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May 23, 2022

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

Re: Written Comment for the following proposed Skilled Trades rules:

Skilled Trades (ORR# 2019-101 LR)

Plumbing Board (ORR# 2019-106 LR)

Electrical Administrative Board (ORR# 2019-110 LR)

Boiler Rules (ORR# 2019-115 LR)

Board of Mechanical Rules (ORR# 2019-126 LR)

Building Officials, Plan Reviewers, and Inspectors (ORR# 2019-109 LR)

Good Afternoon;

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

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

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

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

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

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

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

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

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

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

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

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

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

R 339.5115 Minimal standards.

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

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

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

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

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

R 339.5131 Complaints.

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

(a) Last day at the jobsite.

(b) Final approval from the inspector.

(c) Payment or partial payment tendered.

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

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

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

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

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

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

R 339.5206 Adoption; ASME code CSD-1.

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

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

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

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

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

R 339.5208 Installation and reinstallation of boilers.

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

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

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

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

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

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

R 339.5221 Notice of violation.

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

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

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

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

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

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

R 339.5233 Clearance between boilers and other objects.

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

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

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

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

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

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

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

R339.5236 Prevention of contamination of potable water supply.

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

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

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

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

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

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

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

Best Regards,



M.J. D'Smith
Executive Director