



Legislative Fiscal Bureau

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January 30, 2008

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 194: Regulation of Thermal System Insulation Mechanics and Installation

Senate Bill 194 would require the Department of Commerce to regulate the business of installing and maintaining thermal system insulation in commercial and industrial buildings and residential buildings that contain four or more residential units, establish licensing and continuing education requirements for thermal system mechanics, require the employment of a state inspector, create a Thermal System Insulation Council, and make other changes related to thermal system insulation. Thermal system insulation would be defined as a product used in a heating, ventilating, cooling, plumbing, or refrigeration system to insulate any hot or cold surface, including a pipe, duct, valve, boiler, flue, or tank, or equipment on or in a building.

SB 194 was introduced on May 31, 2007, and referred to the Senate Committee on Labor, Elections and Urban Affairs. On December 4, 2007, the Committee on Labor, Elections and Urban Affairs took executive action to recommend adoption of Senate Substitute Amendment 2 by a vote of 5-0, and to recommend passage as amended by a vote of 4-1. On January 9, 2008, SB 194 was referred to the Joint Committee on Finance.

This memorandum summarizes SSA 2 to SB 194, and refers to the substitute amendment as "the bill."

CURRENT LAW

Currently, the Department of Commerce (Commerce) promulgates administrative rules for building codes that promote safety in public buildings and places of employment and the subsystems in those buildings. The Commerce Safety and Buildings Division issues licenses, permits, registrations, and other credentials to persons engaged in various construction trades, such as electricians and plumbers. A public building includes any structure used for lodging, trade, traffic, occupancy, or use by the public or by three or more tenants. A place of employment

includes any place where any industry, trade, or business is carried on, and where any person is employed by another (but does not include private domestic service). The Commerce Safety and Buildings Division activities are funded primarily from a program revenue appropriation which receives the license, permit, and registration fees.

SUMMARY OF SUBSTITUTE AMENDMENT

Regulation of Installation of Thermal Insulation and Mechanics

Commerce would be required to promulgate administrative rules establishing standards for the installation and maintenance of thermal system insulation in buildings. The Department would be required to base the standards, to the extent possible, on national industry standards for installing and maintaining thermal system insulation. For purposes of thermal system insulation regulation, buildings would include commercial, industrial, or residential buildings, structures, or facilities, as defined by Commerce by administrative rule, but would not include a residential building, structure, or facility that contains three or fewer residential units.

Commerce would be required to promulgate administrative rules establishing requirements for licensing of thermal system insulation mechanics, license fees, a definition of minor repairs, and training and continuing education requirements. A mechanic would mean a person who installs or maintains thermal system insulation in heating, ventilating, cooling, plumbing, and refrigeration systems. A person who makes only minor repairs to thermal system insulation would not be required to obtain a license.

Beginning four years after the effective date of the bill (the first day of the 48th month), a person could only install or maintain thermal system insulation in a building if the person is a mechanic licensed by Commerce, is working under the direct supervision of a licensed mechanic, or is serving an apprenticeship in the installation and maintenance of thermal system insulation that meets the statutory apprenticeship program requirements administered by the Department of Workforce Development.

Commerce could only issue a license to a mechanic if the mechanic demonstrates, in a manner satisfactory to the Department, that he or she has met the requirements established in Commerce rule, and either of the following requirements: (a) he or she has at least 1,000 hours of experience in each of four consecutive years installing and maintaining thermal system insulation under the supervision of a licensed mechanic and has passed an examination approved by Commerce; or (b) he or she has successfully completed an apprenticeship program in installing and maintaining thermal system insulation that is approved by Commerce and meets the requirements of the Department of Workforce Development. Commerce would be authorized to waive either of these requirements, or a portion of these requirements, for any person with experience installing or maintaining thermal system insulation if satisfactory evidence is submitted to the Department that the person is qualified for a license. Commerce would also be authorized to waive a licensing requirement for a person who is licensed as a mechanic in another state in which the standards for licensure are at least as strict as the requirements in Wisconsin.

A license issued to a mechanic would have a term of two years and would be renewable. The rules would have to establish a license fee of not less than \$250 and not more than \$1,000 for each license period. The license fees would be deposited in the Safety and Buildings PR operations appropriation.

Commerce could only renew a license issued to a mechanic if the mechanic submits a certificate to the Department that demonstrates that the mechanic has attended and successfully completed, during the previous license period, a continuing education course approved by Commerce, after consultation with the Thermal System Insulation Council. Commerce would be authorized to promulgate rules establishing standards and procedures for the issuance of temporary and emergency licenses for mechanics, for a term of 30 days.

Thermal System Insulation Council

The bill would create a Thermal System Insulation Council attached to Commerce consisting of the state thermal system insulation inspector created in the bill, who would serve as a nonvoting secretary of the Council, and the following seven voting members: (a) the Secretary of Commerce or his or her designee; (b) two members who represent major insulation companies; (c) one member who is an architect licensed to do business in Wisconsin with work experience in the area of indoor air quality; (d) two members who are mechanics with at least ten years of experience in the area of heat and frost insulation; and (e) one member who is a general contractor in Wisconsin.

The Governor would appoint the six members who are not the Secretary of Commerce for three-year terms. However, two of the initial members would be appointed for a term that expires on July 1, 2010, two would be appointed for a term that expires on July 1, 2011, and two would be appointed for a term that expires on July 1, 2012. The bill does not specify which of the six initial members would be appointed for each of the three term expiration dates.

The Council would be required to make recommendations to Commerce related to all of the following: (a) rules establishing standards for the installation and maintenance of thermal system insulation in buildings; (b) requirements for the licensure of thermal system mechanics and circumstances under which Commerce may take disciplinary action against a mechanic including suspension and revocation of a license; (c) qualifications for the state inspector; and (d) training and continuing education requirements for mechanics. The Council would be authorized, but not required, to consult with engineering authorities and other organizations concerned with safety and health issues related to thermal system insulation and mold in performing its duties.

State Thermal System Insulation Inspector

Under the bill, Commerce would be required to employ a state thermal system insulation inspector who has at least 10 years of experience as a thermal system insulation mechanic, and who has successfully completed a four-year apprenticeship program in installing and maintaining thermal system insulation. The state inspector would work under the direct supervision of the Secretary of Commerce or his or her designee.

The state thermal system insulation inspector would be required to do all of the following: (a) inspect buildings constructed, or in which the mechanical systems have been altered, on or after the first day of the 19th month beginning after the effective date of the bill, to determine whether the installation or maintenance of thermal system installation in those buildings complies with standards established in Commerce rules under the bill; (b) conduct the inspections on a random basis and whenever requested to do so by a local building inspector; (c) provide assistance and information to local building inspectors who inspect buildings for compliance with the Commerce rules; (d) keep complete and accurate records of all inspected buildings including a list of all buildings that are in compliance with the Commerce rules, a list all buildings that are not in compliance, and a list of all orders that the state inspector issues under the authority provided under the bill; and (e) give written notice of noncompliance to the owner of every building that the state inspector determines does not comply with the Commerce rules. The state inspector would be authorized to issue a written order requiring the owner of a building to make repairs or alterations that the state inspector determines are necessary for the building to comply with the standards established in Commerce rules.

The bill would authorize 1.0 PR position in Commerce for the state thermal system inspector and provide \$78,100 PR in each of 2007-08 and 2008-09 for salary and associated costs. The program revenue would be provided from the Safety and Buildings Division PR operations appropriation, into which the fees collected under the bill would be deposited.

Penalties

The bill would prohibit persons from: (a) making a false statement of material fact in an application for the issuance or renewal of a license for a thermal system mechanic; and (b) engaging in fraud, misrepresentation, or bribery in order to obtain a license under the bill.

A person who violates the provisions of the bill or who fails to comply with an order issued by the state thermal system insulation inspector would be subject to a forfeiture of not less than \$2,000 nor more than \$5,000 for each violation. Commerce would be authorized to directly assess the forfeiture by issuing an order against the person who violates the provisions or fails to comply with an order by the state inspector. Commerce would remit the forfeitures received by the Department under the bill to the Department of Administration for deposit in the common school fund. All forfeitures not paid to Commerce as required under the bill would accrue interest at 12% per year. The Attorney General would be authorized to bring an action to collect any forfeiture imposed by Commerce, or interest accrued, if the forfeiture or interest is not paid after the exhaustion of all administrative and judicial reviews.

FISCAL EFFECT

SB 194 would generate workload for Commerce staff in the Safety and Buildings Division program revenue (PR) administrative appropriation. The bill would also generate fee revenue from license fees received from thermal system insulation mechanics, and the fees would be deposited in the PR appropriation. Revenues deposited in the safety and buildings appropriation are provided

from several plan review and inspection activities related to construction such as commercial buildings, multi-family and manufactured dwellings, plumbing, private sewage systems, electrical and heating systems, and elevators.

Commerce submitted a fiscal estimate based on the original bill. Several aspects of the original fiscal effect changed in the substitute amendment that was referred to the Joint Committee on Finance. Commerce officials recently indicated that the substitute amendment would result in estimated costs of \$78,100 PR for 1.0 PR position, annualized revenue of \$125,000 PR, and one-time costs of \$26,500 for rule promulgation.

While SB 194, as introduced, provided Commerce with 1.0 GPR position (but no expenditure authority) for the state thermal system insulation inspector, the substitute amendment removes the GPR costs. The substitute amendment provides a PR position instead of a GPR position, and provides expenditure authority of \$78,100 PR in each of 2007-08 and 2008-09 for the inspector. While the bill provides 12 months of expenditure authority for the position in both years of the biennium, it is unlikely that the inspector would be hired before the summer of 2008, and, thus, Commerce may not need any of the expenditure authority provided in 2007-08. Commerce may need the position authority in 2007-08 in order to begin the hiring process when the bill becomes effective. Any of the expenditure authority provided in 2007-08 for the position but not used would lapse to the PR appropriation or be available for other expenditures from the appropriation. The Joint Committee on Finance could consider amending the bill to delete the \$78,100 in expenditure authority in 2007-08, but could retain the position authority in 2007-08 so Commerce could begin the hiring process.

The original Commerce fiscal estimate was based on an estimate of licensure of 6,000 mechanics and 2,000 contractors with total annual program revenue of approximately \$1,000,000 and staff costs of \$26,200 PR and 0.5 position to administer licensing requirements (in addition to the inspector position). Commerce officials have recently indicated that the substitute amendment would result in lower revenues of approximately \$125,000 PR annually based on licensure of approximately 1,000 mechanics and no contractors. The substitute amendment removes the licensure of contractors from the original bill and includes an exception to the licensing requirements for persons who make only minor repairs to thermal system insulation. (Commerce would define "minor repairs" in administrative rule.) Commerce officials also indicate that the original estimate of staff costs for administering the licensing requirements would not be needed under the substitute amendment, but would be absorbed within current resources.

Finally, Commerce originally estimated that one-time costs would equal approximately \$26,500 for 300 hours of staff time to promulgate administrative rules required under the bill. This workload would remain under the substitute amendment. The substitute amendment does not provide expenditure authority for this purpose. Thus, Commerce would have to reallocate resources from current plan review, inspection and certification, and rule promulgation activities to rule promulgation activities required by the substitute amendment.

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