Ohio Legislative Service Commission

Bill Analysis

Daniel M. DeSantis

Sub. S.B. 78*

130th General Assembly
(As Reported by H. Policy and Legislative Oversight)

Sens. Hughes, Brown, Bacon, Burke, Eklund, Gentile, Patton, Peterson, Sawyer, Schiavoni

BILL SUMMARY

- Requires, rather than permits, 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.
- 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.
- Requires each specialty section of the Board to direct the Administrative Section of the Board to refuse to issue a license to an applicant who 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.

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* This analysis was prepared before the report of the House Policy and Legislative Oversight Committee appeared in House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Removes, from the requirements for a written notice sent by a specialty section to a person who is alleged to have acted as a specialty contractor without a license, 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 who is 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.

- 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, and requires liability insurance to be maintained in only one contracting company name.

- Allows an applicant who fails a specialty contractor licensing examination to retake the examination 60 days after the initial examination, and limits the retakes to five.

- Transfers responsibility for designing examinations for specialty contractor licenses from the Administrative Section of the Board to the specialty sections.

- 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.

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 with whom the individual is employed. If a license is not assigned to a contracting company, the license must be placed in inactive status. A currently licensed

specialty contractor who has not assigned the contractor's license to a contracting company has until 60 days after the bill's effective date to make that assignment. If the specialty contractor fails to make that assignment within the prescribed time, the contractor's license is placed in inactive status.[1]

A "contracting company" is a company in the construction industry working on construction projects.

The bill also modifies the procedure by which a license assignment becomes invalid subsequent to a contractor ceasing to be associated with a contracting company. Under the bill, the assignment becomes invalid at one of the following times, as applicable:

- Ninety calendar days after the date of the contractor's death;
- Ninety calendar days after the contractor completes a change of company form (rather than the date of disassociation);
- As under continuing law, at an earlier time to which the contracting company and the contractor have agreed.[2]

Liability of assigning contractors

Continuing law specifies that any work a contracting company conducts under the license assigned or (as added by the bill) displayed pursuant to the law is deemed to be conducted under the personal supervision of the individual named in the license. Any violation of a term of the license is deemed to have been committed by the individual named in the license. The bill eliminates the liability of each licensee of a business to which multiple licenses have been assigned for license violations occurring during any work conducted under any of the licenses.[3]

Definition of "contractor"

The bill revises the definition of "contractor." Under the bill, a "contractor" is an individual or contracting company that satisfies all of the following requirements:

(1) The individual or contracting company has responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance

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[1] R.C. 4740.07(B) and Section 3.

[2] R.C. 4740.07(D).

[3] R.C. 4740.07(E).

on a construction project with respect to one of the trades governed by the Construction Industry Licensing Law, and offers, identifies, advertises, or otherwise holds out or represents that the individual or contracting company is permitted or qualified to perform or have responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance with respect to one or more trades on a construction project; and

(2) The individual or contracting company either performs construction, improvement, or renovation on a construction project with respect to the individual's or contracting company's trade or employs tradespersons who perform construction, improvement, or renovation on a construction project with respect to the individual's or contracting company's trades.

Under current law, a "contractor" is an individual or business entity that directs, supervises, or has responsibility as described above. The bill contemplates an individual or contracting company having only responsibility, and not directing or supervising, as described above.[4]

A "tradesperson" is an individual who is employed by a contractor and who engages in construction, improvement, renovation, repair, or maintenance of buildings or structures without assuming responsibility for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance. Under current law, a tradesperson did not necessarily have to be "employed" by a contractor, but rather could be supervised or directed by a contractor.[5]

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 Director 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

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[4] R.C. 4740.01(B).

[5] R.C. 4740.01(E).

the 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 a hearing 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 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 as under current law. The specialty section also may file a complaint with the appropriate prosecutor for criminal prosecution. Continuing law provides that a person who acts as a specialty contractor or represents that the person is a specialty contractor without being such is guilty of a minor misdemeanor on the first violation and a fourth degree misdemeanor on subsequent violations.[6]

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.[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

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[6] R.C. 4740.16(A), (B), and (D) and 4740.02, by reference to R.C. 119.07 and R.C. 4740.99, not in the bill.

[7] R.C. 4740.16(C).

[8] R.C. 4740.02(F).

contractor's name and the name of the contracting company associated with the individual also be included.[9]

Specialty sections

The bill refers to 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 Licensing Law[11] 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 that Law.[12]

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 specialty 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.

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 specialty section of the Board determines to qualify to take a specialty contractor licensing examination. The bill removes the requirement that the insurance include complete operations coverage and requires that the insurance be maintained in only one contracting company name.[13]

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. An applicant may attempt the examination up to five times before the applicant is required to reapply for a license.[14]

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[9] R.C. 4740.04(C).

[10] R.C. 4740.02(A).

[11] R.C. Chapter 4740.

[12] R.C. 4740.04, 4740.05, 4740.06, 4740.07, 4740.08, 4740.09, 4740.10, 4740.13, and 4740.16.

[13] R.C. 4740.06.

[14] R.C. 4740.06(D).

A "training agency" is an entity approved by the Administrative Section of the Board to provide continuing education courses.

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 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.[15]

Continuing education

Under the bill, no training agency may offer continuing education courses unless the training agency has been approved by the Administrative Section. Current law requires that *persons,* rather than training agencies, be approved. Similarly, training agencies, rather than persons, 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 one year prior to offering a course.

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 for courses that are offered, as under current law.[16]

Issuance, renewal, suspension, and revocation of licenses

Each specialty section of the Board must adopt certain criteria by rule for the specialty section to use in deciding whether to issue, renew, suspend, revoke, or refuse to issue or renew licenses. The bill 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.[17]

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[15] R.C. 4740.04 and 4740.05.

[16] R.C. 4740.04 and 4740.05.

[17] R.C. 4740.05.

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;
- Suspension of the licensee's license for a period of time;
- Revocation of the licensee's license; or
- 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 also may 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; or
- 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.[18]

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), in order for a specialty section to impose discipline. Under the bill, a specialty section may issue a fine (the $1,000 per day cap is removed), require additional continuing

[18] R.C. 4740.10 (repealed by the bill).

education hours, suspend, revoke, or refuse to issue a license, or take any combination of those actions if an applicant or licensee does any of the following:

- Transfers the person's license to another person without approval of the appropriate specialty section;
- 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; or
- Does or is subject to any of the actions described above for which a section currently may refuse to issue or renew a license.

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 local contracting license or registration of a licensee.

The bill 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 against whom it intends to take disciplinary action.[19] 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 disciplinary action against the individual without holding an adjudication hearing.[20]

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[19] R.C. 119.07, not in the bill.

[20] R.C. 4740.10.

Professional employer organizations and temporary agencies

The bill prohibits the Construction Industry Licensing Law from being construed to prohibit a contractor from leasing, on a temporary or permanent basis, an employee from a professional employer organization or temporary agency to perform work under the contractor's direct supervision.[21]

HISTORY

ACTION	DATE
Introduced	03-13-13
Reported, S. Commerce & Labor	01-22-14
Passed Senate (32-0)	04-02-14
Reported, H. Policy & Legislative Oversight	---

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[21] R.C. 4740.131.