

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 444** DATE: **December 17, 2008**
STATUS: **As Passed by the Senate** SPONSOR: **Rep. J. Stewart**
LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**
CONTENTS: **Makes changes to the construction industry licensing laws concerning unlicensed contractors and other changes**

State Fiscal Highlights

| STATE FUND | 2009 – FUTURE YEARS |
|--|--|
| Industrial Compliance Operating Fund (Fund 5560) – Department of Commerce | |
| Revenues | Potential gain from license fees and civil penalties in the hundreds of thousands of dollars annually |
| Expenditures | - 0 - |
| General Reimbursement Fund (Fund 1060) – Attorney General | |
| Revenues | Potential gain from collection fees |
| Expenditures | - 0 - |

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

Unlicensed Contractors

- The bill authorizes the Ohio Construction Industry Licensing Board (OCILB) to impose on unlicensed contractors a civil penalty of up to \$1,000 per day per violation, with the Industrial Compliance Operating Fund (Fund 556) gaining revenue from this new fining authority. These civil penalties could easily amount to hundreds of thousands of dollars annually. This new disciplinary measure is expected to have no impact on OCILB expenses.
- There may be a significant increase in contractor licensure over time as knowledge of the new disciplinary measure spreads among the industry and compliance increases. If this occurs, there would be a gain in license fee revenue to the Industrial Compliance Operating Fund (Fund 556).
- The bill permits the Attorney General to charge collection fees for unlicensed contractors that fail to pay civil penalties levied by OCILB. These collection fees would accrue to the Attorney General's General Reimbursement Fund (Fund 106).

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.



Detailed Fiscal Analysis

Unlicensed contractors

Background

The Ohio Construction Industry Licensing Board (OCILB) licenses specialty contractors in the heating, ventilating and air conditioning (HVAC), refrigeration, plumbing, hydronics, and electrical trades who perform *commercial* work in Ohio. OCILB administers these licenses through separate HVAC, Refrigeration, Plumbing, Electrical, and Administrative sections. Under current law, no person can act as or claim to be a specialty contractor in one of the above five trades unless that person is licensed by OCILB. Currently, OCILB oversees approximately 20,000 active contractor licenses. The bill contains a number of provisions to reign in unlicensed contractors.

Currently, OCILB has little recourse against contractors operating without a license. OCILB may investigate a complaint concerning an unlicensed contractor and, if there is reasonable evidence, forward the complaint to the appropriate local prosecutor for criminal charges. Unlicensed contractors can be found guilty of a minor misdemeanor on a first offense and a fourth-degree misdemeanor (M4) on a subsequent offense. A minor misdemeanor carries no jail term and a maximum fine of \$150, while an M4 carries a maximum jail term of 30 days and a maximum fine of \$250. Although OCILB refers approximately 150 complaints to local prosecutors in a typical year, such cases can be difficult to successfully prosecute. One reason is that the contracting work that instigated the investigation has already been completed by the time the prosecutor receives the complaint from OCILB. Another reason is that some prosecutors appear to be either unaware of the law or do not have the resources to take on these cases.

New OCILB disciplinary measures

To more effectively pursue unlicensed contractors, the bill permits the appropriate section of OCILB to investigate any person who allegedly has operated as a contractor without a license. If there is reasonable evidence to support that conclusion, the bill requires the appropriate section to hold a hearing to determine if a violation has occurred. If the section finds that a violation has occurred, it may impose civil penalties of up to \$1,000 per violation per day. Any civil penalties or fines would be deposited into the Industrial Compliance Operating Fund (Fund 5560), OCILB's operating fund. Assuming there continues to be a volume of approximately 150 such cases per year, civil penalty revenue could easily be in the hundreds of thousands of dollars annually. However, over time it may be that the revenue these civil penalties generates declines as compliance increases.

In addition to this increased authority, the bill requires the appropriate OCILB section to give the Attorney General the names of those who fail to pay any civil penalties resulting from OCILB investigations. In these situations, individuals would also be liable for any fee assessed by the Attorney General for collection of civil penalties owed. Attorney General fees would likely be deposited into the General Reimbursement Fund (Fund 1060).

Overall, any increase in the volume of hearings would likely pose no additional cost to OCILB since existing hearing officers would be used for any additional hearings that occur. OCILB would continue to refer unlicensed contractors for prosecution, but on a case-by-case basis given the difficulties in prosecuting such individuals.

Possible impact on contractor licensure

As previously mentioned, OCILB currently oversees approximately 20,000 active contractor licenses. This number may well increase as knowledge of the new disciplinary measure included in the bill spreads through the industry. If so, there would be a gain in license fee revenue to the Industrial Compliance Operating Fund in addition to any civil penalties collected as a result of OCILB investigations. Contractors licensed by OCILB pay a \$50 initial license and examination fee and a \$60 annual renewal fee.

Contractor definition

Current law defines a contractor as any individual or business entity that works *for compensation*. The bill removes this qualification from the definition of a contractor. This change is intended to prevent situations in which an unlicensed contractor claims to have not been compensated for their work in an effort to avoid licensure requirements such as paying license fees, obtaining liability insurance, and completing continuing education. By specifying that a contractor must be licensed whether or not they are compensated, contractor licensure may increase, which in turn would increase revenue to the Industrial Compliance Operating Fund.

License assignment

The bill requires (rather than permits, as under current law) each licensee to request that the individual's license be assigned to one business entity with whom the individual is associated as a full-time officer, proprietor, partner, or employee at the time the individual submits the license application. The bill also requires an individual's license to be reassigned to a new business entity or held in escrow when a license becomes invalid if the individual is no longer associated with their current business entity.

Normally, an individual assigns a company name to his or her license and the individual's company will pay the individual's license renewal fee, liability insurance, and continuing education fees. Accordingly, the individual's license should be used exclusively for that company. OCILB noted that individuals not having a business entity assigned on their licenses are able to pull construction permits to perform work for different persons or companies, many of which are either out-of-state or otherwise unlicensed. The provisions described above are intended to stop such activity. They would likely have no fiscal effect on OCILB operations.

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