



Ohio Legislative Service Commission

Bill Analysis

Nicholas A. Keller

S.B. 78

130th General Assembly
(As Introduced)

Sen. Hughes

BILL SUMMARY

- Requires an individual applying for a specialty contractor license to request that the license be assigned to a contracting company with whom the individual is employed rather than permit that assignment as under current law.
- Modifies the procedure by which an assigned license becomes invalid subsequent to a contractor's disassociation from a contracting company.
- Expands the reasons for which discipline may be imposed against a licensee and modifies the disciplinary actions that may be imposed.
- Allows a specialty section of the Board to take disciplinary action against a licensee whose registration with another governmental agency has been suspended or revoked.
- Requires each specialty section of the Board to direct the Administrative Section of the Board to refuse to issue a license to an applicant that had another person take the licensing examination for the applicant or who failed the licensing examination.
- Allows a specialty section of the Board to take action against a licensee without a hearing if the licensee does not request a hearing within 30 days of receiving notice of the Board's intent to act against the licensee.
- Allows a specialty section of the Board, upon determining that a person has acted as a specialty contractor without the appropriate license, to file a complaint with the appropriate prosecutor for criminal prosecution.
- Allows a specialty section of the Board to investigate any person who allegedly has acted as a specialty contractor without the appropriate license.

- Requires an investigator to be appointed by the Department of Commerce to conduct an investigation when a person is alleged to have acted as a specialty contractor without the appropriate license.
- Removes from the requirements for a written notice sent by a specialty section to a person alleged to have acted as a specialty contractor without a license, the specification that a hearing will be held and the date, time, and place of the hearing and the requirement that the notice be sent within seven days of the section's determination.
- Allows a specialty section to take action against a person alleged to have acted as a specialty contractor without a license upon an affirmative vote of a quorum of the section's members if the person does not request a hearing within 30 days of receiving notice of the section's intent to act against the person.
- Reduces from four to three the number of affirmative votes of specialty section members required to impose a penalty on a person who the section determines after a hearing has acted as a specialty contractor without a license.
- Eliminates the current law liability of each licensee of a business to which multiple licenses have been assigned regarding violations of the terms of the license committed during any work conducted under any of the licenses.
- Eliminates the current timeframe in which a person applying to be licensed by the Board must file a written application and fee.
- Requires a contractor's name and the contracting company associated with that contractor to be printed on licenses issued by the Board.
- Requires that an individual seeking to demonstrate requisite experience to be licensed by the Board through work as a tradesperson demonstrate that that work was performed under a licensed specialty contractor.
- Removes the current law requirement that liability insurance required by each specialty section of the Board for a person applying to be licensed by the Board must include complete operations coverage.
- Specifies that liability insurance required by each specialty section of the Board for a person applying to be licensed by the Board must be maintained only in one contracting company name.
- Allows an applicant who fails a specialty contractor licensing examination to retake the examination 60 days after the initial examination.

- Transfers responsibility for designing examinations for specialty contractor licenses from the Administrative Section of the Board to the specialty sections.
- Requires training agencies, rather than persons, to submit required information to the appropriate section of the Board and obtain Board approval if they wish to offer continuing education courses.
- Requires a training agency to pay a per credit hour fee for each course the agency submits to a specialty section of the Board for approval, rather than for each course the agency offers, as under current law.
- Requires each specialty section of the Board to adopt rules establishing criteria for the specialty section to use in deciding whether to issue, renew, suspend, revoke, or refuse to issue or renew licenses.
- Eliminates the current law requirement that the oath of office taken by members of the Board be filed with the Secretary of State.

CONTENT AND OPERATION

Assignment of specialty contractor licenses

Under current law, an individual may request, at the time that the individual applies for a specialty contractor license or any time thereafter, that the license be assigned to a business with whom the individual is associated as a full time officer, proprietor, partner, or employee. The bill makes this assignment mandatory and allows the license to be assigned only at the time of application and only to a contracting company (see "**Definition and terms**," below) with whom the individual is employed.

The bill also modifies the procedure by which a license assignment becomes invalid subsequent to a contractor ceasing to be associated with a business. Under the bill, the assignment becomes invalid 90 calendar days after the date of the contractor's death or after the contractor completes a change of company form, rather than the date of disassociation under current law, or, as under continuing law, at an earlier time to which the contracting company (changed from business entity under the bill) and the contractor have agreed.¹

Liability of assigning contractors

Continuing law specifies that any work a contracting company conducts under the license assigned and advertised (as added by the bill) pursuant to the law pertaining

¹ R.C. 4740.07.



to the assignment of licenses is deemed to be conducted under the personal supervision of the individual named in the license and any violation of a term of the license is deemed to have been committed by the individual named in the license (because this provision does not actually regulate the advertising of licenses, it is unclear how the bill's addition of the advertising requirement affects assignment liability). The bill also eliminates a provision of current law that makes each licensee of a business to which multiple licenses have been assigned liable for license violations occurring during any work conducted under any of the licenses.²

Unlicensed contracting

Current law allows a specialty section of the Construction Industry Licensing Board (see "**Specialty section**," below) to investigate any person who allegedly has acted as a specialty contractor or represented that the person is a specialty contractor without the appropriate license. The bill requires an investigator to be appointed by the Department of Commerce to conduct such an investigation on behalf of the specialty section.

Continuing law requires that if, after an investigation, the appropriate specialty section determines that reasonable evidence exists that a person has acted as a specialty contractor or represented that the person is a specialty contractor without the appropriate license, the section must send written notice to the person in the same way that notice is sent to licensees under the Administrative Procedure Act. The bill removes current law requirements that the notice be sent within seven days after the section's determination and that the notice specify that a hearing will be held and the date, time, and place of the hearing. The Administrative Procedure Act requires the notice to include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within 30 days of the time of mailing the notice. The bill also allows a specialty section to take action against the person without an adjudication hearing, upon an affirmative vote of a quorum of its members, if the person does not request a hearing within 30 days after receiving notice of the section's intent to act. If a hearing is held and the specialty section determines that a violation has occurred, the bill allows for the section to impose a fine of up to \$1,000 per day on the person upon an affirmative vote of a majority of the section's members, rather than upon the affirmative vote of four out of five members of the specialty section as under current law.³ The bill

² R.C. 4740.07(D).

³ R.C. 4740.16(A), (B), and (D) and 4740.02, by reference to R.C. 119.07, not in the bill.



also eliminates the authority of a specialty section to request the court of common pleas to compel attendance of persons before the section for hearings.⁴

After a finding, pursuant to a review and investigation, that a person has acted as or claimed to be a contractor licensed by the Construction Industry Licensing Law⁵ without holding or having been assigned the appropriate license, a specialty section is permitted, under the bill, to file a complaint with the appropriate prosecutor for criminal prosecution.⁶ Continuing law provides that a person who acts as a specialty contractor or represents that the person is a specialty contractor is guilty of a minor misdemeanor on the first violation and a fourth degree misdemeanor on subsequent violations.⁷

The Board

Generally

Under current law, each member of the Board is required to take an oath of office and file the oath with the Secretary of State. The bill eliminates the filing requirement.⁸

The Administrative Section

Continuing law vests the Administrative Section of the Board with the responsibility for issuing and renewing licenses and requires a construction industry license to include a license number and an expiration date. The bill requires that the contractor's name and the name of the contracting company associated with the individual also to be included.⁹

Specialty sections

The bill designates the three sections of the Board other than the Administrative Section (the Plumbing and Hydronics Section, the Electrical Section, and the Heating, Venting, Air Conditioning, and Refrigeration Section) as the "specialty" sections of the Board.¹⁰ The bill adds the term "specialty" throughout the Construction Industry

⁴ R.C. 4740.16(C) (repealed).

⁵ R.C. Chapter 4740.

⁶ R.C. 4740.13.

⁷ R.C. 4740.99 (not in the bill).

⁸ R.C. 4740.02(F).

⁹ R.C. 4740.04(C).

¹⁰ R.C. 4740.02(A).



Licensing Law to denote that one of these three sections is responsible for performing specified duties and for licensing and regulating a specific specialty or trade covered by the Construction Industry Licensing Law.¹¹

Application for a license

Under continuing law, a person seeking a specialty contractor license must file a written application and application fee with the appropriate section of the Board. The bill eliminates the current law timeframe for filing an application, which is between 30 and 60 days prior to the date of the examination required for licensure.

Additionally, the bill modifies the current law experience required to qualify to take a specialty contractor licensing examination. Under continuing law, applicants are required to demonstrate relevant experience to qualify to take the licensing examination. The bill allows an applicant to demonstrate that experience by being a tradesperson for a licensed contractor in the type of trade for which the individual is applying to be licensed for at least five years prior to the date the application is filed. Current law does not require that time spent as a tradesperson be under a licensed contractor.

The bill also modifies current law liability insurance requirements for persons applying for specialty contractor licenses. Continuing law specifies that an applicant must maintain liability insurance in an amount the appropriate section of the Board determines to qualify to take a specialty contractor licensing examination. The bill removes the current law requirement that the insurance include complete operations coverage and requires that the insurance be maintained only in one contracting company name.¹²

Examinations for licensure

The bill allows an applicant who does not pass the required examination to retake the examination not less than 60 days after the applicant's initial examination. It is unclear whether an applicant may retake the examination again if the applicant fails to pass a second or subsequent time.¹³

The bill also makes each specialty section of the Board responsible for designing the licensing examinations that determine an applicant's competence to perform the

¹¹ R.C. 4740.04, 4740.05, 4740.06, 4740.07, 4740.08, 4740.09, 4740.10, 4740.13, and 4740.16.

¹² R.C. 4740.06.

¹³ R.C. 4740.06(D).

particular type of contracting that the specialty section licenses. Current law requires the Administrative Section to select and contract with individuals or businesses to develop these examinations.¹⁴

Continuing education

Under the bill, the specialty sections are required to approve training agencies to offer continuing education courses pursuant to rules that the Board adopts. Current law requires that the sections grant approval to *persons* pursuant to those adopted rules. Similarly, training agencies, rather than persons as under current law, are prohibited from providing continuing education courses under continuing law unless they submit required information to the appropriate section of the Board at least 30 days and not more than a year prior to offering a course and have current Board approval. It is unclear which individuals or entities may be "training agencies" under the bill.

The Administrative Section is currently required to include in rules adopted by the Administrative Section regarding specifications for continuing education courses, the fees that the Board charges to persons who provide continuing education courses. The bill retains the current law fee structure, but requires that the per credit hour fee be paid for each course submitted to a specialty section for approval, rather than those that are offered, as under current law.¹⁵

Renewal, suspension, and revocation of licenses

The bill requires each specialty section of the Board to adopt certain criteria in rules for the specialty section to use in deciding whether to issue, renew, suspend, revoke, or refuse to issue or renew licenses and eliminates the current law requirement that each specialty section authorize the Administrative Section to take these licensing actions on behalf of the specialty section pursuant to rules adopted by the specialty section.¹⁶

Discipline for violations of the Construction Industry Licensing Law

Current law allows each section of the Board upon an affirmative vote of four of its members to impose any of the following penalties on licensees who violate the Construction Industry Licensing Law:

- A fine of up to \$1,000 per day;

¹⁴ R.C. 4740.04 and 4740.05.

¹⁵ R.C. 4740.04.

¹⁶ R.C. 4740.05.



- Suspension of the licensee's license for a period of time;
- Revocation of the licensee's license;
- A requirement that the licensee complete continuing education coursework in addition to the course work already required by the Construction Industry Licensing Law.

Each specialty section may also direct the Administrative Section to refuse to issue or renew a license if the section finds that the applicant has done any of the following:

- Been convicted of a crime of moral turpitude or a disqualifying offense as defined in continuing law;
- Violated the Construction Industry Licensing Law or the rules adopted under it;
- Obtained a license or any Board order, ruling, or authorization by fraud, misrepresentation, or deception;
- Engaged in fraud, misrepresentation, or deception in the conduct of business.

Current law also allows individuals to file complaints with the appropriate sections and allows the sections to investigate alleged violations and apply to courts of common pleas for injunctions against violations.¹⁷

The bill expands the types of disciplinary actions a specialty section may take and the reasons for which disciplinary action may be taken. Additionally, the bill appears to require a simple majority, rather than four votes (out of five members) as under current law, in order for a specialty section to impose discipline. Under the bill, a specialty section may issue a fine (the cap is removed), require additional continuing education hours, or may suspend, revoke, or refuse to issue a license, or any combination thereof, if an applicant or licensee does any of the following, in addition to any of those reasons listed in continuing law described above for which a section may currently refuse to issue or renew a license:

- Transfers the person's license to another person without approval of the appropriate specialty section;

¹⁷ R.C. 4740.10 (repealed by the bill).

- Allows the person's license to be used by an unlicensed person or entity other than a contracting company that has been assigned a license under the license assignment procedures (see "**Assignment of licenses,**" above);
- Fails to comply with a disciplinary action imposed by the appropriate specialty section;
- Fails to maintain insurance throughout the licensing year, unless the license has been placed in inactive status under continuing law.

The specialty section also may take disciplinary action against an applicant or licensee upon receiving notice that a municipal corporation or any other governmental agency has suspended or revoked the registration of a licensee.

The bill also requires each specialty section of the Board to direct the Administrative Section to refuse to issue a license to an applicant upon a finding that the applicant had another person take the licensing examination for the applicant or that the applicant failed the licensing examination.

A specialty section of the Board is required under the Administrative Procedure Act to notify each applicant or licensee that it intends to take disciplinary action against.¹⁸ Under the bill, if an individual fails to request a hearing within 30 days after the date the specialty section notifies the individual of the section's intent to take disciplinary action, the specialty section, by a majority vote of a quorum of the section's members, may impose the action against the individual without holding an adjudication hearing.¹⁹

Terms and definitions

The bill defines "contracting company" as a company in the construction industry working on construction projects and uses the term throughout the bill where current law uses "business entity."

Additionally, the bill changes the definition of "contractor" for purposes of the Construction Industry Licensing Law. Under current law, an individual or business entity, in order to be considered a contractor, must meet three requirements: (1) the individual or business entity must direct, supervise, or have responsibility for a construction project with respect to one the trades governed by the Law, (2) the

¹⁸ R.C. 119.07, not in the bill.

¹⁹ R.C. 4740.10 (as enacted by the bill).

individual or business entity must represent that they are permitted or qualified to perform, direct, supervise, or have responsibility for the construction project, and (3) the individual or business entity must perform construction or supervise or direct tradespersons to perform construction. The bill narrows the definition of contractor so that an individual or contracting company who directs or supervises a construction project but is not responsible for the project, is not a contractor. Also under the bill, an individual or business entity meets the performance requirement of the definition if that individual or contracting company leases manpower from a temporary agency to perform construction, improvement, or renovation on a construction project with respect to the individual's or contracting company's trades in addition to the current law ways the individual may satisfy this requirement.²⁰

HISTORY

ACTION	DATE
Introduced	03-13-13

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²⁰ R.C. 4740.01 with conforming changes in R.C. 4740.06 and 4740.07.

