



**Sub. H.B. 434**

123rd General Assembly

(As Reported by H. Commerce and Labor)

**Reps. Buehrer, Cates, Hoops, Mottley, Netzley, Olman, Trakas, Krupinski, Corbin, Verich, Robinson, Williams, Harris**

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**BILL SUMMARY**

- Creates a system under which heating, ventilating, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, and hydronics contractors who engage in commercial construction can obtain a single state-issued license to do business in all parts of Ohio and eliminates most existing authority for municipal corporations and counties to impose additional purely local regulations on contractors.
- Prohibits municipal corporations or boards of county commissioners from imposing examinations or additional skill-related requirements on the specified contractors who wish to do business within the jurisdiction of municipal corporations or a county.
- Allows a municipal corporation to require the specified contractors to obtain a bond and proof of insurance, compliance with Workers' Compensation Laws, and registration with the tax department of the municipal corporation.
- Gives testing responsibilities to the administrative section of the Ohio Construction Industry Examining Board.
- Allows each contractor section of the Board to directly suspend or revoke a license without going through the administrative section.
- Requires each contractor section of the Ohio Construction Industry Examining Board to adopt rules concerning license renewal, continuing education, and criteria for evaluating whether applicants for licensure are qualified.

- Requires that the members of each contractor section of the Ohio Construction Industry Examining Board who are affiliated with unions be signatories to agreements with unions.
- Specifies employment criteria that one member of each section of the Ohio Construction Industry Examining Board must meet.

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## CONTENT AND OPERATION

### Overview

(Sections 6 and 7)

Existing law establishes the Ohio Construction Industry Examining Board and empowers it to issue "qualification certificates" to an individual as a heating, ventilating, and air conditioning contractor, a refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor. Possession of a qualification certificate entitles the individual contractor to conduct business anywhere in the state but can require the contractor to meet certain additional

regulations imposed by municipalities or counties (see "*Municipal corporation regulations*," and "*Board of county commissioner regulations*," below).

The bill eliminates local skill-related regulation of such contractors in favor of the state-operated system and converts the "qualification certificates" into "licenses."

The bill includes a statement of intent to eliminate duplicative bureaucracies to create a system under which an affected contractor may obtain a single license to permit the contractor to do business in all parts of this state and to obtain authorization to do business in other states. The bill specifies that the provisions of the bill are general laws created in the exercise of the state's police power, arising out of matters of statewide concern, and are designed for the health, safety, and welfare of contractors, their employees, and the public.

The bill also expresses the legislature's intent that the bill not classify or reclassify construction activities to place them under the scope of the bill, or interfere with the right of a construction employer to assign employees to construction activities as enunciated by the decision of the Ohio Supreme Court in *Pipefitters Union Local 392 v. Kokosing Construction Co., Inc.* (1998) 81 Ohio St.3d. 214.

### *Municipal corporation regulations*

(sec. 715.27)

Under current law, with certain exceptions, each municipal corporation may provide for the licensing of heating, ventilating, and air conditioning (HVAC) contractors, refrigeration contractors, electrical contractors, plumbers, plumbing contractors, and hydronics contractors and may require that each of these contractors successfully complete an examination, test, or demonstration of technical skills. Each municipality also may impose a fee and additional requirements for licensure or registration on a contractor who wishes to engage in the contractor's respective occupation within the jurisdiction of the municipal corporation. If a municipality imposes such a fee or additional requirements, it must be the same for all contractors engaged in each specified type of contracting and the municipal corporation must immediately permit an individual who presents evidence of paying the required fee and meeting the additional requirements to engage in the contractor's respective business within the municipal corporation.

The bill prohibits a municipal corporation from requiring any contractor who holds a valid and unexpired state-issued license to successfully complete an examination, test, or demonstration of technical skills in order to engage in the type of contracting for which the license is held, within the municipal corporation.

In addition to imposing a fee, as allowed under current law, the bill gives a municipal corporation the authority to require a contractor who is licensed under the statewide system to obtain a bond and proof of all of the following:

- (1) Contractor's liability insurance, including complete operations coverage in an amount determined by the Ohio Construction Industry Examining Board;
- (2) Compliance with Ohio's Workers' Compensation Laws;
- (3) Registration with the municipality's tax department.

The bill also allows a municipal corporation to revoke the registration of a contractor for good cause shown, which includes failure to maintain in a bond or the items listed in numbers (1) through (3) above.

**Board of county commissioner regulations**

(sec. 3781.02)

Current law allows each board of county commissioners to adopt, by resolution, rules to establish standards and to provide for the licensing of electrical and HVAC contractors enforceable within the unincorporated areas of the county and within any municipal corporation where the legislative authority of the municipal corporation has contracted with the board of county commissioners for the enforcement of county rules within the municipal corporation. Current law allows the board of county commissioners to require successful completion of an examination, or demonstration of technical skills and an additional fee in exchange for allowing an electrical or HVAC contractor to engage in that type of contracting within the jurisdiction of the board of county commissioner's rules.

The bill prohibits a board of county commissioners from requiring a contractor who holds a valid and unexpired state-issued license to complete an examination or additional requirements created by the board of county commissioners. A board of county commissioners may continue to impose a fee for the registration of a contractor who holds a valid and unexpired license before that contractor may engage in the type of contracting for which the license is held within the unincorporated areas of the county and within any municipal corporation whose legislative authority has contracted with the board for the enforcement of county regulations within the municipal corporation, provided that the fee is equal for each type of contractor. If the board of county commissioners does impose a fee under the bill, it must immediately permit a contractor who presents proof of holding a valid and unexpired license and who pays the requisite fee to engage in the type of contracting for which the license is held within unincorporated areas of the county and within any municipal corporation whose

legislative authority has contracted with the board of county commissioners for the enforcement of county regulations.

### Terms

(sec. 4740.01)

Current law identifies a "qualification certificate" as a certificate issued by the Ohio Construction Industry Examining Board to an individual or business entity for HVAC, refrigeration, electrical, plumbing, or hydronics contractors. The bill changes the term "qualification certificate" to "license." The term license will be used throughout the analysis with the understanding that current law uses the term "qualification certificate" and the bill uses the term "license." Under the bill, licenses may be issued only to individuals.

Current law defines "heating, ventilating, and air conditioning," "electrical," "refrigeration," "plumbing," and "hydronics" contractors as any individual who assumes responsible charge, supervision, or direction of persons engaged in that specific type of contracting, or who engages in, offers to engage in, advertises, or otherwise represents that the individual is permitted to engage in the design of, planning of, superintending of, contracting for or responsible charge of that type of contracting. The bill includes business entities in the definition of each type of contractor.

Under the bill, an individual or business entity must do both of the following to be considered an HVAC refrigeration, electrical, plumbing, or hydronics contractor:

(1) For compensation, direct, supervise, or have responsibility for the means, method, and manner of the named type of contracting in the areas of construction, improvement, renovation, repair or maintenance on a construction project, and offer, identify, advertise, or otherwise hold out or represent that the individual or business entity is permitted or qualified to perform, direct, supervise, or have responsibility for the means, method, and manner of that type of contracting in the areas of construction, improvement, renovation, repair, or maintenance on a construction project;

(2) Be a tradesperson or employ tradespersons (see definition below) who perform and who are trained to perform that type of contracting in the areas of construction, improvement, renovation, repair, or maintenance on a construction project.

Current law defines "contracting" to mean the engagement of a person under any written or verbal contract, agreement, or understanding, whereby such

person provides services or materials that are subject to examination under the licensing law. The bill replaces this definition altogether with the definition of a "contractor." Under the bill, a contractor means an HVAC contractor, a refrigeration contractor, an electrical contractor, a plumbing contractor, or a hydronics contractor. The bill adds the definition of a "tradesperson" which means any individual who, for compensation, engages in construction, improvement, renovation, repair, or maintenance of buildings or structures without assuming responsibility for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance. Also, the bills adds the definition of "construction project" which means a construction project involving a building or structure that is subject to the Ohio Basic building code, but specifically excludes from the definition construction projects on buildings or structures that involve one-, two-, or three-family residential dwellings.

Under the bill, electrical contracting does not include work related to the following systems using less than 50 volts:

- (1) Fire and burglar alarm;
- (2) Tele-data;
- (3) Cabling;
- (4) Sound;
- (5) Communication;
- (6) Landscape lighting and irrigation.

### **The Ohio Construction Industry Examining Board**

(secs. 4740.02, 4740.03, and 4740.04)

Under current law, the Ohio Construction Industry Examining Board (Board) consists of the following sections: administrative, plumbing, electrical, HVAC, and refrigeration. The bill specifies that each section of the Board will meet only after adequate advance notice of the meeting has been given to each member of the Board or section, as appropriate.

### **The plumbing section**

Under current law, the plumbing section of the Board consists of four plumbing contractors and one employee of the Department of Commerce other than the Director or the director's designee, who serves as a member of the administrative section. Of the four plumbing contractors, two are to be engaged in

plumbing contracting and represent unions representing plumbers and two are to have no affiliation with any union representing plumbers. The bill removes the administrative section designee and replaces that person with a plumbing inspector employed by the Department of Commerce, a municipal corporation, or a health district. The bill also specifies that the two members who represent unions representing plumbers must be signatories to agreements with unions representing plumbers.

### **The electrical section**

Currently, the electrical section of the Board consists of five members, one of whom is a municipal building electrical inspector, two of whom are electrical contractors who have no affiliation with any union representing electricians, and two of whom are electrical contractors and who represent unions representing electricians. The bill specifies that one member must be an electrical inspector employed by the Department of Commerce, a municipal corporation, or a county, and that the two members affiliated with an electrician's union must be signatories to agreements with unions representing electricians.

### **The HVAC and refrigeration section**

The HVAC and refrigeration section currently consists of five members. One of the members is a municipal HVAC and refrigeration inspector, two of the members are HVAC or refrigeration contractors with no affiliation with any HVAC or refrigeration union, and two members are HVAC or refrigeration contractors who represent unions representing HVAC or refrigeration contractors. The bill requires that one member be a HVAC and refrigeration inspector employed by the Department of Commerce or a municipal corporation. Under the bill, the two members must have no affiliation with HVAC or refrigeration unions that represent HVAC or refrigeration tradespersons, and the two members with HVAC or refrigeration union affiliation must be signatories to agreements with unions representing HVAC or refrigeration tradespersons.

*Duties of the administrative section*

(secs. 4740.30 and 4740.04)

Current law requires the administrative section to schedule, administer, supervise, and conduct the examinations for the qualifying certificates as directed by the individual Board sections. The bill limits the administrative section to scheduling the examinations as directed by the applicable section. The bill also requires that the administrative section instead of the individual section, select and contract with one or more persons to do all of the following relative to examinations:

- (1) Prepare, administer, score, and maintain the confidentiality of the examinations;
- (2) Be responsible for, all the expenses required to prepare, administer, score, and maintain the confidentiality of the examinations;
- (3) Charge an applicant a fee, in an amount authorized by the administrative section of the Board, for administering the examinations;
- (4) Design the examination for each type of contractor to determine an applicant's competence to perform the type of contracting for which the applicant is seeking licensure.

Currently, the administrative section issues qualification certificates to applicants who score the minimum required score on an examination prepared by each of the contractor sections. The bill requires the administrative section to issue and to renew licenses to applicants who have attained the minimum required score on an examination prepared by each of the contractor sections on the condition that the appropriate contractor section of the Board determines that the individual is qualified to hold a license based on application criteria.

The bill also requires the administrative section to regulate a contractor's use and display of a license and any information contained in that license and to adopt rules in accordance with the Administrative Procedure Act as necessary to properly discharge the administrative section's duties.

Under current law, at the request of the administrative section, the Department of Commerce is required to supply the Board with personnel, office space, and supplies as the Director of Commerce determines appropriate. The bill requires the administrative section to employ directly any additional staff it considers necessary and appropriate.

### **Duties of the secretary of the administrative section**

Under current law, the secretary of the administrative section keeps the minutes, books, and other records and files of the Board and each section of the Board. The bill authorizes the secretary to set standards for and delegate those duties to another person and specifies that the secretary is responsible for sending out advance notices of meetings of the Board and of each of the sections. The bill also specifically places the secretary in the unclassified civil service.

### **Combined duties of the contractor sections**

(sec. 4740.05)

Under current law, the contractor sections are responsible for adopting rules related to the approval of a third party to prepare, administer, and score the examinations for each section. Instead, these duties are delegated to the administrative section under the bill.

The bill specifies that the individual contractor sections must adopt rules concerning continuing education and license renewal as it relates to each of their specific sections that address all of the following:

(1) Criteria for selecting and approving courses and persons to provide those courses;

(2) A specification that individuals holding a valid and unexpired license be required to accrue no more than 30 hours of continuing education courses over a period of three years;

(3) A requirement that persons seeking approval to provide continuing education courses submit information regarding the courses to the appropriate section of the Board for approval not less than 90 days or more than one year prior to the date on which the courses are offered, unless a section of the Board permits submission at a different time;

(4) A prohibition against any person providing a course for the purpose of meeting continuing education requirements unless, not more than one year prior to the date the course is offered, the person has been approved by the appropriate section of the Board to provide that course;

(5) A provision limiting approval of continuing education courses to one year;

(6) A provision establishing the following annual fees, to be paid to the Board by persons approved to provide continuing education courses:

(a) For the approval of each continuing education course, not more than \$10 plus \$1 per credit hour;

(b) For the approval of each person providing continuing education courses, \$25.

The bill requires the contractor sections of the Board to grant approval to persons to offer continuing education courses in accordance with the rules the section adopts regarding continuing education courses.

Under the bill, the contractor sections also must adopt rules that specify both of the following:

(1) The criteria that section of the Board must use in evaluating the qualifications of an individual;

(2) The criteria that section of the Board must use in deciding whether to issue, renew, suspend, revoke, or refuse to issue or renew a license.

In addition, the bill allows the electrical section of the Board to adopt rules to provide for procedures for examination, certification, licensing and continuing education for low-voltage contractors specifically for working involving burglar and fire alarm systems.

Under current law, the individual contractor sections are required to "keep" records of its proceedings. The bill changes this to "maintain" a record of its proceedings.

### **Licensure requirements**

(sec. 4740.06)

Under current law, to receive a license, an individual must be at least 18 years of age, be a citizen of the United States, be of good moral character, pass an examination, pay a specified fee, and have at least two years of continuous experience immediately prior to application for examination in the area of contracting for which the applicant is applying for a license. Current law requires that if an applicant meets these qualifications, the appropriate section of the Board must issue a license for which the applicant qualifies.

The bill specifies that to qualify to take the examination required to obtain a license for each type of contractor, an individual must satisfy each of the following:

(1) Be at least 18 years of age;

(2) Be a United States citizen;

(3) Either have been a tradesperson for the type of contractor which the application is filed for not less than three years immediately prior to the date the application is filed, be an engineer, have three years of business experience in the construction industry, or have other experience acceptable to the section of the Board that authorizes issuance of the type of license sought;

(4) Maintain contractor's liability insurance, including without limitation, complete operations coverage, in an amount determined by the appropriate section of the Board;

(5) Not have done any of the following:

(a) Been convicted of or pleaded guilty to a misdemeanor involving moral turpitude or of any felony;

(b) Violated licensing laws related to contractors or any of the rules adopted for regulating contractors;

(c) Obtained or renewed a license issued a contractor, or obtained any order, ruling, or authorization of the Board or a section of the Board by fraud, misrepresentation, or deception;

(d) Engaged in fraud, misrepresentation, or deception in the conduct of business.

The bill rewords the existing law to specify that if an applicant meets the above qualifications adding "and passes the required examination," then the appropriate section of the Board, "within 90 days after the applicant filed the application," must authorize (existing law says "direct") the administrative section of the Board to license the applicant for the appropriate contractor license. The bill specifically allows a section of the Board to withdraw its authorization for licensure to the administrative section of the Board for good cause shown, on the condition that notice of that withdrawal is given prior to the administrative section's issuance of the license.

The bill adds that nothing in any license issued by the Board limits or eliminates any requirement or any license issued by the Ohio Fire Marshal.

### **License renewal**

(secs. 4740.06(D) and 4740.07)

Current law specifies that valid, unexpired contractor licenses expire annually. A licensee can renew a license without reexamination by applying to the appropriate section of the Board for renewal and submitting proof of completion of continuing education requirements and the required renewal fee within 90 days of the license expiration date.

The bill specifies that a licensee may renew the licensee's license not more than 90 days before the license expires. The renewal application must contain information satisfactory to the appropriate section of the Board showing that the applicant continues to meet the qualifications the licensee was required to meet in order to qualify to take the licensure examination (see "Licensure" above). The bill further specifies that the appropriate section of the Board may waive any of the requirements for renewal of a license upon finding that the applicant substantially has met the renewal requirements and that failure to timely apply for renewal was due to excusable neglect. If the section decides to waive its renewal requirements, that section may still impose conditions upon that licensee and assess a late filing fee of not more than double the usual license renewal fee.

The bill specifies that an individual holding a valid, unexpired license may request the appropriate section of the Board to place the license on inactive status under conditions and for a period of time as determined by the Board.

#### **Assignment of an individual license to a business**

Under current law, a license assigned to a business entity by an individual becomes invalid 90 days after the individual is no longer associated with the business entity.

The bill specifies that except for the 90-day renewal extension, a license held by an individual expires immediately upon the death of the individual. The bill further specifies that if an individual who assigned a license to a business entity ceases to be associated with the business entity for any reason, including, without limitation, death of the individual, the individual or business entity must notify the appropriate section on the date on which the individual ceased to be associated with the business entity. However, the bill specifies that if a license becomes invalid due to the disassociation of the individual from the business entity, the business entity may continue to operate if another individual assigns a license to the business entity for the same type of contracting for which the invalid license had been assigned.

The bill specifies that for the period of time during which more than one license for the same type of contracting is assigned to a business entity, any work conducted by the business entity under any of those licenses is considered to have been conducted under the personal supervision of the individuals named in each of

the licenses and all violations of any terms of any of the licenses will be considered to have been committed by the individuals named in each of the licenses.

### **Reciprocity**

(sec. 4740.08)

Current law allows the appropriate contractor section of the Board to authorize the administrative section of the Board to issue, without examination, a license to an individual registered, licensed, or certified in another state of the United States, provided the Board determines that the person meets the qualifications of this state and the other state offers similar reciprocity. The bill allows the appropriate contractor section of the Board to withdraw its authorization to the administrative section for good cause shown prior to the administrative section's issuance of the license.

### **Fees**

(sec. 4740.09)

Current law allows the Board to charge the following fees in addition to any fee charged by a municipal corporation or a county:

- (1) \$25 application fee;
- (2) \$25 to issue a license;
- (3) \$40 for annual renewal.

Current law also allows the administrative section of the Board, subject to Controlling Board approval, to increase fees as necessary provided that no increase exceeds 50% of the fees specified.

The bill eliminates the statutorily set fees and instead provides that fees, including late fees, are to be determined by each section of the Board, subject to the approval of the State Controlling Board. Also, the bill specifies that each section may increase fees provided that no fee exceeds 50% of the lowest fee determined by that section during the three-year period immediately preceding an increase, and that there is no more than one increase made each year.

## **Discipline**

(sec. 4740.10)

Under current law, each contractor section of the Board has the authority to direct the administrative section of the Board to suspend, revoke, or refuse to issue or renew a license if the contractor section finds that the licensee has done any of the following:

- (1) Been convicted of a misdemeanor involving moral turpitude or a felony;
- (2) Violated any provision of the licensing law or rules adopted under the licensing law;
- (3) Obtained a license or any order, ruling, or authorization of the Board or section by fraud, or misrepresentation;
- (4) Been guilty of business gross misconduct.

The bill allows each contractor section directly to suspend or revoke a license. In the case of a refusal to issue or renew, the individual contractor sections would still go through the administrative section. The bill also alters (4) above to allow each contractor section of the Board to direct the administrative section to discipline a licensee if the licensee engaged in fraud, misrepresentation, or deception in the conduct of business. The bill further allows the appropriate section of the Board to investigate any alleged violation of the licensing law or the rules adopted under it.

## **Prohibitions**

(secs. 4740.051 and 4740.12)

The bill prohibits any person from acting as or claiming as a HVAC, refrigeration, plumbing, electrical, or hydronics contractor unless that person holds or has been assigned a license issued for the type of contractor that person is acting as or claiming to be.

Current law stipulates that the law licensing HVAC, refrigeration, electrical, plumbing, and hydronics contractors does not limit the operation of any statute or rule or any ordinance or rule of any political subdivision, district, or agency of the state that requires the registration and assessment of a registration or license fee of individuals who are engaged in the business of HVAC, refrigeration, electrical, plumbing, or hydronics contracting. The bill reworks the last part of the disclaimer to state that nothing in the law limits the registration and assessment of

a registration or license fee of "tradespersons who perform" HVAC, refrigeration, electrical, plumbing, or hydronics construction, improvement, renovation, repair, or maintenance.

**Implementation and effective dates**

(Sections 3, 4, and 5)

The changes to the codified sections of the bill take effect 180 days after the effective date of the bill. However, the bill also requires that 60 days before the effective date of those changes made by the bill, the Ohio Construction Industry Examining Board must send notice by regular mail to the legislative authority of a municipal corporation and to the board of county commissioners of every county which, prior to the effective date of the bill, provided for the licensing or registration of HVAC, refrigeration, plumbing, electrical, or hydronics contractors, informing the municipal corporation and board of county commissioners of the provisions of the act. Furthermore, the bill specifies that 90 days prior to the effective date of the substantive changes to the law the bill makes, the Board must publish notice of the provisions of the act in appropriate trade publications and in a newspaper of general circulation in each of the nine most populous metropolitan areas of this state, once a week for three consecutive weeks.

The bill provides that an individual may receive a license without examination if the individual does all of the following:

(1) Applies to the appropriate section of the Board within seven months after the effective date of the bill;

(2) Pays the appropriate fee;

(3) Has been actively engaged as a heating, ventilating, and air conditioning contractor, refrigeration contractor, plumbing contractor, electrical contractor, or hydronics contractor, as applicable, in this state for at least three years immediately prior to the effective date of the bill;

(4) Furnishes business records or other evidence to verify the experience requirement to the satisfaction of the appropriate section of the Board;

(5) Provides evidence of all of the following:

(a) Current contractor's liability insurance, including complete operations coverage in the amount of \$300,000 (except that when more than one individual is affiliated with a business, then those individuals collectively must provide this type of insurance in a total amount of \$300,000);

(b) Compliance with workers' compensation and unemployment compensation laws;

(c) Compliance with any other applicable legal requirements to do business in this state, as determined by the Board.

The bill also specifies that an individual may receive a license without examination if the applicant applies to the Board within one year of the effective date of the bill if the applicant pays the appropriate fee and demonstrates that the individual satisfies qualification requirements as determined by the Board to the Board's satisfaction. In addition, any person who holds a valid and unexpired qualification certificate issued prior to the effective date of the bill and who provides evidence of current contractor's liability insurance, including, without limitation, complete operations coverage, in the amount of \$300,000, shall be considered by the Ohio Construction Industry Examining Board as holding a license under the bill until the expiration date of the person's current qualification certificate. Thereafter, the individual must follow the license renewal procedures established in the bill.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-08-99	p. 1213
Reported, H. Commerce & Labor	04-12-00	p. 1818

H0434-RH.123/ejs