



Phil Mullin

Bill Analysis

Legislative Service Commission

H.B. 266

125th General Assembly
(As Introduced)

Reps. Flowers, Widener

BILL SUMMARY

- Renames the Board of Building Standards as the Board of Building *and Fire* Standards and adds five members to the renamed Board.
- Transfers authority to adopt the State Fire Code from the State Fire Marshal to the Board of Building and Fire Standards.
- Creates a five-member Ohio Building Code Advisory Committee and a five-member Ohio Fire Code Advisory Committee to assist the Board of Building and Fire Standards in Ohio Building Code and State Fire Code development.
- Transfers the State Fire Marshal's office from the Department of Commerce to the Department of Public Safety, where it will become the Division of the State Fire Marshal.
- Adds two members to the State Board of Building Appeals.
- Transfers the regulation of underground storage tanks from the State Fire Marshal to the Superintendent of Industrial Compliance.
- Requires the Superintendent of Industrial Compliance to propose rules to the Board of Building and Fire Standards for the adoption of an Aboveground Petroleum Storage Tank Program and gives the Superintendent primary responsibility, with specified exceptions, for administering that program.
- Creates a 16-member Aboveground Petroleum Storage Tank Study Committee for the purpose of submitting a recommendation whether unregulated aboveground petroleum storage tanks should be registered or otherwise regulated.

- Makes appropriations.

TABLE OF CONTENTS

Board of Building and Fire Standards	2
Board membership	2
Renaming of the Board--State Fire Code adoption.....	3
Board of Building Appeals.....	3
Code advisory committees	3
In general	3
Ohio Building Code Advisory Committee specifically.....	4
Ohio Fire Code Advisory Committee specifically.....	5
Corresponding State Fire Commission Law changes	5
Enforcement of the State Fire Code and variances	5
State Fire Marshal office transfer to the Department of Public Safety.....	6
Office transfer generally.....	6
State Fire Marshal's Fund.....	6
Regulation of underground storage tanks	7
Regulation of aboveground storage tanks	8
In general	8
First type of rules.....	8
Second type of rules.....	9
State Fire Code and Fire Safety law overlap	9
Aboveground Petroleum Storage Tank Study Committee.....	9
Delayed effective date.....	10

CONTENT AND OPERATION

Board of Building and Fire Standards

Board membership

Currently, the Board of Building Standards, which is within the Department of Commerce and administers and enforces the Building Standards Law and the Ohio Building Code adopted pursuant to that law, is comprised of ten members appointed by the Governor with the Senate's advice and consent. The bill renames the Board (see below) and adds to the renamed Board the following: the State Fire Marshal, the Superintendent of Industrial Compliance, and three specified members who are to be appointed by October 13, 2004, by the Governor--bringing the renamed Board's membership to a total of 15 members. Of the three new appointed members, one must be a building official chosen from a list of candidates submitted by the Ohio Building Officials Association, one must be a

fire chief with recognized ability and broad training in the field of fire prevention chosen from a list of candidates submitted by the Ohio Fire Chiefs Association, and one must be a fire fighter with recognized ability and broad training in the field of fire prevention and fire protection systems chosen from a list of candidates submitted by the Ohio Fire Alliance. (R.C. 3781.07 and Section 4.)

Renaming of the Board--State Fire Code adoption

The bill renames the Board of Building Standards as the Board of Building and Fire Standards and transfers authority to adopt the State Fire Code from the State Fire Marshal to the renamed Board (R.C. 3737.82 to 3737.86 and 3781.07). It specifies, however, that the State Fire Code adopted by the State Fire Marshal, as it exists on July 1, 2004 (the bill's effective date), remains effective until the renamed Board adopts changes to it (Sections 5 and 9). The bill also requires the renamed Board, instead of the State Fire Marshal as under current law, to adopt rules as part of the State Fire Code governing the equipment, operation, and maintenance of filling stations as necessary to protect persons and property (R.C. 3741.14). And, throughout the bill conforming changes are made to statutes to reflect the shift of State Fire Code authority and the Board's renaming (R.C. 3701.82, 3737.03, 3737.22, 3737.65, 3781.19, and 3781.22).

Board of Building Appeals

The bill adds a fire protection engineer and a certified building official to the Board of Building Appeals (the Governor must appoint them by October 13, 2004) and increases filing fees for appeals to the Board from \$100 to \$200. The Board is within the Department of Commerce and currently consists of five specified members appointed by the Governor with the Senate's advice and consent. (R.C. 3781.19 and Section 4.)

Code advisory committees

In general

The bill creates within the Department of Commerce the Ohio Building Code Advisory Committee and the Ohio Fire Code Advisory Committee to assist the Board of Building and Fire Standards in Ohio Building Code and State Fire Code development. The Governor must make appointments to both advisory committees within 90 days after the bill's effective date. Terms of office for members of both committees are three years. Advisory committee members will not receive any salary but must receive their actual and necessary expenses incurred in the performance of their duties. The advisory committees apparently are not intended to be subject to the Sunset Review Law that is generally

applicable to state boards, commissions, and committees.¹ In providing advice concerning adoption of the Ohio Building Code and the State Fire Code, the advisory committees must make joint recommendations to the Board as they determine appropriate. (R.C. 3781.071(A), (B), (C), (D), and (F) and 3781.072(A), (B), (C), (D), and (F).)

Ohio Building Code Advisory Committee specifically

The Ohio Building Code Advisory Committee consists of the Superintendent of Industrial Compliance (or designee) and four persons appointed by the Governor. Of its members, one must be a building official recommended by the Ohio Building Officials Association, one must be a licensed architect recommended by the Ohio Chapter of the American Institute of Architects, one must be a registered professional engineer recommended by the American Council of Engineering Companies of Ohio, and one must be a registered professional engineer recommended by the Ohio Society of Professional Engineers. (R.C. 3781.071(A).)

The advisory committee must do all of the following (R.C. 3781.071(E)):

- (1) Advise the Board concerning adoption of the Ohio Building Code, including the mechanical code, plumbing code, fuel gas code, and other codes relative to buildings and structures other than the State Fire Code;
- (2) Advise the Board regarding the establishment of standards for certification of building officials who enforce the Ohio Building Code;
- (3) Assist the Board in providing information and guidance to contractors and building officials who enforce the Ohio Building Code;
- (4) Advise the Board regarding the interpretation of the Ohio Building Code;
- (5) Make recommendations to the Board regarding other matters that may impact upon the specific duties and areas of concern assigned to the advisory committee;
- (6) Provide other assistance as it considers necessary.

¹ *The bill's cross-references to achieve this intent are erroneous and should be to "sections 101.82 to 101.87."*

Ohio Fire Code Advisory Committee specifically

The Ohio Fire Code Advisory Committee consists of the State Fire Marshal (or designee) and four persons appointed by the Governor. Of its members, one must be recommended by the Ohio Association of Professional Fire Fighters, one must be recommended by the Ohio State Fire Fighters Association, one must be recommended by the Ohio Fire Chiefs Association, and one must be recommended by the Ohio Fire Officials Association. (R.C. 3781.072(A).)

The advisory committee must do all of the following (R.C. 3781.072(E)):

- (1) Advise the Board concerning adoption of the State Fire Code;
- (2) Advise the Board regarding the interpretation of the State Fire Code;
- (3) Make recommendations to the Board regarding other matters that may impact upon the specific duties and areas of concern assigned to the advisory committee;
- (4) Any additional duties required by the Board.

Corresponding State Fire Commission Law changes

Under the bill, the State Fire Commission no longer must recommend revisions to the State Fire Code. And, corresponding to the transfer from the State Fire Marshal to the Board of Building and Fire Standards of the authority to adopt the State Fire Code, the State Fire Marshal no longer must file a copy of proposed rules to modify the State Fire Code with the Commission's Chair and then wait 60 days before adopting such rules. Nor for the same reasons must the State Fire Marshal consider under the bill Commission recommendations. (R.C. 3737.03(B) and 3737.86(C).)

Enforcement of the State Fire Code and variances

Although the State Fire Marshal will no longer adopt the State Fire Code under the bill, the bill authorizes the State Fire Marshal (1) to adopt rules necessary to enforce it and (2) to enforce it, except that the State Fire Marshal cannot do so at a building or structure for which a certificate of occupancy is required until that certificate has been issued. Currently, the State Fire Marshal is charged with "enforcing the State Fire Code." (R.C. 3737.22(A)(1) and (2).)

Additionally, under the bill, the State Fire Marshal may grant a variance to any provision of the State Fire Code upon written application by an affected party and upon demonstration by that party of both of the following (R.C. 3737.22(H)):

(1) That a literal enforcement of the provision will result in an unnecessary hardship to the party;

(2) Either that the variance will not threaten the public health, safety, or welfare or that the party will provide measures to protect the public health, safety, and welfare that are substantially equivalent to the measures otherwise required under the State Fire Code.

If the State Fire Marshal denies a variance, the affected party may appeal the denial to the state Board of Building Appeals within 30 days after receiving notice of the denial (R.C. 3737.22(H)).

State Fire Marshal office transfer to the Department of Public Safety

Office transfer generally

Current law creates the State Fire Marshal's office as a part of the Department of Commerce. The Director of Commerce must appoint the State Fire Marshal, and the Department of Commerce is given all powers, and must perform all duties, vested in the State Fire Marshal. The State Fire Marshal has the responsibility for adopting and enforcing the State Fire Code, appointing assistant fire marshals to enforce the State Fire Code, conducting investigations into the cause, origin, and circumstances of fires and explosions, assisting in the prosecution of persons believed to be guilty of arson and related crimes, providing public education on fire safety, and performing a number of other duties under the fire safety, hotel, and fireworks laws. (R.C. 121.04, 121.08(B), 3737.21, 3737.22, and 3743.75.)

The bill transfers the State Fire Marshal's office to the Department of Public Safety, where the office will become a division of the Department. The Division of the State Fire Marshal generally will have the same powers and responsibilities as the State Fire Marshal's office currently possesses, with the exception of those transferred by the bill to another state entity or official. The Director of Public Safety is given the authority to appoint the State Fire Marshal, who will serve at the pleasure of the Director. (R.C. 121.04, 121.08(B), 3737.21(A), 3737.22(B), 3737.71, 3743.57, 3743.75, 3746.02(A)(3), 3901.86, and 5502.01(J).)

State Fire Marshal's Fund

Current law requires that the State Fire Marshal's Fund be assessed a share of the administrative costs of the Department of Commerce, with the assessment being paid into the Division of Administration Fund. The bill instead permits the State Fire Marshal's Fund to be assessed a proportionate share of the administrative costs of the Department of Public Safety, with the assessment being

paid into the Highway Safety Fund. The moneys so assessed and paid will be subject to appropriation solely for the expense of the operation and maintenance of the Department of Public Safety. (R.C. 3737.71.)

The State Fire Marshal's Fund, which must be used generally for the maintenance and administration of the State Fire Marshal's office and the Ohio Fire Academy, receives fees for licenses, permits, and testing, and assessments on insurers selling fire insurance in this state. Under current law, the Fund's use is subject to the Director of Commerce's control; the bill shifts this control to the Director of Public Safety. (R.C. 3737.71, 3743.57, and 3901.86.)

Regulation of underground storage tanks

Under current law, the State Fire Marshal has the responsibility for the implementation of the Underground Storage Tank (UST) Program and for taking corrective action in the event of releases from underground petroleum storage tanks. The State Fire Marshal may adopt rules, conduct inspections, certify installers, require annual registration of underground storage tanks, issue citations, and perform other duties under the UST Program. The bill transfers this responsibility, and the related authority, from the State Fire Marshal to the Superintendent of Industrial Compliance in the Department of Commerce. It correspondingly replaces numerous statutory references to the State Fire Marshal with references to the Superintendent of Industrial Compliance in relation to the regulation of underground storage tanks. (R.C. 3737.01, 3737.02, 3737.22(B), 3737.88, 3737.881, 3737.882, 3737.883, 3737.89, 3737.91, 3737.92, and 3737.98.)

The bill also replaces references to the State Fire Commission with references to the Board of Building and Fire Standards in connection with the filing of rules under the UST Program Law. Under these provisions, the Superintendent of Industrial Compliance will file proposed rules with the Board's Chair for the Board's (instead of the Commission's) review and recommendations.² (R.C. 3737.88(B).)

² *The bill specifies that the State Fire Commission will be within the Department of Public Safety (R.C. 3737.81) and that the Board of Building and Fire Standards (instead of the Commission as under current law) also may recommend courses of action to the Superintendent of Industrial Compliance (instead of the State Fire Marshal as under current law) in carrying out the Superintendent's UST Program-related duties (R.C. 3737.88(C)).*

Regulation of aboveground storage tanks

In general

The bill gives the Superintendent of Industrial Compliance "*primary*" responsibility under Title 37 of the Revised Code for the implementation and administration of the Aboveground Petroleum Storage Tank (APST) Program, except as provided under the Air Pollution Control Law (R.C. Chapter 3704.), the Solid and Hazardous Wastes Law (R.C. Chapter 3734.), the Emergency Planning Law (R.C. Chapter 3750.), the Hazardous Substances Law (R.C. Chapter 3751.), the Cessation of Regulated Operations Law (R.C. Chapter 3752.), and the Risk Management Program Law (R.C. Chapter 3753.).³ To implement the APST Program, the Superintendent must propose rules to the Board of Building and Fire Standards; the Board cannot adopt the proposed rules, however, until the Ohio Fire Code Advisory Committee files recommendations for revisions in the proposed rules or a period of 60 days elapses since apparently the proposed rules were filed by the Superintendent with the Board or by the Board with the advisory committee, whichever occurs first. The Board must consider any recommendations made by the advisory committee before adopting proposed rules, but may accept, reject, or modify such recommendations as long as any proposed rule is consistent with the State Fire Code. The Board must adopt the rules in accordance with the Administrative Procedure Act. (R.C. 3741.15(A).)

First type of rules

In proposing rules to the Board, the Superintendent must require a method of "permitting" for the installation, removal, modification, and repair of aboveground storage tanks containing petroleum or petroleum products *at terminal and bulk plants* in Ohio. The Superintendent also must propose rules allowing for the delegation of authority to conduct inspections related apparently to that permitting. The Superintendent may consider and propose rules for annual registration of apparently those aboveground petroleum storage tanks, and may propose fees for registration, permitting, and inspection that are consistent with the APST Program. Relatedly, within seven days after the receipt of an application for a permit, the Superintendent generally must notify in writing the State Fire Marshal and the fire department having jurisdiction of the proposed permitted activity. But, the bill allows the State Fire Marshal or such a fire department to waive this notification requirement. (R.C. 3714.15(B).)

³ *The bill does not delineate what constitutes "primary" responsibility for the Aboveground Petroleum Storage Tank Program over and against the laws that are excepted under this provision.*

Second type of rules

In addition to the Superintendent's responsibility for aboveground storage tanks containing petroleum or petroleum products at terminal and bulk plants, the Superintendent has primary jurisdiction for all other aboveground petroleum storage tanks. Specifically, the Superintendent must propose rules to the Board for the implementation and administration of a program for *aboveground storage tanks* (apparently) *used by "the end-user"* and not used at terminal and bulk plants. In formulating and proposing these rules, the Superintendent must exclude from registration requirements any tank used to contain less than 1,320 gallons of petroleum or petroleum products, aboveground petroleum storage tanks used for agricultural purposes to fuel farm machinery, and any aboveground petroleum storage tank regulated by the Department of Natural Resources. (R.C. 3714.15(C).)

State Fire Code and Fire Safety law overlap

The APST Program provisions do not prohibit the State Fire Marshal or a certified fire safety inspector from inspecting terminal and bulk plants in Ohio. If, upon an inspection or investigation, the State Fire Marshal, an assistant fire marshal, or a certified fire safety inspector finds a violation of the State Fire Code or the Fire Safety Law at a terminal or bulk plant, he or she may take enforcement actions under the Fire Safety Law or the rules adopted under that law. (R.C. 3714.15(D).)

When any permit is issued by the Superintendent under the APST Program, the structure and every particular of the structure represented by that permit and disclosed in the permit must be conclusively presumed, in the absence of fraud or a serious safety hazard, to comply with the Fire Safety Law or any rule issued pursuant under that law, if the structure was constructed, altered, or repaired in accordance with that permit and any such rule in effect at the time of approval (R.C. 3714.15(E)).

Finally, upon application by an affected party regulated under the APST Program, the Superintendent may grant a variance from the State Fire Code or rules adopted for the Program's implementation and administration if the Superintendent determines that a literal enforcement of a requirement will result in unnecessary hardship and the variance will not be contrary to the public health, safety, or welfare (R.C. 3714.15(F)).

Aboveground Petroleum Storage Tank Study Committee

The bill creates the 16-member Aboveground Petroleum Storage Tank Study Committee, comprised of the State Fire Marshal, the Superintendent of

Industrial Compliance, a member of the House of Representatives appointed by the House Speaker, a member of the Senate appointed by the Senate President, and 12 members appointed by the Governor. The legislative members must be from different political parties. Of the appointments made by the Governor, two must be representatives of petroleum refiners, two must be representatives of petroleum marketers, and one must be appointed to represent each of the following interest groups: municipal corporations, counties, townships, agricultural interests, the highway construction industry, the trucking industry, the Fire Service Alliance, and the public. The House Speaker, Senate President, and Governor must make their appointments by September 1, 2004. (Section 3.)

The study committee must determine and recommend (1) whether aboveground petroleum storage tanks that are not regulated by the Superintendent of Industrial Compliance should be registered and, if they are to be registered, the annual fee for registration, and (2) any other regulation needed to insure the safety of those tanks and the vicinities in which they are located.⁴ It must make its recommendations to the Governor, House Speaker, and Senate President not later than December 31, 2004. (Section 3.)

Delayed effective date

The bill delays the effective date of its previously described provisions until July 1, 2004 (Section 9).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-21-03	p. 1037

H0266-I-125.doc/jc

⁴ *The bill is ambiguous as to the types of aboveground petroleum storage tanks that are not regulated by the Superintendent of Industrial Compliance.*