

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
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BILL: **Sub. S.B. 275** DATE: **June 10, 2008**

STATUS: **As Reported by Senate Insurance,  
Commerce and Labor** SPONSOR: **Sen. Spada**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Regulating home improvement contractors**

## State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
<b>General Revenue Fund (GRF)</b>	
Revenues	Potential, likely no more than negligible, annual gain in court cost revenues
Expenditures	Potential minimal annual increase related to Attorney General's regulatory duties
<b>Consumer Protection Enforcement Fund (Fund 631) – Attorney General</b>	
Revenues	Potential gain in civil penalties, timing and magnitude uncertain
Expenditures	Potential minimal annual increase related to Attorney General's regulatory duties
<b>Industrial Compliance Fund (Fund 556) – Department of Commerce</b>	
Revenues	Potential gain in license fee revenues, annual magnitude uncertain
Expenditures	Potential annual increase, possibly offset or defrayed by revenue gain
<b>Victims of Crime/Reparations Fund (Fund 402)</b>	
Revenues	Potential, likely no more than negligible, annual gain in court cost revenues
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Office of the Attorney General workload.** This bill creates specific requirements and prohibitions governing the conduct of certain unlicensed home improvement contractors, the violations of which would also be subject to the Consumer Sales Practices Act (CSPA). The Attorney General is also authorized to initiate criminal proceedings for prosecution of the bill's criminal penalties. The administrative, investigative, enforcement, and prosecutorial duties assigned to the Office of the Attorney General under the bill would most likely be performed by its Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 631) and the General Revenue Fund (GRF). Presumably, any additional annual operating expenses generated (which are likely to be minimal) as a result of performing these administrative, investigative, and enforcement duties might be offset by additional revenues that could be collected and deposited in Fund 631, which is funded by three-fourths of the amount of civil penalties ordered and paid pursuant to the CSPA and all costs awarded to the Attorney General. The timing and magnitude of this potential revenue stream is uncertain.
- **Department of Commerce.** Department of Commerce staff has indicated to LSC fiscal staff that its new licensing and related regulatory duties can be absorbed within its current manner of doing business, and that any additional operating expenses can be drawn, as necessary, from its Industrial Compliance Fund (Fund



556). The fees to be collected in connection with the licensing of home improvement contractors would presumably offset, or at least defray, any additional annual operating expenses.

- **Court cost revenues.** As a result of violations of the bill's new misdemeanor prohibitions, it is possible that some persons whose conduct may not have been criminal under current state law will be arrested and successfully prosecuted. This creates the possibility that the state may gain locally collected court cost revenues that are deposited in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). As the number of persons that would potentially be affected in this manner annually statewide appears to be relatively small, the amount of court cost revenues that those state funds may gain annually is likely to be no more than negligible. For the purposes of this fiscal analysis, "negligible" means an estimated revenue gain of less than \$1,000 for either state fund per year.

### *Local Fiscal Highlights*

<b>LOCAL GOVERNMENT</b>	<b>FY 2008 – FUTURE YEARS</b>
<b>Counties and Municipalities</b>	
Revenues	(1) Potential gain in court cost, fine, and filing fee revenues; (2) Potential gain in civil penalties and criminal forfeitures for county treasury, timing and magnitude uncertain
Expenditures	Potential increase to adjudicate civil, criminal, and forfeiture actions, ongoing annual cost appears likely to be no more than minimal

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Attorney General-initiated civil actions.** It appears unlikely that the bill will generate a costly new burden for courts of common pleas in the form of a large number of additional civil cases requiring adjudication brought about by the Office of the Attorney General's pursuit of civil remedies. Depending upon the civil remedy that the Attorney General brings, a portion of the penalty that could be assessed against a violator by the court might go to the treasury of the county where the case took place. The timing and magnitude of this potential revenue stream is uncertain.
- **Consumer-initiated civil actions.** It is uncertain as to the number of additional consumers that will elect to pursue a civil remedy, but LSC fiscal staff's research to date suggests that the number would be relatively small in the context of any given court's total caseload. Assuming this is true, then the annual fiscal effect on local revenues collected in the form of court costs and fees and moneys expended will likely be no more than minimal.
- **Local criminal justice system expenditures.** Based on LSC fiscal staff's research to date, the number of additional misdemeanor cases that may be generated by violations of the bill's criminal prohibitions in any affected local jurisdiction appears likely to be relatively small, especially in the context of the criminal justice system's total caseload, and that any resulting increase in county and municipal expenditures would likely be minimal at most annually. For the purposes of this fiscal analysis, a "minimal" expenditure increase means an estimated cost of no more than \$5,000 for any affected county or municipality per year.
- **Local court cost and fine revenues.** If, as LSC fiscal staff assumes, the number of additional criminal cases and successful prosecutions that will be created exclusively by violations of the bill's new misdemeanor prohibitions is relatively small in any affected local jurisdiction, then the potential amount of court cost and fine revenues that might be generated for that local jurisdiction is likely to be no more than minimal annually. For the purposes of this fiscal analysis, a "minimal" revenue gain means an estimated increase of no more than \$5,000 for any affected county or municipality per year.

- **Criminal forfeiture actions.** As a result of the bill, a local prosecutor may file, and the appropriate local court would then be required to adjudicate, additional criminal forfeiture actions. The associated prosecution and adjudication expenses for any affected local jurisdiction are uncertain, but presumably the filing of such actions will be relatively infrequent in comparison to the ongoing and relatively large criminal caseload generated by individuals who commit drug, robbery, sex, burglary, and assault offenses.
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## *Detailed Fiscal Analysis*

### Overview

Most notably for the purposes of this fiscal analysis, the bill:

- Creates requirements and prohibitions applicable to both home improvement and new residential construction contractors, home improvement contractors only, and new residential construction contractors only.
- Allows an owner to initiate a civil action in a court of common pleas for damages due to any breach of contract or for breach of any duty the bill imposes.
- Allows the Attorney General to prosecute contractors for violations of the bill or any other criminal law for claims related to, or arising out of, a construction project.
- Provides criminal penalties and remedies for certain violations of the bill.
- Removes several transactions from the definition of "consumer transaction" under the state's existing Consumer Sales Practices Act.
- Allows, but does not require, home improvement contractors to obtain a license from the existing Ohio Construction Industry Licensing Board to engage in a home improvement or new residential construction.

### Department of Commerce

The bill permits, but does not require, any home improvement contractor to apply for a license with the Ohio Construction Industry Licensing Board (OCILB), a board associated with the Department of Commerce that issues licenses to qualified electrical, heating, ventilating, and air conditioning (HVAC), plumbing, hydronics, and refrigeration contractors who successfully pass the International Code Council (ICC) licensing examination. A home improvement contractor licensed in this manner would be exempt from the state's existing Consumer Sales Practices Act (CSPA). The CSPA would continue to be applicable to a home improvement contractor not licensed with the OCILB.

The bill additionally requires the OCILB to adopt certain rules, including, but not limited to, fees for license issuance and renewal, continuing education requirements, a code of ethics, standards for minimal best practices, and disciplinary procedures. Additionally, pursuant to continuing law, the OCILB would have the power to discipline and investigate a licensee who violates the bill.

Department of Commerce staff has indicated to LSC fiscal staff that these new duties can be absorbed within its current manner of doing business, and that any additional operating expenses can be drawn, as necessary, from its Industrial Compliance Fund (Fund 556). The fees to be collected in connection with the licensing of home improvement contractors would presumably offset, or at least defray, any additional annual operating expenses.

### **Attorney General**

The bill makes a violation of its prohibitions, by a contractor not licensed by the OCILB, a violation of the CSPA. Under current law, the services of home improvement contractors are already subject to the CSPA. The Attorney General's staff reported to LSC fiscal staff that, in 2007, the office received nearly 2,000 complaints involving the delivery of home improvement type services around the state. The bill creates certain requirements that must be followed by home improvement contractors and establishes a list of prohibited conduct.

There are two civil remedies currently available for handling violations of the CSPA. The first such remedy is available to the Attorney General, who is authorized to investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action. The second remedy permits a private individual to initiate a civil action. Based on a conversation with Attorney General staff familiar with this area of law, it does not appear, from LSC fiscal staff's perspective at least, that either of these remedies would be more frequently utilized as a result of the bill since it appears that the Attorney General can already successfully pursue CSPA cases involving home improvement contractors under current law and practice.

### **Attorney General-initiated remedy**

Under current practice, the Attorney General's Consumer Protection Section handles the investigative and legal work associated with the CSPA. The state's administrative, investigative, and enforcement duties relative to the regulation of home improvement contractors would be assigned to the Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 631) and the General Revenue Fund (GRF).

However, it seems likely that the Attorney General would try to settle the issues surrounding any alleged violations of the bill's prohibitions prior to initiating any formal legal action. For example, a contractor could simply agree to cease their conduct, and assuming they did so, the Attorney General would stop incurring any related investigative and legal expenses. Similar to the procedures taken under the CSPA, the Attorney General would seek court action against a contractor as a last resort if they perceive that the contractor is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade the contractor to cease their offending behavior. From LSC fiscal staff's perspective, it appears that the bill may provide the Attorney General with an additional enforcement tool relative to protecting consumers, but the associated additional costs, if any, are likely to be no more than minimal annually.

If, on the other hand, the Attorney General successfully pursues a civil remedy under the CSPA, the court adjudicating the matter can award the Attorney General all costs and expenses associated with their investigation, in addition to reasonable attorney's fees. The court may also

order civil penalties up to \$25,000. Three-quarters of this civil penalty (as much as \$18,750 if the maximum \$25,000 possible fine is assessed), as well as the investigative costs and attorney's fees would be credited to the state's Consumer Protection Enforcement Fund (Fund 631). The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as \$6,250 if the \$25,000 maximum possible fine is assessed). According to staff of the Attorney General, the collection of these penalties remains one of the more problematic areas in cases involving home improvement contractors. The timing and magnitude of this potential revenue stream is uncertain.

The bill also allows the Attorney General to initiate criminal proceedings for prosecution of the bill's criminal penalties, or any other section of the Revised Code for claims related to or arising out of a construction project by presenting evidence of criminal violations to the prosecuting attorney of the county in which the alleged offense may be prosecuted. After reviewing this evidence, if the prosecuting attorney chooses not to prosecute the alleged violations, or upon the specific request of the prosecuting attorney, the Attorney General may proceed with the prosecution under his or her own authority. Presumably, these additional duties relative to the prosecution of home improvement contractors for violations of the bill's misdemeanor provisions would be assigned to the Consumer Protection Section, whose funding is split between the Consumer Protection Enforcement Fund (Fund 631) and the General Revenue Fund (GRF).

#### **Consumer-initiated remedy**

The bill essentially provides a homeowner with two avenues for seeking damages stemming from a contractor's actions as follows: (1) a civil action brought under the Ohio Home Improvement Contractor Law, and (2) a civil action brought under the existing CSPA.

#### **Courts of common pleas**

If the bill's provisions are violated, then a homeowner or the Attorney General may file additional civil actions in the appropriate court of common pleas that might otherwise have been filed under the CSPA. Such an outcome would presumably generate local revenues in the form of fees and court costs and require the court to expend some amount of time and effort to adjudicate the matter. LSC fiscal staff's research to date suggests that the number of additional civil actions likely to be filed in any affected court will be relatively small in the context of that court's total caseload. Assuming this is true, then the annual fiscal effect on local revenues collected and moneys expended will likely be no more than minimal.

### **Criminal provisions**

The bill creates three criminal offenses, as noted below.

- Any contractor performing any construction project the cost of which equals or exceeds \$1,000 must first enter into a written contract, containing certain specified provisions, with the homeowner. Failure to do so is a misdemeanor of the fourth degree.
- Any contractor who knowingly engages in a pattern of misrepresentation to consumers or knowingly and improperly represents quality, timeliness, or quantity of work that was or is to be performed for a construction project is guilty of a misdemeanor of the first degree.
- Any person who previously held a home improvement contractor license and had that license subsequently revoked by the OCILB is prohibited from engaging in construction projects. A violation of this provision is a misdemeanor of the first degree.

### **County and municipal criminal justice system expenditures**

It seems virtually certain that violations of the bill's criminal prohibitions will occur and that additional misdemeanor cases will be generated for county and municipal criminal justice systems to resolve. If this were to happen, then, theoretically at least, local criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders would increase in any affected county or municipality.

Based on LSC fiscal staff's research to date, however, the number of cases in any affected local jurisdiction appears likely to be relatively small, especially in the context of the criminal justice system's total caseload, and that any resulting increase in county and municipal expenditures would likely be minimal at most annually. For the purposes of this fiscal analysis, a "minimal" expenditure increase means an estimated cost of no more than \$5,000 for any affected county or municipality per year.

### **County and municipal revenues**

If, as assumed above, the number of additional criminal cases and successful prosecutions that will be created exclusively by violations of the bill's new misdemeanor prohibitions is relatively small in any affected local jurisdiction, then the potential amount of court cost and fine revenues that might be generated for that local jurisdiction is likely to be no more than minimal annually. For the purposes of this fiscal analysis, a "minimal" revenue gain means an estimated increase of no more than \$5,000 for any affected county or municipality per year.

### *State court cost revenues*

The court is generally required to impose state court costs totaling \$24 on any offender convicted of, or pleading guilty to, a misdemeanor. Of that amount, \$15 is directed to the GRF and \$9 is directed to the Victims of Crime/Reparations Fund (Fund 402). If, as assumed above, the number of additional criminal cases and successful prosecutions that will be created exclusively by violations of the bill's new misdemeanor prohibitions is relatively small, then the potential amount of court cost revenues that might be generated for either state fund per year is likely to be negligible at most. For the purposes of this fiscal analysis, a "negligible" revenue gain means an estimated increase of less than \$1,000 for either state fund per year.

### *Criminal forfeiture*

The bill specifies that any contractor convicted of an offense in connection with a construction project is subject to the forfeiture provisions of the Criminal Forfeiture Law. This provision may or may not produce some increase in the number of criminal forfeiture actions brought before the court in cases where contractors have violated the newly created criminal provisions. It is difficult to determine the precise magnitude of any such increase, or ascribe a specific cost to such potential increases in courtroom-related activities. Prosecutors and local law enforcement agencies may also realize some additional gain in revenues and/or other property resulting from successful forfeiture actions stemming from the bill.

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