18) default on student loan (i.e., loan guaranteed by Ill. agency), unless establish a satisfactory repayment record; 19) failing to continue to meet requirements of the Act; 20) physical or mental disability, etc.; 21) material misstatement in furnishing info. to dept. or other state agency; 22) involuntary or judicial admission under Ill. mental health law; 23) false, misleading, or deceptive advertising. ✓

All info. required by dept., except financial info., is a public record. All such public records are prima facie evidence in any state admin. proceeding.

Licensee must notify dept. within 30 days of change in name style, address, or employment.

Act also include investigative and disciplinary provisions specific to Ill. law.

Dept. allowed to temporarily suspend license if evidence of imminent danger to the public.

Violation of Act is Class A misdemeanor. Subsequent violation is a Class 4 felony. Each day of violation is separate violation.

↓  
6 mos - 1 yr imprisonment

↓  
1 yr or more imprisonment

Local governments allowed to make laws and ordinances that are more stringent than the Act. (And nothing in Act limits local governments to regulate roofing, etc., or impose licensing fees, etc.)

Officials authorized by state to issue building or related permits must ascertain that applicant is licensed before issuing permit. Evidence of licensure consists solely of exhibition to official of current evidence of licensure. Municipalities and counties may not issue building permit unless contractor provides sufficient evidence of licensure.

Director of dept., through Attorney General, and local district attorneys may bring action to enjoin violation or require compliance with Act. Also, any licensee, interested person, or person injured may bring action "for relief" (same is in foregoing sentence?) against unlicensed person who holds himself or herself out as being licensed.

In addition to any other penalty, unlicensed person who holds himself or herself out as licensed must pay civil penalty not to exceed \$5,000 which is directly assessed by the dept.

Act includes provision comparable to initial applicability provision to avoid impairment of contracts issue.

Act creates Roofing Advisory Board: 6 licensees and one public member. Appointed by director. Must represent geographic areas of state. 4 year terms. Dept. must consider advice and recommendations of board, and must explain in writing to board any deviation from board's advice, and board has opportunity to comment on director's decision.

State - <sup>act's</sup> plans for ~~comm~~ buildings 101.12

Munis - 1 1/2 family dwellings

101.65 (1m)

bring an act -  
for inj relief or damages against ~~state~~ <sup>in a claim related to the person's</sup> ~~the~~ <sup>future to</sup>  
copy w/  
licensee

\*\*\* - competency requirement?

## Kunkel, Mark

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**From:** Kunkel, Mark  
**Sent:** Friday, December 21, 2001 2:48 PM  
**To:** Plona, Katie  
**Subject:** Roofing request

Katie:

You called last week about this request. My apologies for taking so long to get back to you.

Yes, I am the appropriate attorney for drafting the request, assuming that you want the Department of Regulation and Licensing (DRL), or a board in DRL, to do the licensing. Which leads me to my first question: which agency do you want to do the licensing? DRL, or do you want to create a new examining board that is independent from DRL? Note also that the Illinois law has its version of DRL do the licensing, but it must receive advise from an advisory board that is created. You could also do something comparable.

I have a few other basic, initial questions.

The Illinois law covers roofing and waterproofing. Do you want to cover both activities? I thought it was kind of surprising that waterproofing is covered in the Illinois law, because it seems kind of buried in the language. Also, "waterproofing" isn't defined, so if you want to cover waterproofing, I think a definition should be created.

The Illinois law has the following exemptions from licensure: 1) people who sell roofing materials or services but who don't actually do roofing; 2) people who perform roofing or waterproofing on their own property; 3) people who do roofing or waterproofing but who do not get paid; and 4) an employee who performs roofing or waterproofing for an employer (presumably, the employer must be licensed). I'm assuming that these exemptions are okay with you?

There are two other exemptions in the Illinois law. First, the law does not apply to the installation of plastics, glass, or fiberglass to greenhouses and related horticultural structures. Second, the Act does not apply to repair or construction of farm buildings. Are these exemptions okay?

Finally, the Illinois law specifies that it does apply to any roofing contractor who performs work for the state or local government, which must determine compliance with the law before awarding contracts for construction, etc. I'm assuming that's okay with you, too, correct?

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Mark D. Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131

## Kunkel, Mark

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**From:** Kennedy, Debora  
**Sent:** Wednesday, January 23, 2002 12:09 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Drafting question

Your amendment looks fine; you probably need an initial app that refers to plans requested on the effective date, or some such language, so that you don't start interfering with projects for which contracts have been let. There are two other instances in which DHFS approves construction projects. Under s. 150.29, stats., DHFS must approve certain nursing home projects, including construction of a new nursing home (these approvals are intended to keep down the number of new nursing homes and do not specifically review the materials proposed to be used, etc., so I'm unsure whether they are relevant to your task). Also, under ss. 150.963 (2) (b) and 150.967, DHFS has to develop, prepare, administer and review state plans that include programs for construction of mental retardation facilities and community mental health centers. Offhand, I don't know of others--DHFS used to do swimming pool plan reviews, but that now is under ch. 145.

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Wednesday, January 23, 2002 11:43 AM  
**To:** Kennedy, Debora  
**Subject:** Drafting question

Debora:

I am drafting a bill that requires DRL to license roofing contractors.

For part of the request, I have to prohibit state agencies from approving construction projects unless the roofing services are performed by a licensed roofer. There are 2 statutes in your areas that are relevant, ss. 50.02 (2) (b) 1. and 50.36 (2) (a).

Do you think the amendment below is okay? (I would do the same thing to s. 50.02 (2) (b) 1.)

Section 10. 50.36 (2) (a) of the statutes is amended to read:

50.36 (2) (a) The department shall conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with building code requirements under ch. 101 and with physical plant requirements under this chapter or under rules promulgated under this chapter. If the plans involve the performance of roofing contracting services, as defined in s. 440.99 (1), construction or remodeling may not commence unless the applicant submits evidence satisfactory to the department that those services will be performed by a person who is licensed under subch. XII of ch. 440 or is exempt from licensure under that subchapter.

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## Kunkel, Mark

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**From:** Shovers, Marc  
**Sent:** Wednesday, January 23, 2002 12:42 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Public contracts with counties?

Actually, I think you'll be OK just working s. 66.0901, because s. 59.52 (29) states, in part: "A contract, the estimated cost of which exceeds \$25,000, shall be let and entered into under s. 66.0901, except that the board may by a three-fourths vote of all the members entitled to a seat provide that any class of public work or any part thereof may be done directly by the county without submitting the same for bids." For a roofing job, I'm sure the \$25,000 threshold will be OK.

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Wednesday, January 23, 2002 10:54 AM  
**To:** Shovers, Marc  
**Subject:** Public contracts with counties?

I am creating s. 66.0901 (2m), which prohibits a municipality from entering into a public contract that involves the performance of roofing contracting services unless those services are performed by a licensed roofing contractor. However, "municipality" does not include counties. Are there some public contract provisions for counties?

---

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Legislative Attorney  
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## Kunkel, Mark

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**From:** Nelson, Robert P.  
**Sent:** Wednesday, January 23, 2002 1:17 PM  
**To:** Kunkel, Mark  
**Subject:** RE: Private cause of action

I assume that the violation we are talking about is doing something without the proper license, right? I think that the language works, but I would add costs to the reasonable attorney fees that the court awards. Do you want the "shall award reasonable attorney fees" to be mandatory, or should it read "may award"?

-----Original Message-----

**From:** Kunkel, Mark  
**Sent:** Wednesday, January 23, 2002 11:52 AM  
**To:** Nelson, Robert P.  
**Subject:** Private cause of action

Bob:

Remember that private cause of action regarding unlicensed roofers that we talked about? I decided to make it broader. What do you think of the following (which is based on s. 134.23 (5)):

**Private cause of action.** A person who is aggrieved by a violation of this subchapter or a rule promulgated under this subchapter may bring an action to enjoin further or continuing violations or to recover actual damages sustained as a result of a violation, together with costs of the action. In an action under this section, the court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a party who obtains injunctive relief or an award of damages.

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Mark D. Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131

## Kunkel, Mark

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**From:** Kunkel, Mark  
**Sent:** Wednesday, January 23, 2002 2:21 PM  
**To:** Kunkel, Mark  
**Subject:** FW: Drafting question

What is the requester's goal? Do they just want to ensure that cities and villages may continue to regulate roofers? Your proposed language may give towns and counties authority to regulate roofers that they don't presently have. Is that a goal? Not knowing the requester's intent I'm not sure how to answer but, assuming that the requester doesn't want to change the status quo in the area of local regulation of roofers, I don't think I'd do what you propose. As an aside, if you do include the provision, the language should say "enacting and enforcing", not "enacting or enforcing." See, for example, s. 59.54 (6), (11), and (22) to (25) and compare it to s. 59.70 (6) (e).

Under their home rule authority, cities and villages could regulate roofers now, unless there is some statute that I'm not aware of that pre-empts the field. Currently, unless towns and counties are specifically authorized to act in this area, or unless their authority is necessarily implied from a specific grant of authority, they can't regulate roofers. If DRL is given the authority to regulate roofers, I suppose someone could argue that the state has pre-empted this field and that the regulation of roofers is primarily a state concern, in which case your proposed language would be necessary if the requester wants to continue to allow local regulation. On the other hand, I think one would be hard pressed to argue convincingly that the regulation of roofers is primarily a state concern. At best, it's an area of mixed responsibility under which both the state the cities and villages could act, even if the state licenses roofers.

I did a search of "nothing prohibits a" and got 54 hits. A few of them related to "nothing prohibits a (local unit of government of one kind or another from doing something)", but most of those hits dealt with firearms stuff in s. 66.0409 and one hit dealt with emergency government in s. 166.03 (4) (d). It seems that doing what you propose is not very common, although there must be a fair number of statutes that authorize an agency to act in an area of primarily local concern or an area of mixed responsibility in which cities and villages, at least, continue to act also. Again, doing what you propose could also serve to give towns and counties authority which at present they do not have.

If you do draft something like you've proposed, you could say that pol subds. may **enact** ordinances that are more stringent than the state law, but I'm never really sure what "more stringent" means in a lot of cases (not to say that I haven't done it). I don't think you'd have to say that pol. subds. could impose licensing fees if they are given the authority to regulate; I think that regulation includes the authority to impose fees.

There is one other issue for you to consider: overlapping authority of town and county ordinances. A county ordinance would (probably) apply only in the unincorporated areas of a county, i.e. towns, unless the statute says that the county ordinance applies throughout the county. If towns are also given the authority to enact a similar ordinance, you must address the question of which ordinance would apply in a town. You should probably state that a county ordinance applies only in towns that have not enacted a similar ordinance.

-----Original Message-----

**From:** Kunkel, Mark



**Sent:** Wednesday, January 23, 2002 11:01 AM  
**To:** Shovers, Marc  
**Subject:** Drafting question

What do you think of the following in a subchapter requiring DRL to license roofing contractors?

**Local regulation.** Nothing in this subchapter prohibits a city, village, town, or county from enacting or enforcing an ordinance that regulates the performance of roofing contracting services.

Is it okay? Or should I say that cities, etc., may adopt ordinances that are more stringent than the subchapter? Do I have to mention that cities, etc., can impose their own licensing fees?

Mark D. Kunkel  
Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4144/P1

MDK:.....

Jld

D-NOTE

TODAY  
11/25  
PM

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS - please check  
auto refs

Gen

- 1 AN ACT ...; relating to: regulating roofing contractors, creating a roofing advisory
- 2 council, extending the time limit for emergency rule procedures, providing an
- 3 exemption from emergency rule procedures, granting rule-making authority,
- 4 and providing penalties.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be prepared for a subsequent version of the draft.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

- 5 SECTION 1. 13.48 (19) of the statutes, as affected by 2001 Wisconsin Act 16, is
- 6 amended to read:
- 7 13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION. Whenever the building
- 8 commission determines that the use of innovative types of design and construction

1 processes will make better use of the resources and technology available in the  
 2 building industry, the building commission may waive any or all of s. 16.855, except  
 3 s. 16.855 (14m), if such action is in the best interest of the state and if the waiver is  
 4 accomplished through formal action of the building commission. The building  
 5 commission may authorize the lease, lease purchase or acquisition of such facilities  
 6 constructed in the manner authorized by the building commission. Subject to the  
 7 requirements of s. 20.924 (1) (i), the building commission may also authorize the  
 8 lease, lease purchase or acquisition of existing facilities in lieu of state construction  
 9 of any project enumerated in the authorized state building program.

History: 1971 c. 125; 1973 c. 90; 1973 c. 243 s. 82; 1973 c. 335 s. 13; 1975 c. 39, 40, 198, 199; 1977 c. 26; 1977 c. 29 ss. 7, 8r, 1654 (8) (c); 1977 c. 325; 1977 c. 418 ss. 5, 5m, 924 (18) (c); 1979 c. 34, 221, 350; 1981 c. 341; 1983 a. 27 ss. 11 to 12n, 2202 (5); 1983 a. 36 ss. 18 to 20, 96 (3); 1983 a. 207; 1985 a. 29, 120; 1987 a. 27, 186, 395, 399; 1989 a. 31, 366; 1991 a. 39, 269, 315; 1993 a. 16, 288, 414; 1995 a. 27, 216, 225, 227; 1997 a. 5, 27, 35, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 16.

10 **SECTION 2.** 15.407 (7) of the statutes is created to read:

11 15.407 (7) ROOFING ADVISORY COUNCIL. (a) There is created a roofing advisory  
 12 council in the department of regulation and licensing and serving the department in  
 13 an advisory capacity. The council shall consist of the following members appointed  
 14 for 4-year terms:

- 15 1. Six persons licensed under subch. XII of ch. 440.
- 16 2. One public member.

17 (b) The members appointed under par. (a) 1. shall be appointed to provide  
 18 geographic diversity to the council.

\*\*\*NOTE: Under this bill, the governor appoints members to the council. Is that okay? Alternatively, you could have the secretary of DRL appoint the members.

19 **SECTION 3.** 16.854 (3) of the statutes is amended to read:

20 16.854 (3) It shall be a goal of the department, with regard to each of the  
 21 contracts described under sub. (2) (a), (b) and (c), to award at least 25% of the dollar  
 22 value of such contracts to minority businesses and at least 5% of the dollar value of  
 23 such contracts to women's businesses. Sections 16.85<sup>and</sup> 16.855, except s. 16.855 (14m),

① and <sup>S:</sup>16.87 do not apply to services provided or contracted by the department under  
2 this section.

History: 1995 a. 56.

3 SECTION 4. 16.855 (14m) of the statutes is created to read:

4 16.855 (14m) The department<sup>✓</sup> may not enter into any contract for roofing  
5 contracting services, as defined in s. 440.99 (1),<sup>✓</sup> unless the contract provides that  
6 those services will be provided by a person who is licensed under subch. XII of ch. 440<sup>△</sup>  
7 or is exempt from licensure under that subchapter.

8 SECTION 5. 23.41 (5)<sup>✓</sup> of the statutes, as affected by 2001 Wisconsin Act 16, is  
9 amended to read:

10 23.41 (5) Each contract for construction work entered into by the department  
11 under this section shall be awarded on the basis of bids or competitive sealed  
12 proposals in accordance with procedures established by the department. Each  
13 contract for construction work shall be awarded to the lowest responsible bidder or  
14 the person submitting the most advantageous competitive sealed proposal as  
15 determined by the department. If the bid of the lowest responsible bidder or the  
16 proposal of the person submitting the most advantageous competitive sealed  
17 proposal is determined by the department to be in excess of the estimated reasonable  
18 value of the work or not in the public interest, the department may reject all bids or  
19 competitive sealed proposals. Every such contract is exempted from ss. <sup>from</sup>16.70 to  
20 16.75, 16.755, 16.76, 16.767 to 16.82, <sup>and</sup>16.855, except s. 16.855 (14m), <sup>and ss.</sup>16.87 and 16.89,  
21 but ss. 16.528, 16.754 and 16.765 apply to the contract. Every such contract  
22 involving an expenditure of more than \$60,000 is not valid until the contract is  
23 approved by the governor.

History: 1989 a. 31, 359; 1991 a. 39; 1995 a. 227; 1997 a. 27; 2001 a. 16.

24 SECTION 6. 50.02 (2) (b) 1. of the statutes is amended to read:

1           50.02 (2) (b) 1. The department shall conduct plan reviews of all capital  
 2 construction and remodeling of nursing homes to ensure that the plans comply with  
 3 building code requirements under ch. 101 and with life safety code and physical plant  
 4 requirements under s. 49.498, this chapter or under rules promulgated under this  
 5 chapter. If the plans involve the performance of roofing contracting services, as  
 6 defined in s. 440.99 (1), construction or remodeling may not commence unless the  
 7 applicant submits with the plans evidence satisfactory to the department that those  
 8 services will be performed by a person who is licensed under subch. XII of ch. 440 or  
 9 is exempt from licensure under that subchapter.

History: 1971 c. 125, 161; 1973 c. 122, 323, 327, 333; 1975 c. 119, 260; 1975 c. 413 ss. 5 to 8; 1977 c. 29, 170, 418; 1981 c. 20, 121, 391; 1983 a. 542; 1985 a. 29; 1987 a. 161; 1989 a. 336; 1991 a. 250; 1993 a. 16, 327; 1995 a. 27 ss. 3222 to 3225, 9116 (5); 1995 a. 98; 1997 a. 237; 1999 a. 9, 103.

10           **SECTION 7.** 50.36 (2) (a) of the statutes is amended to read:

11           50.36 (2) (a) The department shall conduct plan reviews of all capital  
 12 construction and remodeling projects of hospitals to ensure that the plans comply  
 13 with building code requirements under ch. 101 and with physical plant requirements  
 14 under this chapter or under rules promulgated under this chapter. If the plans  
 15 involve the performance of roofing contracting services, as defined in s. 440.99 (1),  
 16 construction or remodeling may not commence unless the applicant submits with the  
 17 plans evidence satisfactory to the department that those services will be performed  
 18 by a person who is licensed under subch. XII of ch. 440 or is exempt from licensure  
 19 under that subchapter.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9.

20           **SECTION 8.** 66.0901 (2m) of the statutes is created to read:

21           66.0901 (2m) **ROOFING CONTRACTING SERVICES.** A municipality may not enter  
 22 into a public contract for roofing contracting services, as defined in s. 440.99 (1),  
 23 unless the contract provides that those services will be performed by a person who

1 is licensed under subch. XII of ch. 440 or is exempt from licensure under that  
2 subchapter.

\*\*\*\*NOTE: A county is also subject to the above requirement, but only if the estimated cost of the contract exceeds \$25,000. See s. 59.52 (29), stats. I think the \$25,000 threshold would cover most roofing projects, but if you want any changes, please let me know.

3 SECTION 9. 101.12 (2m) <sup>✓</sup> of the statutes is created to read:

4 101.12 (2m) If the plans specified in sub. (2) <sup>✓</sup> involve the performance of roofing  
5 contracting services, as defined in s. 440.99 (1), <sup>✓</sup> construction may not commence  
6 unless the designer or owner submits with the plans evidence satisfactory to the  
7 department that those services will be performed by a person who is licensed under  
8 subch. XII of ch. 440 or is exempt from licensure under that subchapter.

9 SECTION 10. 101.65 (1) <sup>s ← letter</sup> of the statutes is created to read:

10 101.65 (1) <sup>s ← (B)</sup> May not issue a building permit unless the applicant provides  
11 evidence satisfactory to the city, village, town, or county that all roofing contracting  
12 services, as defined in s. 440.99 (1), will be performed by a person who is licensed  
13 under subch. XII of ch. 440 or is exempt from licensure under that subchapter.

14 SECTION 11. 150.29 (1) of the statutes is amended to read:

15 150.29 (1) No person may enter into an obligation for a project described in s.  
16 150.21 or engage in activities described in that section without the department's  
17 prior approval. If the project involves the performance of roofing contracting  
18 services, as defined in s. 440.99 (1), the department <sup>✓</sup> may not approve the project  
19 unless the applicant submits evidence satisfactory to the department that those  
20 services will be performed by a person who is licensed under subch. XII of ch. 440 or  
21 is exempt from licensure under that subchapter.

History: 1983 a. 27; 1993 a. 290.

22 SECTION 12. 231.20 of the statutes is amended to read:



1 "Roofing contracting services" do not include the installation of plastics, glass, or  
2 fiberglass to greenhouses and other horticultural structures.

\*\*\*\*NOTE: The Illinois law also applies to waterproofing, but I understand that you do not want to include waterproofing.

3 (2) "Roofing contractor" means a person who performs roofing contracting  
4 services.

5 **440.991 License required.** (1) Except as provided in sub. (2),<sup>✓</sup> no person may  
6 perform roofing contracting services or use the title "roofing contractor" or any other  
7 title or description that represents that the person is a roofing contractor unless the  
8 person is licensed under this subchapter.

9 (2) This subchapter<sup>✓</sup> does not require a license for any of the following:

10 (a) A person who sells roofing materials.

11 (b) A person who provides roofing contracting services if the services are not  
12 performed by the person or the person's employees.

13 (c) A person who performs roofing contracting services without compensation.

14 (d) An employee who performs roofing contracting services for an employer who  
15 is licensed under this subchapter.

16 **440.992 Licensure requirements; renewal.**<sup>✓</sup> (1) The department<sup>✓</sup> shall issue  
17 a license under this subchapter to a person who does all of the following:

18 (a) Submits an application for the license to<sup>the</sup> department on a form provided by  
19 the department.

20 (b) Pays the fee specified in s. 440.05 (1).<sup>✓</sup>

21 (c) If the person is a business entity, submits a statement to the department  
22 that the person is legally qualified to act on behalf of the business entity and  
23 identifies to the department the business representatives of the business entity and



1 the business representatives who are responsible for supervising roofing contracting  
2 services performed by the business entity.

\*\*\*\*NOTE: The Illinois law requires the applicant for the license to be the person who supervises roofing contracting services. I took a different approach and require the applicant to identify such persons. Is that okay?

3 (d) Submits evidence satisfactory to the department that <sup>check</sup> the person has in  
4 effect public liability and property damage insurance in amounts specified in rules  
5 promulgated by the department.

6 (e) Submits evidence satisfactory to the department <sup>that</sup> the person has worker's  
7 compensation insurance or is exempted from the requirement to have such insurance  
8 by the department of workforce development under s. <sup>✓</sup>102.28 (2) (b) or (3).

9 (f) Executes and files with the department a bond in the amount of \$5,000.

\*\*\*\*NOTE: The Illinois law also requires an applicant to submit its Illinois unemployment identification number. Wisconsin does not have such a number.

\*\*\*\*NOTE: Like the Illinois law, this bill does not require an applicant to show that he or she is competent to perform roofing contracting services. Is that okay?

\*\*\*\*NOTE: The Illinois law also requires a licensee to notify the licensing agency about any changes in the licensee's name, address, etc. It's not necessary to include such a requirement in this bill because current law already has such a requirement. See s. <sup>✓</sup>440.11, stats.

10 (2) The department shall assign a license number to each license issued under  
11 this subchapter.

12 (3) The renewal dates for licenses issued under this subchapter are specified  
13 under s. <sup>✓</sup>440.08 (2) (a). Renewal applications shall be submitted to the department  
14 on a form provided by the department and shall include the renewal fee specified in  
15 s. 440.08 (2) (a) and evidence satisfactory to the department that the applicant has  
16 in effect public liability and property damage insurance in amounts specified in rules  
17 promulgated by the department.

\*\*\*\*NOTE: I added the requirement about submitting proof of insurance because there are comparable requirements for renewing other licenses issued by boards in DRL.

1           **440.993 Display of license and license number.** A person who is issued a  
2 license under this subchapter must conspicuously display the license at the person's  
3 principal place of business, affix the license number to all bids and contracts for  
4 roofing contracting services, display the license number on all vehicles used by  
5 person in performing roofing contracting services, and include the license number  
6 in all advertisements for roofing contracting services.

\*\*\*\*NOTE: The Illinois law also requires a license number to be "included" in advertising. However, I'm not sure how the requirement applies to radio or television advertising. For example, does a radio spot have to mention the number? You could eliminate the confusion by revising the requirement so that it only applies to printed advertising. Please let me know if you want to make this change.

\*\*\*\*NOTE: The Illinois law also provides that "nothing [in the above requirement] requires the publisher of advertising for roofing contractor services to investigate or verify the accuracy of the license number provided by the licensee." I didn't include this language because I don't think it's necessary.

7           **440.994 Rule~~g~~making.** (1) The department shall promulgate rules for each  
8 of the following:

9           (a) Specifying the minimum amounts of public liability and property damage  
10 insurance that a person licensed under this subchapter is required to have in effect.

11           (b) Establishing a code of ethics governing the performance of roofing  
12 contracting services by persons licensed under this subchapter.

13           (2) Before submitting any proposed rules relating to the regulation of roofing  
14 contracting services to the legislative council staff under s. 227.15, the department  
15 shall submit the proposed rules to the roofing advisory council for comment. The  
16 council shall have 30 days to submit comments on the proposed rules to the secretary.

17           (3) When promulgating emergency rules under s. 227.24, the department shall  
18 provide a copy of the rules to the roofing advisory council prior to publication of the  
19 rules in the official state newspaper.

1           (4) The chairperson of the roofing advisory council, or his or her designee from  
2 the council, may cochair with the secretary, or the secretary's designee, any public  
3 hearing held by the department on proposed rules relating to the regulation of  
4 roofing contracting services.

5           (5) The department shall submit to the roofing advisory council a copy of the  
6 report required under s. 227.19 (2) on any proposed final rules relating to the  
7 regulation of roofing contracting services. The council may prepare a dissenting  
8 report stating its recommendations on the proposed final rules. Any dissenting  
9 report shall be prepared within 10 days from the date of receipt of the department's  
10 report, be attached to the department's report, and be sent to the presiding officer of  
11 each house of the legislature and distributed under s. 227.19 (2). The department  
12 shall cause a statement to appear in the Wisconsin administrative register to the  
13 effect that a dissenting report of the council has been submitted to the presiding  
14 officer of each house of the legislature.

15           (6) The roofing advisory council may petition the department under s. 227.12  
16 for the adoption, amendment, or repeal of rules relating to the regulation of roofing  
17 contracting services. This subsection does not limit the rights of other persons to  
18 petition the department under s. 227.12.

\*\*\*\*NOTE: The above requirements are based on s. 452.07, stats., which applies to  
the relationship between DRL and the real estate board.

19           **440.995 Public record exception.** The department shall withhold from  
20 public inspection any financial information submitted by a person licensed under  
21 this subchapter.

22           **440.996 Disciplinary proceedings and actions.** (1) Subject to the rules  
23 promulgated under s. 440.03 (1), the department may make investigations and

1 conduct hearings to determine whether a violation of this subchapter or any rule  
2 promulgated under this subchapter has occurred.

3 (2) Subject to the rules promulgated under s. 440.03 (1),<sup>✓</sup> the department may  
4 reprimand a licensee or deny, limit, suspend, or revoke<sup>✓</sup> a license issued under this  
5 subchapter if it finds that the applicant or licensee has done any of the following:

6 (a) Made a material misstatement in an application for a license or for renewal  
7 of a license or in any information submitted to the department.

8 (b) Subject to ss. 111.321, 111.322, and 111.335,<sup>✓</sup> been convicted of an offense the  
9 circumstances of which substantially relate to the performance of roofing contracting  
10 services.

11 (c) Advertised in a manner that is false, deceptive, or misleading.

12 (d) Advertised, practiced, or attempted to practice under another's name.

13 (e) Subject to ss. 111.321, 111.322 and 111.34,<sup>✓</sup> performed roofing contracting  
14 services while his or her ability to practice was impaired by alcohol or other drugs  
15 or physical or mental disability or disease.

16 (f) Engaged in unprofessional or unethical conduct in violation of the code of  
17 ethics established in the rules promulgated under s. 440.994 (1) (b).<sup>✓</sup>

\*\*\*\*NOTE: The Illinois law does not define what constitutes unethical or unprofessional conduct. This bill, like other Wisconsin statutes, requires DRL to promulgate rules establishing a code of ethics.

18 (g) Committed gross negligence or misconduct, or acted in a grossly  
19 incompetent manner, in performing roofing contracting services.

\*\*\*\*NOTE: The above language is based on s. ~~440.968~~<sup>440</sup> (1) (h), stats. The Illinois law also includes gross malpractice, but I think the references to negligence and misconduct are sufficient to cover malpractice.

20 (h) Been disciplined in another jurisdiction on grounds that are substantially  
21 similar to grounds specified in this subsection.<sup>✓</sup>

1 (i) Received compensation for roofing contracting services that were not  
2 performed.

\*\*\*\*NOTE: The Illinois law also prohibits giving compensation for services that are not performed. However, I don't understand the rationale for such a prohibition, so I didn't include it.

3 (j) Grossly and knowingly overcharged for roofing contracting services or filed  
4 false statements for obtaining compensation for roofing contracting services that  
5 were not performed.

6 (k) Been adjudicated mentally incompetent by a court.

7 (L) Violated this subchapter or any rule promulgated under this subchapter or  
8 aided another person in violating this subchapter or any rule promulgated under this  
9 subchapter.

\*\*\*\*NOTE: The Illinois law also includes tax delinquency as a grounds for discipline. Such a provision is not necessary in this bill because it is already covered under s. 440.12, stats., which applies to any license issued by DRL or a board in DRL.

\*\*\*\*NOTE: The Illinois law also includes defaults on student loans as grounds for discipline. No other professional licensing statute under Wisconsin law has such grounds. Therefore, I did not include it here. Please let me know if you want to include it.

\*\*\*\*NOTE: The Illinois law also includes violating a term of a probationary license as a grounds for discipline. However, the Wisconsin professional licensing statutes don't provide for probationary licenses, so I did not include them in this bill.

10 (3) The department may summarily suspend a license issued under this  
11 subchapter for a period not to exceed 30 days pending hearing if the department has  
12 in its possession evidence establishing probable cause to believe that the licensee has  
13 violated this subchapter or a rule promulgated under this subchapter and that it is  
14 necessary to suspend the license immediately to protect the public health, safety, or  
15 welfare. The licensee shall be granted an opportunity to be heard during the  
16 determination of whether or not probable cause exists. The department may  
17 designate any of its officers to exercise the authority granted by this subsection to  
18 suspend summarily a license, for a period not exceeding 72 hours. If a license has

1 been summarily suspended by the department or any of its officers, the department  
2 may, while the hearing is in progress, extend the initial period of suspension for not  
3 more than an additional 30<sup>✓</sup> days. If the licensee has caused a delay in the hearing  
4 process, the department may subsequently suspend the license from the time<sup>that</sup> the  
5 hearing is commenced until a final decision is issued or may delegate such authority  
6 to the hearing examiner.

\*\*\*\*NOTE: The above language is based on s. 448.675 (2),<sup>✓</sup> stats.

7 **440.997 Injunctive relief.** If the department has reason to believe that any  
8 person is violating this subchapter or any rule promulgated under this subchapter,  
9 the department, the attorney general, or the district attorney of the proper county  
10 may investigate and may, in addition to any other remedies, bring an action in the  
11 name and on behalf of this state to enjoin the person from the violation.

12 **440.998 Private cause of action.** A person who is aggrieved by a violation  
13 of this subchapter or a rule promulgated under this subchapter may bring an action  
14 to enjoin further or continuing violations or to recover actual damages sustained as  
15 a result of a violation. In an action under this section,<sup>✓</sup> the court shall award costs  
16 and reasonable attorney fees, notwithstanding s. 814.04 (1),<sup>✓</sup> to a party who obtains  
17 injunctive relief or an award of damages.

\*\*\*\*NOTE: The Illinois law creates a private cause of action for a person who is injured by an unlicensed roofing contractor. The above language is broader, because it also applies to injuries by licensed roofing contractors who commit other violations of the bill. I'm not sure why the Illinois law is so limited, but if you want me to change the above language, please let me know.

18 **440.999 Penalties.** (1) A person who violates this subchapter or a rule  
19 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
20 for not more than 9 months or both. Each day of violation constitutes a separate  
21 offense.

\*\*\*\*NOTE: The amount of the fine is the same as under the Illinois law. The Illinois law is less specific regarding the length of imprisonment. A first-time violator may be imprisoned from 6 months to a year, and a 2nd-time violator may be imprisoned for more than a year. Is the 9 months okay?

1 (2) In addition to or in lieu of the penalties under sub. (1), the department may  
2 directly assess against a person who violates s. 440.991 (1) a forfeiture of not more  
3 than \$5,000.

4 SECTION 16. 452.01 (3j) of the statutes is renumbered 440.01 (1) (ae).

5 SECTION 17. 452.01 (3k) of the statutes is renumbered 440.01 (1) (af). ag

\*\*\*\*NOTE: The above 2 SECTIONS move the definitions of "business entity" and "business representative" so that they apply throughout chs. 440 to 480, stats.

6 SECTION 18. Nonstatutory provisions.

7 (1) INITIAL APPOINTMENTS TO ROOFING ADVISORY COUNCIL.

8 (a) Notwithstanding section 15.407 (7) (a) of the statutes, as created by this act,  
9 the initial members of the roofing advisory council shall be appointed by the first day  
10 of the 3rd month beginning after the effective date of this paragraph for the following  
11 terms:

- 12 1. Two roofing contractor members, for terms expiring on July 1, 2005.
- 13 2. Two roofing contractor members, for terms expiring on July 1, 2006.
- 14 3. Two roofing contractor members and the public member, for terms expiring  
15 on July 1, 2007.

16 (b) Notwithstanding section 15.407 (7) (a) of the statutes, as created by this act,  
17 the roofing contractor members appointed under paragraph (a) are not required to  
18 be licensed at the time of appointment but must have been engaged in performing  
19 roofing contracting services during the 3-year period before the appointment.

\*\*\*\*NOTE: It isn't possible for the initial members of the council to be licensed. The reason is that nobody can be licensed until DRL promulgates rules on insurance, and DRL can't promulgate the rules without submitting them to the council for comment. Therefore, I required instead that the initial members must have 3 years experience as \*

a roofing contractor. You could take a different approach, or require a different length of time for the experience. Please let me know if you want to make any changes.

1           (2) EMERGENCY RULES. ✓ The department of regulation and licensing may use the  
2 procedure under section 227.24 of the statutes to promulgate rules required under  
3 sections 440.992 (1) (d) and (3) ✓ and 440.994 (1) (a) ✓ of the statutes, as created by this  
4 act. Notwithstanding section 227.24 (1) (c) ✓ and (2) ✓ of the statutes, the rules may  
5 remain in effect until the date on which permanent rules take effect.  
6 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) ✓ of the statutes, the department  
7 is not required to provide evidence that promulgating a rule under this ✓ subsection  
8 as an emergency rule is necessary for the preservation of public peace, health, safety,  
9 or welfare and is not required to provide a finding of emergency for a rule  
10 promulgated under this subsection.

\*\*\*\*NOTE: The above allows DRL to promulgate the insurance rules as emergency rules. DRL might need this ability to avoid delays in licensing people that might occur while it promulgates permanent rules.

\*\*\*\*NOTE: I'm assuming that you do not want any "grandfather" provisions that would allow a person who currently performs roofing contracting services to be licensed without meeting all of the bill's requirements. Is that correct?

11           (3) CONTRACTS. ✓ If a person is affected by a contract that is in effect on the  
12 effective date of this subsection and that contains provisions that are inconsistent  
13 with section 440.991 (1) ✓ of the statutes, as created by this act, then, notwithstanding  
14 section 440.991 (1) of the statutes, as created by this act, the person may perform its  
15 obligations, and exercise its rights, under those provisions of the contract until the  
16 contract expires or is extended, modified, or renewed, ✓ whichever occurs first.

\*\*\*\*NOTE: The above language is necessary so that the bill does not unconstitutionally impair contracts for roofing contracting services that are in effect when the bill goes into effect.

17           **SECTION 19. Initial applicability.**



1 (1) STATE AND MUNICIPAL CONTRACTS. The treatment of sections 16.855 (14m) and  
2 66.0901 (2m) of the statutes first applies to contracts entered into on the effective  
3 date of this subsection.

4 (2) HOSPITAL, NURSING HOME, AND PUBLIC BUILDING PLANS. The treatment of  
5 sections 50.02 (2) (b) 1., 50.36 (2) (a), and 101.12 (2) of the statutes first applies to  
6 plans submitted on the effective date of this subsection.

7 (3) BUILDING PERMITS; NURSING HOME APPROVALS. The treatment of sections  
8 101.65 (1) and 150.29 (1) of the statutes first applies to applications submitted on  
9 the effective date of this subsection.

10 SECTION 20. Effective dates. This act takes effect on the first day of the 10th  
11 month beginning after publication, except as follows:

12 (1) SECTION 18 (1) and (2) of the act takes effect on the day after publication.

\*\*\*\*NOTE: I think you need a delayed effective date to give people an opportunity  
to comply with the bill's requirements. The first day of the 10th month after publication  
is approximately 9 months. Is that length of delay okay?

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4144/P1dn

MDK:.....

↑  
jld

Representative Schoof:

Please review this preliminary draft carefully to make sure it achieves your intent. I will prepare a final version after you have reviewed the questions raised in the NOTES that are included in the text.

What do you want to do, if anything, about regulation by cities, villages, towns, and counties? Note that the Illinois law includes a provision that allows local units of government to adopt more stringent requirements than those in the law. I haven't included such a provision in this bill because I am not sure about your intent.

Under current law, cities and villages may use their home rule authority to regulate roofers. If the bill passes, someone could argue that the state has preempted the authority of cities and villages to regulate roofers. However, for that argument to succeed, one would also have to argue that the regulation of roofers is primarily a state concern, but I don't think that is a very convincing argument. Therefore, as drafted, I don't think that the bill affects the authority of cities and villages. ✓

Counties and villages ✓ may act in an area only if a statute specifically authorizes them to do so, or their authority is necessarily implied from a specific grant of authority. I'm not aware of any statutory authority that one could use to imply that counties and villages may regulate roofers. Therefore, I don't think that counties and villages may regulate roofers under current law and, as drafted, the bill does not affect counties and villages.

Please contact me if you want to revise the bill to address the issue of local regulation.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4144/P1dn  
MDK:jld:kjf

January 25, 2002

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4144/P1

MDK:jld:kjf

1  
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By tomorrow  
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2/14

DRAFT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT A

Regenerate

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AN ACT *to renumber* 440.01 (1) (a), 452.01 (3j) and 452.01 (3k); *to amend* 13.48 (19), 16.854 (3), 23.41 (5), 50.02 (2) (b) 1., 50.36 (2) (a), 150.29 (1) and 231.20; and *to create* 15.407 (7), 16.855 (14m), 66.0901 (2m), 101.12 (2m), 101.65 (1s), 440.08 (2) (a) 68b. and subchapter XII of chapter 440 [precedes 440.99] of the statutes; **relating to:** regulating roofing contractors, creating a roofing advisory council, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, granting rule-making authority, and providing penalties.

***Analysis by the Legislative Reference Bureau***

~~This is a preliminary draft. An analysis will be prepared for a subsequent version of the draft.~~

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 13.48 (19) of the statutes, as affected by 2001 Wisconsin Act 16, is  
2 amended to read:

3           13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION. Whenever the building  
4 commission determines that the use of innovative types of design and construction  
5 processes will make better use of the resources and technology available in the  
6 building industry, the building commission may waive any or all of s. 16.855, except  
7 s. 16.855 (14m), if such action is in the best interest of the state and if the waiver is  
8 accomplished through formal action of the building commission. The building  
9 commission may authorize the lease, lease purchase or acquisition of such facilities  
10 constructed in the manner authorized by the building commission. Subject to the  
11 requirements of s. 20.924 (1) (i), the building commission may also authorize the  
12 lease, lease purchase or acquisition of existing facilities in lieu of state construction  
13 of any project enumerated in the authorized state building program.

14           **SECTION 2.** 15.407 (7) of the statutes is created to read:

15           15.407 (7) ROOFING ADVISORY COUNCIL. (a) There is created a roofing advisory  
16 council in the department of regulation and licensing and serving the department in  
17 an advisory capacity. The council shall consist of the following members appointed  
18 for 4-year terms:

- 19           1. Six persons licensed under subch. XII of ch. 440.  
20           2. One public member.

21           (b) The members appointed under par. (a) 1. shall be appointed to provide  
22 geographic diversity to the council.

23           \*\*\*NOTE: Under this bill, the governor appoints members to the council. Is that  
okay? Alternatively, you could have the secretary of DRL appoint the members.

**SECTION 3.** 16.854 (3) of the statutes is amended to read:

Delete all \*\*\* NOTES

1           16.854 (3) It shall be a goal of the department, with regard to each of the  
2 contracts described under sub. (2) (a), (b) and (c), to award at least 25% of the dollar  
3 value of such contracts to minority businesses and at least 5% of the dollar value of  
4 such contracts to women's businesses. Sections 16.85, and 16.855, except s. 16.855  
5 (14m), and s. 16.87 do not apply to services provided or contracted by the department  
6 under this section.

7           **SECTION 4.** 16.855 (14m) of the statutes is created to read:

8           16.855 (14m) The department may not enter into any contract for roofing  
9 contracting services, as defined in s. 440.99 (1), unless the contract provides that  
10 those services will be provided by a person who is licensed under subch. XII of ch. 440  
11 or is exempt from licensure under that subchapter.

12           **SECTION 5.** 23.41 (5) of the statutes, as affected by 2001 Wisconsin Act 16, is  
13 amended to read:

14           23.41 (5) Each contract for construction work entered into by the department  
15 under this section shall be awarded on the basis of bids or competitive sealed  
16 proposals in accordance with procedures established by the department. Each  
17 contract for construction work shall be awarded to the lowest responsible bidder or  
18 the person submitting the most advantageous competitive sealed proposal as  
19 determined by the department. If the bid of the lowest responsible bidder or the  
20 proposal of the person submitting the most advantageous competitive sealed  
21 proposal is determined by the department to be in excess of the estimated reasonable  
22 value of the work or not in the public interest, the department may reject all bids or  
23 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to  
24 16.75, 16.755, 16.76, 16.767 to 16.82, and 16.855, except s. 16.855 (14m), and from  
25 ss. 16.87 and 16.89, but ss. 16.528, 16.754 and 16.765 apply to the contract. Every

1 such contract involving an expenditure of more than \$60,000 is not valid until the  
2 contract is approved by the governor.

3 **SECTION 6.** 50.02 (2) (b) 1. of the statutes is amended to read:

4 50.02 (2) (b) 1. The department shall conduct plan reviews of all capital  
5 construction and remodeling of nursing homes to ensure that the plans comply with  
6 building code requirements under ch. 101 and with life safety code and physical plant  
7 requirements under s. 49.498, this chapter or under rules promulgated under this  
8 chapter. If the plans involve the performance of roofing contracting services, as  
9 defined in s. 440.99 (1), construction or remodeling may not commence unless the  
10 applicant submits with the plans evidence satisfactory to the department that those  
11 services will be performed by a person who is licensed under subch. XII of ch. 440 or  
12 is exempt from licensure under that subchapter.

13 **SECTION 7.** 50.36 (2) (a) of the statutes is amended to read:

14 50.36 (2) (a) The department shall conduct plan reviews of all capital  
15 construction and remodeling projects of hospitals to ensure that the plans comply  
16 with building code requirements under ch. 101 and with physical plant requirements  
17 under this chapter or under rules promulgated under this chapter. If the plans  
18 involve the performance of roofing contracting services, as defined in s. 440.99 (1),  
19 construction or remodeling may not commence unless the applicant submits with the  
20 plans evidence satisfactory to the department that those services will be performed  
21 by a person who is licensed under subch. XII of ch. 440 or is exempt from licensure  
22 under that subchapter.

23 **SECTION 8.** 66.0901 (2m) of the statutes is created to read:

24 66.0901 (2m) ROOFING CONTRACTING SERVICES. A municipality may not enter  
25 into a public contract for roofing contracting services, as defined in s. 440.99 (1),

1 unless the contract provides that those services will be performed by a person who  
2 is licensed under subch. XII of ch. 440 or is exempt from licensure under that  
3 subchapter.

\*\*\*\*NOTE: A county is also subject to the above requirement, but only if the  
estimated cost of the contract exceeds \$25,000. See s. 59.52 (29), stats. I think the  
\$25,000 threshold would cover most roofing projects, but if you want any changes, please  
let me know.

4 **SECTION 9.** 101.12 (2m) of the statutes is created to read:

5 101.12 (2m) If the plans specified in sub. (2) involve the performance of roofing  
6 contracting services, as defined in s. 440.99 (1), construction may not commence  
7 unless the designer or owner submits with the plans evidence satisfactory to the  
8 department that those services will be performed by a person who is licensed under  
9 subch. XII of ch. 440 or is exempt from licensure under that subchapter.

10 **SECTION 10.** 101.65 (1s) of the statutes is created to read:

11 101.65 (1s) May not issue a building permit unless the applicant provides  
12 evidence satisfactory to the city, village, town, or county that all roofing contracting  
13 services, as defined in s. 440.99 (1), will be performed by a person who is licensed  
14 under subch. XII of ch. 440 or is exempt from licensure under that subchapter.

15 **SECTION 11.** 150.29 (1) of the statutes is amended to read:

16 150.29 (1) No person may enter into an obligation for a project described in s.  
17 150.21 or engage in activities described in that section without the department's  
18 prior approval. If the project involves the performance of roofing contracting  
19 services, as defined in s. 440.99 (1), the department may not approve the project  
20 unless the applicant submits evidence satisfactory to the department that those  
21 services will be performed by a person who is licensed under subch. XII of ch. 440 or  
22 is exempt from licensure under that subchapter.

23 **SECTION 12.** 231.20 of the statutes is amended to read:





1 “Roofing contracting services” do not include the installation of plastics, glass, or  
2 fiberglass to greenhouses and other horticultural structures.

~~\*\*\*NOTE: The Illinois law also applies to waterproofing, but I understand that you  
do not want to include waterproofing~~

3 (2) “Roofing contractor” means a person who performs roofing contracting  
4 services.

5 **440.991 License required.** (1) Except as provided in sub. (2), no person may  
6 perform roofing contracting services or use the title “roofing contractor” or any other  
7 title or description that represents that the person is a roofing contractor unless the  
8 person is licensed under this subchapter.

9 (2) This subchapter does not require a license for any of the following:

10 (a) A person who sells roofing materials.

11 (b) A person who provides roofing contracting services if the services are not  
12 performed by the person or the person’s employees.

13 (c) A person who performs roofing contracting services without compensation.

14 (d) An employee who performs roofing contracting services for an employer who  
15 is licensed under this subchapter.

16 **440.992 Licensure requirements; renewal.** (1) The department shall issue  
17 a license under this subchapter to a person who does all of the following:

18 (a) Submits an application for the license to the department on a form provided  
19 by the department.

20 (b) Pays the fee specified in s. 440.05 (1).

21 (c) If the person is a business entity, submits a statement to the department  
22 that the person is legally qualified to act on behalf of the business entity and  
23 identifies to the department the business representatives of the business entity and

1 the business representatives who are responsible for supervising roofing contracting  
2 services performed by the business entity.

*Handwritten:* \*\*\*\*NOTE: The Illinois law requires the applicant for the license to be the person who supervises roofing contracting services. I took a different approach and require the applicant to identify such persons. Is that okay?

3 (d) Submits evidence satisfactory to the department that the person has in  
4 effect public liability and property damage insurance in amounts specified in rules  
5 promulgated by the department.

6 (e) Submits evidence satisfactory to the department that the person has  
7 worker's compensation insurance or is exempted from the requirement to have such  
8 insurance by the department of workforce development under s. 102.28 (2) (b) or (3).

9 (f) Executes and files with the department a bond in the amount of \$5,000.

*Handwritten:* \*\*\*\*NOTE: The Illinois law also requires an applicant to submit its Illinois unemployment identification number. Wisconsin does not have such a number.

*Handwritten:* \*\*\*\*NOTE: Like the Illinois law, this bill does not require an applicant to show that he or she is competent to perform roofing contracting services. Is that okay?

*Handwritten:* \*\*\*\*NOTE: The Illinois law also requires a licensee to notify the licensing agency about any changes in the licensee's name, address, etc. It's not necessary to include such a requirement in this bill because current law already has such a requirement. See s. 440.11, stats.

10 (2) The department shall assign a license number to each license issued under  
11 this subchapter.

12 (3) The renewal dates for licenses issued under this subchapter are specified  
13 under s. 440.08 (2) (a). Renewal applications shall be submitted to the department  
14 on a form provided by the department and shall include the renewal fee specified in  
15 s. 440.08 (2) (a) and evidence satisfactory to the department that the applicant has  
16 in effect public liability and property damage insurance in amounts specified in rules  
17 promulgated by the department.

*Handwritten:* \*\*\*\*NOTE: I added the requirement about submitting proof of insurance because there are comparable requirements for renewing other licenses issued by boards in DRL.

*Handwritten:* INSERT 8-10

1           **440.993 Display of license and license number.** A person who is issued a  
2 license under this subchapter must conspicuously display the license at the person's  
3 principal place of business, affix the license number to all bids and contracts for  
4 roofing contracting services, display the license number on all vehicles used by  
5 person in performing roofing contracting services, and include the license number  
6 in all advertisements for roofing contracting services.

\*\*\*\*NOTE: The Illinois law also requires a license number to be "included" in advertising. However, I'm not sure how the requirement applies to radio or television advertising. For example, does a radio spot have to mention the number? You could eliminate the confusion by revising the requirement so that it only applies to printed advertising. Please let me know if you want to make this change.

\*\*\*\*NOTE: The Illinois law also provides that "nothing [in the above requirement] requires the publisher of advertising for roofing contractor services to investigate or verify the accuracy of the license number provided by the licensee." I didn't include this language because I don't think it's necessary.

7           **440.994 Rule making.** (1) The department shall promulgate rules for each  
8 of the following:

9           (a) Specifying the minimum amounts of public liability and property damage  
10 insurance that a person licensed under this subchapter is required to have in effect.

11           (b) Establishing a code of ethics governing the performance of roofing  
12 contracting services by persons licensed under this subchapter.

13           (2) Before submitting any proposed rules relating to the regulation of roofing  
14 contracting services to the legislative council staff under s. 227.15, the department  
15 shall submit the proposed rules to the roofing advisory council for comment. The  
16 council shall have 30 days to submit comments on the proposed rules to the secretary.

17           (3) When promulgating emergency rules under s. 227.24, the department shall  
18 provide a copy of the rules to the roofing advisory council prior to publication of the  
19 rules in the official state newspaper.

1           (4) The chairperson of the roofing advisory council, or his or her designee from  
2 the council, may cochair with the secretary, or the secretary's designee, any public  
3 hearing held by the department on proposed rules relating to the regulation of  
4 roofing contracting services.

5           (5) The department shall submit to the roofing advisory council a copy of the  
6 report required under s. 227.19 (2) on any proposed final rules relating to the  
7 regulation of roofing contracting services. The council may prepare a dissenting  
8 report stating its recommendations on the proposed final rules. Any dissenting  
9 report shall be prepared within 10 days from the date of receipt of the department's  
10 report, be attached to the department's report, and be sent to the presiding officer of  
11 each house of the legislature and distributed under s. 227.19 (2). The department  
12 shall cause a statement to appear in the Wisconsin Administrative Register to the  
13 effect that a dissenting report of the council has been submitted to the presiding  
14 officer of each house of the legislature.

15           (6) The roofing advisory council may petition the department under s. 227.12  
16 for the adoption, amendment, or repeal of rules relating to the regulation of roofing  
17 contracting services. This subsection does not limit the rights of other persons to  
18 petition the department under s. 227.12.

*NOTE: The above requirements are based on s. 452.07, stats., which applies to  
the relationship between DRL and the real estate board.*

19           **440.995 Public record exception.** The department shall withhold from  
20 public inspection any financial information submitted by a person licensed under  
21 this subchapter.

22           **440.996 Disciplinary proceedings and actions.** (1) Subject to the rules  
23 promulgated under s. 440.03 (1), the department may make investigations and

1 conduct hearings to determine whether a violation of this subchapter or any rule  
2 promulgated under this subchapter has occurred.

3 (2) Subject to the rules promulgated under s. 440.03 (1), the department may  
4 reprimand a licensee or deny, limit, suspend, or revoke a license issued under this  
5 subchapter if it finds that the applicant or licensee has done any of the following:

6 (a) Made a material misstatement in an application for a license or for renewal  
7 of a license or in any information submitted to the department.

8 (b) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an offense the  
9 circumstances of which substantially relate to the performance of roofing contracting  
10 services.

11 (c) Advertised in a manner that is false, deceptive, or misleading.

12 (d) Advertised, practiced, or attempted to practice under another's name.

13 (e) Subject to ss. 111.321, 111.322 and 111.34, performed roofing contracting  
14 services while his or her ability to practice was impaired by alcohol or other drugs  
15 or physical or mental disability or disease.

16 (f) Engaged in unprofessional or unethical conduct in violation of the code of  
17 ethics established in the rules promulgated under s. 440.994 (1) (b).

\*\*\*NOTE: The Illinois law does not define what constitutes unethical or  
unprofessional conduct. This bill, like other Wisconsin statutes, requires DRL to  
promulgate rules establishing a code of ethics.

18 (g) Committed gross negligence or misconduct, or acted in a grossly  
19 incompetent manner, in performing roofing contracting services.

\*\*\*NOTE: The above language is based on s. 440.968 (1) (b) stats. The Illinois law  
also includes gross malpractice, but I think the references to negligence and misconduct  
are sufficient to cover malpractice.

20 (h) Been disciplined in another jurisdiction on grounds that are substantially  
21 similar to grounds specified in this subsection.

1 (i) Received compensation for roofing contracting services that were not  
2 performed.

\*\*\*NOTE: The Illinois law also prohibits giving compensation for services that are not performed. However, I don't understand the rationale for such a prohibition, so I didn't include it.

3 (j) Grossly and knowingly overcharged for roofing contracting services or filed  
4 false statements for obtaining compensation for roofing contracting services that  
5 were not performed.

6 (k) Been adjudicated mentally incompetent by a court.

7 (L) Violated this subchapter or any rule promulgated under this subchapter or  
8 aided another person in violating this subchapter or any rule promulgated under this  
9 subchapter.

\*\*\*NOTE: The Illinois law also includes tax delinquency as a grounds for discipline. Such a provision is not necessary in this bill because it is already covered under s. 440.12, stats., which applies to any license issued by DRL or a board in DRL.

\*\*\*NOTE: The Illinois law also includes defaults on student loans as grounds for discipline. No other professional licensing statute under Wisconsin law has such grounds. Therefore, I did not include it here. Please let me know if you want to include it.

\*\*\*NOTE: The Illinois law also includes violating a term of a probationary license as a grounds for discipline. However, the Wisconsin professional licensing statutes don't provide for probationary licenses, so I did not include them in this bill.

10 (3) The department may summarily suspend a license issued under this  
11 subchapter for a period not to exceed 30 days pending hearing if the department has  
12 in its possession evidence establishing probable cause to believe that the licensee has  
13 violated this subchapter or a rule promulgated under this subchapter and that it is  
14 necessary to suspend the license immediately to protect the public health, safety, or  
15 welfare. The licensee shall be granted an opportunity to be heard during the  
16 determination of whether or not probable cause exists. The department may  
17 designate any of its officers to exercise the authority granted by this subsection to  
18 suspend summarily a license, for a period not exceeding 72 hours. If a license has

1 been summarily suspended by the department or any of its officers, the department  
2 may, while the hearing is in progress, extend the initial period of suspension for not  
3 more than an additional 30 days. If the licensee has caused a delay in the hearing  
4 process, the department may subsequently suspend the license from the time that  
5 the hearing is commenced until a final decision is issued or may delegate such  
6 authority to the hearing examiner.

\*\*\*NOTE: The above language is based on s. 448.675 (2), stats.

7 **440.997 Injunctive relief.** If the department has reason to believe that any  
8 person is violating this subchapter or any rule promulgated under this subchapter,  
9 the department, the attorney general, or the district attorney of the proper county  
10 may investigate and may, in addition to any other remedies, bring an action in the  
11 name and on behalf of this state to enjoin the person from the violation.

12 **440.998 Private cause of action.** A person who is aggrieved by a violation  
13 of this subchapter or a rule promulgated under this subchapter may bring an action  
14 to enjoin further or continuing violations or to recover actual damages sustained as  
15 a result of a violation. In an action under this section, the court shall award costs  
16 and reasonable attorney fees, notwithstanding s. 814.04 (1), to a party who obtains  
17 injunctive relief or an award of damages.

\*\*\*\*NOTE: The Illinois law creates a private cause of action for a person who is  
injured by an unlicensed roofing contractor. The above language is broader, because it  
also applies to injuries by licensed roofing contractors who commit other violations of the  
bill. I'm not sure why the Illinois law is so limited, but if you want me to change the above  
language, please let me know.

18 **440.999 Penalties. (1)** A person who violates this subchapter or a rule  
19 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned  
20 for not more than 9 months or both. Each day of violation constitutes a separate  
21 offense.



\*\*\*\*NOTE: The amount of the fine is the same as under the Illinois law. The Illinois law is less specific regarding the length of imprisonment. A first-time violator may be imprisoned from 6 months to a year, and a 2nd-time violator may be imprisoned for more than a year. Is the 9 months okay?

1 (2) In addition to or in lieu of the penalties under sub. (1), the department may  
2 directly assess against a person who violates s. 440.991 (1) a forfeiture of not more  
3 than \$5,000.

4 SECTION 16. 452.01 (3j) of the statutes is renumbered 440.01 (1) (ae).

5 SECTION 17. 452.01 (3k) of the statutes is renumbered 440.01 (1) (ag).

\*\*\*\*NOTE: The above 2 SECTIONS move the definitions of "business entity" and  
"business representative" so that they apply throughout chs. 440 to 480, stats.

6 SECTION 18. Nonstatutory provisions.

7 (1) INITIAL APPOINTMENTS TO ROOFING ADVISORY COUNCIL.

8 (a) Notwithstanding section 15.407 (7) (a) of the statutes, as created by this act,  
9 the initial members of the roofing advisory council shall be appointed by the first day  
10 of the 3rd month beginning after the effective date of this paragraph for the following  
11 terms:

- 12 1. Two roofing contractor members, for terms expiring on July 1, 2005.
- 13 2. Two roofing contractor members, for terms expiring on July 1, 2006.
- 14 3. Two roofing contractor members and the public member, for terms expiring  
15 on July 1, 2007.

16 (b) Notwithstanding section 15.407 (7) (a) of the statutes, as created by this act,  
17 the roofing contractor members appointed under paragraph (a) are not required to  
18 be licensed at the time of appointment but must have been engaged in performing  
19 roofing contracting services during the <sup>5</sup>2-year period before the appointment.

\*\*\*\*NOTE: It isn't possible for the initial members of the council to be licensed. The  
reason is that nobody can be licensed until DRL promulgates rules on insurance, and DRL  
can't promulgate the rules without submitting them to the council for comment.  
Therefore, I required instead that the initial members must have 3 years' experience as

*[Handwritten signature]*  
a roofing contractor. You could take a different approach, or require a different length of time for the experience. Please let me know if you want to make any changes.

1           (2) EMERGENCY RULES. The department of regulation and licensing may use the  
2 procedure under section 227.24 of the statutes to promulgate rules required under  
3 sections 440.992 (1) (d) and (3) and 440.994 (1) (a) of the statutes, as created by this  
4 act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the rules may  
5 remain in effect until the date on which permanent rules take effect.  
6 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department  
7 is not required to provide evidence that promulgating a rule under this subsection  
8 as an emergency rule is necessary for the preservation of public peace, health, safety,  
9 or welfare and is not required to provide a finding of emergency for a rule  
10 promulgated under this subsection.

*[Handwritten signature]*  
\*\*\*NOTE: The above allows DRL to promulgate the insurance rules as emergency rules. DRL might need this ability to avoid delays in licensing people that might occur while it promulgates permanent rules.

*[Handwritten signature]*  
\*\*\*NOTE: I'm assuming that you do not want any "grandfather" provisions that would allow a person who currently performs roofing contracting services to be licensed without meeting all of the bill's requirements. Is that correct?

11           (3) CONTRACTS. If a person is affected by a contract that is in effect on the  
12 effective date of this subsection and that contains provisions that are inconsistent  
13 with section 440.991 (1) of the statutes, as created by this act, then, notwithstanding  
14 section 440.991 (1) of the statutes, as created by this act, the person may perform its  
15 obligations, and exercise its rights, under those provisions of the contract until the  
16 contract expires or is extended, modified, or renewed, whichever occurs first.

*[Handwritten signature]*  
\*\*\*NOTE: The above language is necessary so that the bill does not unconstitutionally impair contracts for roofing contracting services that are in effect when the bill goes into effect.

17           **SECTION 19. Initial applicability.**

1 (1) STATE AND MUNICIPAL CONTRACTS. The treatment of sections 16.855 (14m) and  
2 66.0901 (2m) of the statutes first applies to contracts entered into on the effective  
3 date of this subsection.

4 (2) HOSPITAL, NURSING HOME, AND PUBLIC BUILDING PLANS. The treatment of  
5 sections 50.02 (2) (b) 1., 50.36 (2) (a), and 101.12 (2m) of the statutes first applies to  
6 plans submitted on the effective date of this subsection.

7 (3) BUILDING PERMITS; NURSING HOME APPROVALS. The treatment of sections  
8 101.65 (1s) and 150.29 (1) of the statutes first applies to applications submitted on  
9 the effective date of this subsection.

10 **SECTION 20. Effective dates.** This act takes effect on the first day of the 10th  
11 month beginning after publication, except as follows:

12 (1) SECTION 18 (1) and (2) of this act takes effect on the day after publication.

13 *\*\*\*\*NOTE: I think you need a delayed effective date to give people an opportunity  
to comply with the bill's requirements. The first day of the 10th month after publication  
is approximately 9 months. Is that length of delay okay?*

(END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4144/lins  
MDK.....

1

INSERT A:

Under this bill, with certain exceptions, a person may not perform roofing contracting services, or use the title "roofing contractor" or a similar title, unless the department of regulation and licensing (DRL) has issued a license to the person. "Roofing contracting services" are defined as the construction, reconstruction, alteration, maintenance, or repair of roofs, except for roofs of farm buildings. In addition, "roofing contracting services" are defined not to include the installation of plastics, glass, or fiberglass to greenhouses or other horticultural structures. The following persons are exempt from the licensure requirement: 1) a seller of roofing materials; 2) a person who provides roofing contracting services, if the services are not performed by the person or the person's employees; 3) a person who performs roofing contracting services without compensation; and 4) an employee of an employer who is licensed.

An applicant for a license must satisfy certain requirements, including passing an examination approved by DRL that tests competency to perform roofing contracting services. The examination must also test knowledge of lien laws and safety requirements. An applicant must also submit evidence to DRL that the applicant has in effect public liability and property damage insurance in amounts specified in rules promulgated by DRL. Also, an applicant must submit evidence that the applicant either has worker's compensation insurance or is exempt from the requirement to have insurance by the department of workforce development. In addition, an applicant must file a \$5,000 bond with DRL.

DRL must assign a unique license number to each license that it issues. A licensee must conspicuously display the license at the licensee's principal place of business, and must affix the license number to all bids and contracts, display the license number on all vehicles used for performing roofing contracting services, and include the license number in all advertisements. A licensee must also renew the license every ~~one~~<sup>two</sup> years.

The bill allows DRL to take disciplinary action, including revoking or suspending a license, against a person who violates the bill's requirements, including engaging in unprofessional or unethical conduct in violation of a code of ethics established in rules promulgated by DRL. Other grounds for discipline include advertising in a false, deceptive, or misleading manner, committing gross negligence or misconduct, receiving compensation for roofing contracting services that were not performed, and grossly and knowingly overcharging for roofing contracting services. The bill also allows DRL to summarily suspend a license for up to 30 days if DRL has probable cause to believe that a violation of the bill's requirements has occurred and the suspension is necessary to protect the public health, safety, or welfare. A person who violates the bill's requirements may be fined not more than \$1,000, imprisoned for not more than ~~one~~<sup>nine</sup> months, or both. In addition, DRL may directly assess a forfeiture of not more than \$5,000 against an unlicensed person who performs roofing contracting services or uses a prohibited title.

The bill also creates a roofing advisory council consisting of <sup>Six</sup> licensees and one public member. DRL must obtain comments from the council when DRL promulgates rules under the bill. In addition, the council is allowed to petition DRL for the adoption, amendment, or repeal of rules relating to the regulation of roofing contracting services.

Finally, the bill also does all of the following:

1. Allows a person who is aggrieved by a violation of the bill's requirements to bring an action to enjoin the violation or to recover actual damages sustained as a result of the violation.

2. Prohibits the department of administration and municipalities from entering into contracts for roofing contracting services unless the contract provides that the services will be performed by a licensee or a person exempt from licensure.

3. Prohibits the construction of hospitals, nursing homes, and public buildings that are subject to plan review by the department of health and family services or the department of commerce unless the applicant submits satisfactory evidence that any roofing contracting services will be performed by a licensee or a person exempt from licensure.

4. Prohibits cities, villages, towns, and counties from issuing building permits unless the applicant provides satisfactory evidence that any roofing contracting services will be performed by a licensee or a person exempt from licensure.

**INSERT 8-10:**

1  
2  
3  
4

(g) Passes an examination approved by the department, with the advice of the roofing advisory council, that tests competency to perform roofing contracting services, including knowledge of lien laws and safety requirements.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4144/1dn  
MDK. *hmk*

*Date*

Representative Schooff:

This version is identical to the previous version, except for the following:

1. This version contains an analysis.
2. An applicant for a license must pass an examination approved by DRL. ✓
3. The initial members of the council must have 5, not 3, years experience.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4144/1dn  
MDK:hnh:rs

February 14, 2002

Representative Schooff:

This version is identical to the previous version, except for the following:

1. This version contains an analysis.
2. An applicant for a license must pass an examination approved by DRL.
3. The initial members of the council must have 5, not 3, years experience.

Mark D. Kunkel  
Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.state.wi.us

**Beam, Laura**

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**From:** Beam, Laura  
**Sent:** Friday, February 15, 2002 2:11 PM  
**To:** Rep.Schooff  
**Subject:** LRB-4144/1 (ATTACHED AS REQUESTED)



01-4144/1



**Beam, Laura**

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**From:** Plona, Katie  
**Sent:** Monday, February 25, 2002 11:54 AM  
**To:** LRB.Legal  
**Subject:** LRB 4144

I am writing to request a jacketed copy of LRB 4144 be sent to Rep. Schooff's Office this afternoon. 420-North

I thank you,

Katie  
Rep. Schooff's Office  
6-9967