



Sub. S.B. 179
125th General Assembly
(As Passed by the Senate)

Sens. Nein, Carey, Stivers, Harris

BILL SUMMARY

- Renames the Ohio Construction Industry Examining Board the Ohio Construction Industry *Licensing* Board.
- Makes operating without an appropriate construction trades contractor's license issued by the Construction Industry Licensing Board a minor misdemeanor on the first violation and a fourth degree misdemeanor on subsequent violations.
- Establishes a \$1,000 fine and increased continuing education courses as potential penalties for violation of the Construction Industry Licensing Law.
- Authorizes the Attorney General to bring a civil action for appropriate relief upon the request of a trades section of the Board.
- Extends the deadline for submitting a complaint against a licensed contractor from one to three years after the alleged action or event occurred.
- Transfers certain duties of the trades sections of the Ohio Construction Industry Examining Board to the administrative section of the Board and modifies some of those duties.
- Modifies certain continuing education, examination, and license renewal requirements relative to licensed contractors.
- Eliminates specific provision requiring Controlling Board approval for license and renewal fee increases but requires that those fees be reasonable.

- Increases fees charged to continuing education providers who provide courses for licensed contractors.
- Modifies provisions relative to an assigned license.
- Requires backflow technicians to be certified pursuant to rules adopted by the Superintendent of the Division of Industrial Compliance.
- Permits the Ohio Turnpike Commission to keep cost estimates for construction projects for roadways and bridges confidential until all bids are received.
- Modifies certain definitions relative to licensed contractors.

CONTENT AND OPERATION

Renaming the Ohio Construction Industry Examining Board and the Construction Industry Examining Fund

The bill renames the Ohio Construction Industry Examining Board the Ohio Construction Industry *Licensing* Board. The Board is comprised of an administrative section and three trades sections that have responsibilities relative to the construction trade contractors that each respective section serves. (Sec. 4740.02.)

Changes in definitions

Contractor

Under continuing law, the Board licenses the following five types of contractors: heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, and hydronics. Each type of contractor is separately defined. The bill eliminates the separate definitions and instead defines "contractor" as a general term without reference to a specific trade. Additionally, under the bill, a contractor can mean a person who engages in one *or more* trades.

The bill adds that a contractor is one who, for compensation, directs, supervises, or has responsibility for the means, method, and manner of *testing* on a construction project in addition to the construction, improvement, renovation, repair, or maintenance on a construction project.

A contractor under existing law is a tradesperson or one who employs tradespersons who perform and who are trained to perform construction, improvement, renovation, repair, or maintenance on a construction project with

respect to that contractor's trade. The bill eliminates reference to a person being trained to perform that person's trade and eliminates reference to a contractor being a tradesperson (who, by definition, is not responsible for the means or manner of construction). (Sec. 4740.01.)

Licensed trade

The bill newly defines "licensed trade" and does so by using the existing definition of "contractor," but specifying that it is a trade performed by contractors of the various enumerated trades. (Sec. 4740.01(G).)

Duties of trades sections of the Board

The bill specifies that the plumbing section has primary responsibility for the licensure of plumbing contractors, hydronics contractors, and backflow contractors. The electrical section has primary responsibility for the licensure of electrical contractors. And the heating, ventilating, air conditioning, and refrigeration section has primary responsibility for the licensure of heating, ventilating, and air conditioning contractors, and refrigeration contractors.

Current duties

Under current law, each section is authorized to adopt rules limited to the following related to the respective section:

- (1) Application procedures for examinations;
- (2) Specifications concerning continuing education requirements for license renewal that address all of the following:
 - (a) Criteria for selecting and approving courses and persons to provide those courses;
 - (b) 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;
 - (c) 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 nor 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;
 - (d) 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;

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

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

- For the approval of each continuing education course, not more than \$10 plus \$1 per credit hour;
- For the approval of each person providing continuing education courses, \$25. (Sec. 4740.05(A).)

Modifications by the bill

The bill shifts authority for adopting rules concerning the foregoing subjects to the administrative section of the Board. It also modifies what the rules should accomplish as follows:

(2)(a) above is more generally stated in the bill. It simply says "Criteria for continuing education courses conducted under this chapter."

(2)(b) requires ten hours per year instead of a maximum of 30 hours every three years.

(2)(c) requires submission of required information at least 30 days prior to course offering instead of not less than 90 days. Additionally, the Board's authority to permit submission at a different time is eliminated. (Sec. 4740.04(G).)

Under current law, the trades sections of the Board establish license, renewal, and late fees, subject to the approval of the Controlling Board. Each section may increase these fees, provided that no increase exceeds 50% of the lowest fee determined by that section of the Board during the three-year period immediately preceding an increase, and further provided that no increase is made more than once a year. The bill transfers the authority to establish the license and renewal fees to the administrative section, while leaving late fee authority with the trades sections. It also eliminates the specified required approval of the Controlling Board but states that fees and increases to fees must be reasonable. The bill requires the administrative section to establish license and renewal fees pursuant to rules it adopts in accordance with the Administrative Procedure Act. (Secs. 4740.05(A)(2)(f), 4740.06(D), and 4740.09.)

Continuing education

The bill requires each section of the Board to establish or approve a continuing education curriculum for license renewal for each class of contractors for which the section has primary responsibility. It specifies that no curriculum may require that more than five out of the ten total continuing education hours required per year be of specific course requirements. The bill requires the administrative section of the Board to adopt any continuing education curriculum that the other sections of the Board establish or approve. (Secs. 4740.04(G) and 4740.05(C).)

If a licensee violates the Construction Industry Licensing Law (R.C. Chapter 4740.), the trades sections of the Board are permitted under the bill to require the licensee to complete additional continuing education course work. Any continuing education course work so required may not count toward any other continuing education requirements established under that Law. (Sec. 4740.10(A)(4).)

Fee schedule

The bill also modifies the fee schedule relative to continuing education. The administrative section must adopt rules that add a new fee of \$1 per credit hour of instruction per attendee, which is charged to persons who provide continuing education courses. Regarding the current charge of not more than \$10 plus \$1 per credit hour described above, the bill more specifically states that this charge is for the approval of *each* course offered. (Sec. 4740.04(G)(2)(e).)

Legal aliens may take required examination

One requirement to qualify to take the examination required for licensure is that a person be a United States citizen. The bill allows legal aliens who produce valid documentation demonstrating their legal-resident-status to also qualify to take the examination.

The bill also specifies that if a person has been convicted of or pleaded guilty to a misdemeanor involving moral turpitude or any felony anytime before five years prior to submitting an application for licensure, that person may qualify to take the required examination if all other criteria are satisfactorily met. Current law prohibits anyone who has ever committed or pleaded guilty to a misdemeanor involving moral turpitude or any felony from taking the examination. (Sec. 4740.06(B)(2) and (5)(a).)

License renewal

Under current law, a licensee may renew an unexpired license without reexamination if the licensee submits an application for renewal along with the renewal fee and proof of having satisfied continuing education requirements if the applicant submits this material not more than 90 days before the license expires. The bill states that this deadline is 90 *calendar* days. (Sec. 4740.06(D).)

Currently, each section of the Board may waive renewal requirements upon finding that an applicant substantially meets renewal requirements. The bill specifies that a section may grant such waiver upon application and within one calendar year after a license has expired. The bill adds that an applicant must satisfy any condition the section imposes before a license is reissued. (Sec. 4740.06(D).)

Under current law, 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 immediately must notify the appropriate section of the Board of the date on which the individual ceased to be associated with the business entity. The bill eliminates "without limitation," which could imply that limitations may be placed upon this provision. (Sec. 4740.07(D)(1).)

Currently, a license assigned to a business entity is invalid 90 days after the date on which the individual who assigned the license ceases to be associated with the business entity. The bill specifies that this 90-day period is 90 calendar days. (Sec. 4740.07(D)(1).)

Penalty for operating without a contractor's license

Whoever acts as or claims to be a heating, ventilating, and air conditioning contractor, refrigeration contractor, plumbing contractor, electrical contractor, or hydronics contractor without an appropriate license is guilty, under the bill, of a minor misdemeanor on the first violation and a misdemeanor of the fourth degree on subsequent violations. (Sec. 4740.99.)

Civil action brought by the Attorney General

The bill specifies that upon the request of the appropriate section of the Board, the Attorney General may bring a civil action for appropriate relief, including but not limited to a temporary restraining order or permanent injunction in the court of common pleas of the county where the unlicensed person resides or is acting as or claiming to be a licensed contractor. (Sec. 4740.13(B).)

\$1,000 fine for violation of Construction Industry Licensing Law

The bill authorizes the trades sections of the Board to impose a fine on a licensee who violates the Construction Industry Licensing Law (R.C. Chapter 4740.), not exceeding \$1,000 per violation per day. (Sec. 4740.10(A)(1).)

Extension for submitting written complaints

Under current law, a person may submit a written complaint to the appropriate section of the Board against a licensee within one year after the action or event upon which the complaint is based. The bill extends this deadline to three years after the action or event. (Sec. 4740.10(D).)

Deposit of fines

Currently the Board must deposit all receipts it collects into the state treasury to the credit of the Industrial Compliance Operating Fund. The bill adds a specification that the Board deposit all *fines* it collects to the credit of that Fund. (Sec. 4740.11.)

Conflict with other statutes

Existing law specifies that nothing in the law regulating trades contractors can be construed to limit the operation of any statute or rule of Ohio or any ordinance or rule of any political subdivision, district, or agency of the state that does either of the following:

(1) Regulates the installation, repair, maintenance, or alteration of plumbing systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems;

(2) Requires the registration and assessment of a registration or license fee of tradespersons who perform heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, or hydronics construction, improvement, renovation, repair, or maintenance.

The bill applies provision (1) described directly above to hydronics systems. It also creates an exception to provision (2) described directly above by specifying that any political subdivision, district, or state agency that requires these types of contractors to register and pay a registration, permit, or license fee, must require that those contractors also be licensed under Ohio law. (Sec. 4740.12(A)(1).)

Certification of backflow technicians

The Superintendent of the Division of Industrial Compliance, within 90 days after the bill's effective date, must appoint a Backflow Advisory Board consisting of no more than ten members, who serve at the pleasure of the Superintendent. The Superintendent must appoint a representative from the plumbing section of the Division of Industrial Compliance, three representatives recommended by the Plumbing Administrator of that Division, a representative of the Drinking Water Program of the Ohio Environmental Protection Agency, three representatives recommended by the Director of Environmental Protection, and not more than two members who are not employed by the plumbing or water industry. The Board must advise the Superintendent on matters pertaining to the training and certification of backflow technicians. (Sec. 3703.21(A).)

Rules concerning certification

The Superintendent must adopt rules in accordance with the Administrative Procedure Act to provide for the certification of backflow technicians. The rules must establish all of the following requirements, specifications, and procedures:

- (1) Requirements and procedures for the initial certification of backflow technicians, including eligibility criteria and application requirements and fees;
- (2) Specifications concerning and procedures for taking examinations required for certification as a backflow technician, including eligibility criteria to take the examination and application requirements and fees for taking the examination;
- (3) Specifications concerning and procedures for renewing a certification as a backflow technician, including eligibility criteria, application requirements, and fees for renewal;
- (4) Specifications concerning and procedures for being approved as a training agency authorized to teach required courses to candidates for certification as backflow technicians or continuing education courses to certified backflow technicians;
- (5) Specifications concerning and procedures for renewing the approval described in (4) directly above;
- (6) Education requirements that candidates for initial certification as backflow technicians must satisfy and continuing education requirements that certified backflow technicians must satisfy;

(7) Grounds and procedures for denying, suspending, revoking, or denying the renewal of certification as a backflow technician;

(8) Procedures for issuing administrative orders for the remedy of any violation of the statutory provisions concerning certification of backflow technicians and any rule adopted by the Superintendent regarding such certification, including but not limited to, procedures for assessing a civil penalty;

(9) Any provision the Superintendent determines is necessary to administer or enforce statutory requirements concerning certification of backflow technicians. (Sec. 3703.21(B).)

The bill prohibits an individual from engaging in the installation, testing, or repair of any isolation backflow prevention device unless that individual possesses a valid certification as a backflow technician. This prohibition does not apply, however, with respect to the installation, testing, or repair of any *containment* backflow prevention device (see "Definitions" below). Anyone who violates this prohibition or any related rule adopted by the Superintendent must pay a civil penalty of not more than \$5000 for each day that the violation continues. The Superintendent, by order, may assess a civil penalty, or may request the Attorney General to bring a civil action to impose the civil penalty in the court of common pleas of the county in which the violation occurred or where the violator resides. (Sec. 3703.21(C) and (D).)

The bill makes any action taken under a rule regarding the denial, suspension, or revocation of a certificate subject to the appeal process of the Administrative Procedure Act. Additionally, an administrative order issued to remedy a violation and an appeal to that type of administrative order must be executed in accordance with the Administrative Procedure Act. (Sec. 3703.21(E).)

Definitions

For purposes of the provisions described directly above, the bill defines "isolation backflow prevention device" as a device for the prevention of the backflow of liquids, solids, or gases that is regulated by the Ohio Building Code and rules adopted by the Superintendent. "Containment backflow prevention device" means a device for the prevention of the backflow of liquids, solids, or gases that is installed by the supplier of, or as a requirement of, any public water system under the Safe Drinking Water Act (R.C. Chapter 6109.). (Sec. 3703.21.)

Ohio Turnpike Commission cost estimate confidentiality

Under current law, the Ohio Turnpike Commission must include in the plans and specifications for construction projects for which bids are solicited, the

estimate of the project's cost. These plans and specifications are made public in advertisements for bids pursuant to existing law. These requirements generally apply to all public authorities, except the Department of Transportation, when constructing public improvements. (Secs. 153.12 and 5525.12, not in the bill.)

Under the bill, the Commission may require that the cost estimate for the construction, demolition, alteration, repair, improvement, renovation, or reconstruction of a roadway or bridge for which the Commission is required to receive bids be kept confidential and remain confidential until after all bids for the public improvement have been received or the deadline for receiving bids has passed. Thereafter, and before opening the bids submitted for the public improvement, the Commission must make the cost estimate public knowledge by reading the cost estimate in a public place. (Sec. 5537.07(A).)

Miscellaneous

The bill prohibits a municipal corporation and a board of county commissioners from registering an unlicensed specialty contractor who is required to be licensed under the Construction Industry Licensing Law. (Secs. 715.27(F) and 3781.102(H).)

The bill eliminates an obsolete reference to the Construction Industry Examining Fund. (Sec. 4740.03(F).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-13-04	p. 1386
Reported, S. Insurance, Commerce, & Labor	04-28-04	p. 1777
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