



S.B. 102

125th General Assembly
(As Introduced)

Sens. Wachtmann, Jacobson

BILL SUMMARY

- Creates the Ohio Manufactured Homes Commission to regulate the installation of manufactured housing.
- Requires the Commission to adopt rules establishing the standards that govern the installation of manufactured housing.
- Establishes requirements to issue a manufactured housing installer license and requires the Commission to adopt rules governing the procedures to issue a license and to issue licenses accordingly.
- Establishes other duties and powers of the Commission.
- Permits the Commission to discipline manufactured housing installers and deny licenses to installers for specific reasons.
- Permits the Commission to certify local departments to accept and approve plans and inspect installations of manufactured housing.

TABLE OF CONTENTS

Background	2
The Ohio Manufactured Homes Commission	3
Duties	3
Composition	3
Administration	4
Executive Director.....	5
Rule adoption.....	5
Functions of the Commission	6
Contractual and delegation powers	7
Licenses	8

Licensure requirements.....	8
Continuing education requirements	9
Denial, suspension, revocation, or refusal to renew a license	10
Exemptions from licensure requirement	12
Certification of building departments	12
Prohibitions	12

CONTENT AND OPERATION

Background

Federal law, through the Manufactured Housing Construction and Safety Standards Act (42 U.S.C.S. 5404(c)(3)), as amended by the Manufactured Housing Improvement Act of 2000, sets forth that if a state wants to regulate the installation of manufactured housing and their installers, the state must have an installation regulation program in place that meets the requirements of that law by December 27, 2005. If a state does not have a program in place, then the state must comply with the program implemented by the United States Secretary of Housing and Urban Development (42 U.S.C.S. 5404(c)(2)(B)). The standards a state establishes must be at least as stringent as the standards the Secretary establishes. Ohio currently does not have a program to license manufactured housing installers.

A manufactured home, as defined in continuing law, is a building unit or assembly of closed construction that is fabricated one place and constructed in conformity with federal standards and has a permanent tag affixed to it. Mobile homes, under continuing law, are building units of closed construction that is fabricated in an off-site facility and is greater than 35 feet in length or when erected on-site is at least 320 square feet. A mobile home, in general, is built on a permanent chassis and is transportable, and is not a manufactured home or industrialized unit. The term "manufactured housing" refers to both mobile and manufactured homes (see **COMMENT**).

Industrial units, which also are known as modular homes, are not regulated under the bill. An industrial unit, as defined in continuing law, is a building unit or assembly of closed construction fabricated in an off-site facility that is substantially self-sufficient as a unit or as part of a greater structure, and that requires transportation to the site of intended use. This definition does not include manufactured homes. (Sec. 3781.06(C)(3).)

Under the bill "installation" means any of the following: (1) the temporary or permanent construction of stabilization, support, and anchoring systems for manufactured housing, (2) the placement and erection of a manufactured housing

unit or components of a unit on a structural support system, (3) the supporting, blocking, leveling, securing, anchoring, underpinning, or adjusting of any section or component of a manufactured housing unit, (4) the joining or connecting of all sections or components of a manufactured housing unit. A person who conducts these functions is a manufactured housing installer.

The Ohio Manufactured Homes Commission

Duties

The bill creates the Ohio Manufactured Homes Commission and vests it with the exclusive authority to regulate manufactured housing installers, the installation of manufactured housing, and manufactured housing foundations and support systems. The bill sets forth that municipal corporations and other political subdivisions are preempted from regulating and licensing installers and regulating and inspecting the installation of manufactured housing and manufactured housing foundations and support systems. The Commission has exclusive power to adopt rules of uniform application throughout the state to govern the installation of manufactured housing, the inspection of manufactured housing foundations and support systems, the training and licensing of manufactured housing installers, and the investigation of complaints concerning manufactured housing installers. No political subdivision of the state or any department or agency of the state may establish any other standards. (Sec. 4781.14.)

Composition

The Commission is comprised of nine members, six of whom are chosen from a list of recommendations by the Ohio Manufactured Homes Association. With specified exceptions, members must be residents of Ohio. Members serve four-year terms that end on December 31, with the exception of the initial appointees, who have designated terms under the bill. The bill limits Commission members to two consecutive four-year terms. It also includes standard provisions for the filling of vacancies and specifies that a vacancy does not impair the authority of the remaining members to exercise all the Commission's powers.

Under the bill, the Governor, the President of the Senate, and the Speaker of the House of Representatives must appoint three members each. The Governor appoints the following members: (1) one member to represent the Board of Building Standards who is either an actual Board member or a non-classified Board employee, (2) one member to represent the Department of Health who may be a non-classified Department employee, and (3) one member whose primary residence is a manufactured housing unit.

The President of the Senate appoints the following members: (1) two manufactured housing installers who have been actively engaged in the installation of manufactured housing for the five years immediately prior to appointment, (2) one member, who is not required to be a resident of Ohio, who manufactures manufactured homes in Ohio, or if outside Ohio, has the homes shipped into Ohio.

The Speaker of the House appoints the following members: (1) one member who operates a manufactured or mobile home retail business in Ohio to represent the interests of these types of retailers, (2) another member who is a manufactured home park operator or an employee of an operator, and (3) one member to represent the Ohio Manufactured Homes Association who may be the President or Executive Director of the Association. The bill gives the Governor power to remove Commission members for incompetence, neglect of duty, misfeasance, nonfeasance, malfeasance, or unprofessional conduct in office. (Sec. 4781.02.)

Administration

The bill requires the members of the Commission annually to elect a chairperson and vice-chairperson to preside at Commission meetings. The chairperson presides over meetings, with the vice-chairperson doing so when the chairperson is not present. Under the bill, the Commission is required to meet at least three times a year either upon the call of the chairperson or when a majority of the Commission members submit a request. The chairperson determines the time and place of the meeting, and five votes are necessary for the Commission to take action. If neither the chairperson nor the vice-chairperson attends a meeting and at least five members are present, those present must elect a presiding officer to run the meeting.

The bill prohibits Commission members from participating in any vote regarding a contract or license the Commission awards if the member has a direct pecuniary interest in that contract or license. Under the bill, no action of the Commission constitutes a conflict of interest for any member unless a majority of the Commission determines that a conflict of interest would exist if a member participated in an action. The bill does not specify whether the member with the possible conflict may vote on whether a conflict exists.

Under the bill, members do not receive compensation for serving on the Commission but may be reimbursed for actual, necessary expenses incurred while serving on the Commission, including travel expenses. The Commission may employ administrative staff in the non-classified civil service. The staff serve at the Commission's pleasure and perform the duties and functions the Commission authorizes. (Sec. 4781.03.)

Executive Director

Part of the Commission's administrative staff authorized by the bill includes the position of Executive Director. The Executive Director, with the Commission's approval, may obtain and manage an office space, supplies, and staff necessary to effectively perform the Executive Director's and Commission's duties. The Executive Director reviews license applications and issues licenses according to Commission rules. If the Commission has not contracted to have another entity run the dispute resolution program it develops, then the Executive Director must administer that program. Also, if the Commission develops a continuing education program, the Executive Director administers that program as well. The Executive Director collects any fees that the Commission establishes and must employ installation inspectors and investigators who serve at the Executive Director's pleasure. The Executive Director serves as the secretary of the Commission and maintains a written record of the Commission's meetings and proceedings. Additionally, the Executive Director must notify manufactured home installers when a change has been made to the laws governing them. The Executive Director serves as determined by the Commission and performs the duties the Commission requests or delegates for the administration and enforcement of the bill. (Secs. 4781.05 and 4781.06(A).)

Rule adoption

Under the bill, the Commission must adopt rules, pursuant to the Administrative Procedure Act. The Commission must establish standards by rule that govern the installation of manufactured housing, with the minimum standards being the model standards the Secretary of the United States Department of Housing and Urban Development adopts. The standards must be consistent with, and not less stringent than, the Secretary's model standards or manufacturers' standards that the Secretary determines are equal to or not less stringent than the model standards. Current law requires the Public Health Council to adopt rules regarding "blocking" and "tiedowns" of manufactured and mobile homes in manufactured home parks, but under the bill, the Commission has the exclusive authority to make such rules. (Secs. 4781.04(A)(1) and 3733.02(A)(1).) Also, under current law, permanent foundation can be approved locally. However, under the bill, permanent foundation means permanent masonry, concrete, or a footing or foundation approved by the Commission, to which a manufactured or mobile home may be affixed (sec. 3781.06).

The Commission also must adopt rules to do all of the following:

- (1) Govern the inspection of the installation of manufactured housing;

(2) Govern the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured and mobile homes;

(3) Govern the training, experience, and education requirements for manufactured housing installers;

(4) Establish a code of ethics for manufactured housing installers;

(5) Govern the issuance, revocation, and suspension of licenses to manufactured housing installers;

(6) Establish fees for the issuance and renewal of licenses, for conducting inspections to determine an applicant's compliance with this bill and the rules the Commission adopts pursuant to it, and for the Commission's expenses incurred in carrying out the requirements of the bill;

(7) Establish conditions under which a licensee may enter into contracts to fulfill the licensee's responsibilities;

(8) Govern the investigation of complaints concerning violations of the bill and the administrative rules created pursuant to it or complaints involving the conduct of any licensed manufactured housing installer or person installing manufactured housing without a license;

(9) Establish a dispute resolution program for the timely resolution of warranty issues, disputes regarding responsibility for the correction or repair of defects in new and used manufactured housing, and the installation of new and used manufactured housing. The rules must provide for the resolution of disputes between manufacturers, retailers, installers, and consumers and must require that any dispute that concerns an installation be reported within one year following that installation. The Executive Director of the Commission administers the program.

(10) Establish the requirements, procedures, and the fees to be charged for the certification of building departments and building department personnel and renewal of the certification (see "*Certification of building departments*" below);

(11) Carry out any other provision of the bill. (Sec. 4781.04(A).)

Functions of the Commission

The Commission must provide for the licensing of manufactured housing installers. The Commission must prepare and administer a licensure examination to determine an applicant's knowledge of manufactured housing installation and other aspects of installation the Commission determines are appropriate. To do this, the Commission must select, provide, or procure appropriate examination

questions and answers for the licensure examination and establish the criteria for successful completion of the examination. The Commission must prepare, distribute, and receive any application form that is required for licensure, including applications for the renewal of a license. The Commission must establish procedures for processing, approving, and disapproving applications for licensure and must issue licenses to qualified applicants. (Sec. 4781.04(B)(1) through (6).)

The bill also requires the Commission to review the design of and plans for manufactured housing installations, foundations, and support systems and to inspect the construction and installation of manufactured housing installations, foundations, and support systems to determine compliance with the adopted standards. (Sec. 4781(B)(7) and (8).)

The bill requires the Commission to investigate complaints concerning violations of the bill and rules adopted under it, or the conduct of any installer. The bill gives the Commission power to conduct audits and inquiries of installers as appropriate for the enforcement of the rules it adopts. The Commission, or any person the Commission employs for the purpose of conducting audits and inquiries, may review and audit the business records of any installer during normal business hours. The Commission is authorized by the bill to determine the appropriate disciplinary actions to take for violations of the provisions set forth in the bill and rules adopted by the Commission. (Sec. 4781.04(B)(10) through (12).)

The Commission must administer the Manufactured Homes Commission Operating Fund, which is created under the bill (sec. 4781.04(B)(9)). The fund must be used for the administration and enforcement of the bill including the payment of the Commission's operating costs, staff salaries, and expenses. (Secs. 4781.13 and 4743.05.)

Finally, the Commission has the authority to perform any function or duty necessary to administer the bill's provisions and the rules the Commission adopts (sec. 4781.04(B)(13)).

Contractual and delegation powers

Under the bill, the Commission must establish a dispute resolution program. However, the bill allows the Commission to contract with the Ohio Manufactured Homes Association or another entity to administer the program, with the contract specifying the program's terms. The bill also provides that the Commission may contract with any private third party, municipal corporation, township, county, state agency, or the Ohio Manufactured Homes Association to perform any of the Commission's functions mentioned above under **"Functions of**

the Commission" that the Commission has not delegated to the Executive Director (see "***Executive Director***" below).

Licenses

Under the bill, beginning one year after the bill's effective date, only a person who is licensed as a manufactured housing installer can install manufactured housing. (Sec. 4781.11(A)(1) and Section 3.) A license must bear the licensee's name and post office address, the issue date, a serial number the Commission designates, and the signature of the Commission chairperson or a person the Commission designates pursuant to rules (sec. 4781.08(D)). No manufactured housing installer's license may be transferred to another person (sec. 4781.08(F)).

Licensure requirements

An installer's license must be issued by the Commission to any applicant who is at least 18 years of age and meets all of the following requirements:

- (1) Submits an application to the Commission on a form the Commission prescribes and pays the fee the Commission requires;
- (2) Completes all training requirements the Commission prescribes;
- (3) Meets the experience requirements the Commission prescribes by rule;
- (4) Has at least one year of experience installing manufactured housing under the supervision of a licensed installer if applying for licensure after January 1, 2006;
- (5) Has completed an installation training course the Commission approves, which may be offered by the Ohio Manufactured Homes Association or other entity;
- (6) Receives a passing score on the licensure examination the Commission administers;
- (7) Provides information the Commission requires to demonstrate compliance with this bill and Commission rules;
- (8) Provides the Commission with three references from persons who are retailers, manufacturers, or manufactured home park operators familiar with the person's installation work experience and competency. At least two of the three references provided after January 1, 2006, must be from persons who are licensed installers;

(9) Has liability insurance or a surety bond that is issued by an insurance or surety company authorized to transact business in Ohio, in the amount the Commission specifies, and containing the terms and conditions the Commission requires;

(10) Is in compliance with the Workers' Compensation Law (sec. 4781.08(A)).

The bill provides that any person who is licensed, certified, or otherwise approved under the laws of another state to perform functions substantially similar to those of a manufactured housing installer may apply to the Commission for a license on a Commission form. The Commission must issue a license if the standards in the state in which the applicant is licensed, certified, or approved are substantially similar to or exceed the requirements set forth by the bill and the Commission's rules. The Commission can require the applicant to pass the Commission's licensure examination. (Sec. 4781.08(C).)

Under the bill, a license expires two years after it is issued. To renew a license, a licensee must meet the same requirements discussed above to initially receive the license. Also, a licensee must show that he or she has complied with the requirements of the bill and the Commission's rules, including meeting any continuing education requirements the Commission might establish. (Sec. 4781.08(E).)

Continuing education requirements

The bill permits the Commission to establish programs and requirements for continuing education for licensed installers if the Commission chooses to do so. The Commission cannot, however, require licensees to complete more than eight credit hours of continuing education during each two-year license period. The continuing education must be completed prior to the expiration of the installer's license unless an extension is granted. (Sec. 4781.10(A).) The Commission cannot renew the license of any person who fails to satisfy any continuing education requirement that the Commission establishes. The bill allows the Commission to grant an extension in order to comply with the continuing education requirements if the person shows the extension is for good cause. Any installer who is granted an extension and completes the requirements within the time the Commission establishes is deemed in compliance with the requirements. The installer's license remains in effect during the period of the extension. (Sec. 4781.10(D).)

Under the bill, if the Commission establishes a program of continuing education, it must require that only courses that the Commission pre-approves be accepted for licensure credit (sec. 4781.10(A)). If the Commission creates the

requirements, the bill allows the Commission to adopt rules that are consistent with the bill to carry out the program. These rules may govern the content and subject matter of the courses. Since the Commission must approve the course taught, it may establish the criteria, standards, and procedures to approve the courses, including the course sponsors and instructors. The bill allows the Commission to make rules governing the methods of instruction of the courses as well. The Commission's rules also govern the computation of course credit. The Commission may also make rules that govern the ability to carry forward course credit from one year to another. Since under the bill the Commission may grant extensions for good cause, it may make rules to govern conditions in which it may grant a waiver or change in the requirements for hardship or other reasons to be determined by the Commission. Finally, the Commission may adopt rules that govern the procedures to comply with the continuing education requirements and that establish sanctions for noncompliance. (Sec. 4781.10(C).)

The bill allows the Commission to establish nonrefundable fees in order to provide the resources to administer continuing education programs it might establish. The fees may come from several sources. First, the Commission may charge an application fee to the sponsor of each proposed course. That fee may not be more than \$150. The Commission also can charge the sponsor of each course an annual renewal fee of up to \$75 for course approval. Third, the Commission may charge each sponsor a course fee. The course fee is charged for each person completing the course, at a maximum of \$5 per person who completes the approved course. Finally, the Commission can charge a licensee a student fee for each course or activity the licensee submits to the Commission for approval. The student fee cannot exceed \$50 per course or activity. The Commission may charge any or all of these fees to fund the continuing education program if it establishes one. (Sec. 4781.10(B).)

Denial, suspension, revocation, or refusal to renew a license

The bill provides that the Commission must not grant a license to any person who the Commission finds has engaged in actions during the previous two years that constitute grounds for denial, suspension, or revocation of a license. The Commission also cannot issue a license to a person who has had a license revoked or disciplinary action imposed by the licensing or certification board of another state or jurisdiction. The action had to have occurred within two years before applying for a license and the action must be in connection with the installation of manufactured housing. (Sec. 4781.08(B).)

The Commission may deny, suspend, revoke, or refuse to renew an installer's license for any of the following reasons:

- (1) Failing to meet the application requirements;

- (2) Failing to meet the continuing education requirements if the Commission establishes them;
- (3) Violating any provision of the bill or any Commission rules;
- (4) Misstating material information on the license application;
- (5) Installing manufactured housing without a license or without being under the supervision of a licensed manufactured housing installer;
- (6) Failing to appear at a final hearing of the Commission in which the installer was required to appear;
- (7) Failing to comply with a Commission final adjudication order;
- (8) Being convicted of a felony or a crime involving moral turpitude;
- (9) Having a license revoked, suspended, or denied by the Commission or by another state or jurisdiction;
- (10) Engaging in conduct in another state or jurisdiction that would violate this bill if committed in this state. (Sec. 4781.09(A).)

An installer whose license is suspended, revoked, or not renewed may apply for a new license two years after the date on which the license was suspended, revoked, or not renewed (sec. 4781.09(D)). New applicants who are denied a license are not specifically prohibited from reapplying in two years.

The Commission also may impose a civil penalty of not less than \$100 or more than \$500 for each violation of the bill or any rule adopted under it. The Commission must deposit penalties in the Occupational Licensing and Regulatory Fund. (Sec. 4781.09(C).)

Any installer whose license is revoked, suspended, denied, or not renewed, or upon whom a civil penalty is imposed, and any applicant who is denied a license may request an adjudication hearing on the matter within 30 days after receipt of the notice of the action. The hearing must be held in accordance with the Administrative Procedure Act. Any licensee or applicant may appeal an order made pursuant to an adjudication hearing in the manner provided in the Administrative Procedure Act. Any action against the Commission and any appeal from a determination or decision by the Commission must be brought in the Court of Common Pleas of Franklin County. (Secs. 4781.09(B) and 119.12).

Exemptions from licensure requirement

The bill allows a person who is not a licensed installer to perform foundation or base support system construction if supervised by a licensed installer, but the licensed installer does not have to be present at the time of construction. (Sec. 4781.11(A)(3).) A licensed installer who supervises the work of an unlicensed person, whether present or not during the work, is responsible for all installation work that the unlicensed person performs under the licensed installer's supervision. Whether or not the person is licensed, the foundation and support system must still meet the standards the Commission establishes and receive all approvals and inspections that the Commission requires. The bill does not set forth what other work an unlicensed person may perform while under the supervision of a licensed installer. (Sec. 4781.11(C).)

A person who is building manufactured housing for the person's own use on land owned by the person does not have to obtain a license under the bill. That person is not entitled to claim any right or remedy, or bring a cause of action under the bill. The bill implies that if the housing is located in a manufactured home park, then the person must obtain a license even if the housing is for the person's own use. (Sec. 4781.11(B)(1) and (2).)

Certification of building departments

The bill allows the Commission to certify municipal, township, and county building departments and the personnel of those departments to exercise the Commission's enforcement authority, accept and approve plans and specifications for foundations, support systems and installations, and inspect manufactured housing foundations, support systems, and manufactured housing installations. The Commission must adopt rules to establish certification standards. Certification lasts for three years. The Commission may initiate an investigation on its own motion or the petition of a person affected by the enforcement or approval of plans. Following an investigation and finding of facts that support its action, the Commission may revoke or suspend certification. The bill does not specify the types of actions that might cause the loss of certification.

Prohibitions

It is a violation of the bill to do any of the following: (1) represent another's installer license as one's own, (2) give false or misleading information of any kind to the Commission or a Commission member in connection with a licensing issue, (3) impersonate an installer or use an expired, revoked, or suspended license. (Sec. 4781.11(D).)

The Commission may apply to an appropriate court to stop a violation of the bill or rules adopted under it. The court must grant any appropriate relief, including an injunction, restraining order, or any combination thereof, upon a showing that a person has violated or is about to violate the bill's provisions or Commission rules. The prosecuting attorney of a county, a city director of law, or the Attorney General may, upon the complaint of the Commission, prosecute to termination or bring an action for injunction against any person violating the bill's provisions or Commission rules.

COMMENT

Federal law appears to change terminology in the Manufactured Housing Construction and Safety Act (47 U.S.C.S. §5401, et seq.). An amendment was added, substituting "manufactured home" wherever "mobile home" appeared in the Act. Therefore, after the passage of the Act, new mobile homes are referred to as manufactured homes under federal law. Ohio law, however, refers to manufactured homes and mobile homes separately. But because the Act requires regulation of manufactured homes, which under the federal terminology includes mobile homes, the Commission is to regulate both in order to be compliant with the Act.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-24-03	p. 858

S0102-I-125.doc/jc

