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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

S.B. 176*
133rd General Assembly

Occupational Regulation Report

[Click here for S.B. 176's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Sen. Schaffer

Impacted Profession: Residential contractors and commercial contractors

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.¹

SUMMARY OF PROPOSED REGULATIONS

Residential contractor licensure

The bill prohibits a contractor from performing the duties, responsibilities, or functions associated with a licensed trade on a residential building, unless the contractor is licensed by the Ohio Construction Industry Licensing Board (OCILB) to perform the trade. The bill's license requirement does not apply to a contractor who is employed by a licensee, performing work on their primary residence, or a direct labor subcontractor.

Currently, a contractor is only required to be licensed by OCILB if they are performing a licensed trade on a commercial construction project or if they employ tradespersons who perform the licensed trade on a commercial project.² Under continuing law, a "licensed trade" is a trade performed by a heating, ventilating, and air conditioning (HVAC) contractor, a

* This report addresses the "As Introduced" version of S.B. 176. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 4740.13(A), 4740.131, and 4740.01 and Section 3.

refrigeration contractor, an electrical contractor, a plumbing contractor, or a hydronics contractor.³

The bill distinguishes between a universal license and a residential only license. A “universal license” allows a contractor to perform a licensed trade on any construction project (commercial and residential). A “residential only” license allows a contractor to perform a licensed trade on a residential construction project only.⁴

The bill does not establish different qualifications or examinations for the different types of licenses. Instead, it requires each specialty section of OCILB to adopt rules for the classes of contractors over which the section has primary responsibility. To receive a license from OCILB (regardless of type), a contractor must meet certain eligibility requirements and pass an examination. Licenses may be issued pursuant to reciprocity agreements. Licenses are valid for one year and may be renewed. To renew a license, a contractor must complete continuing education requirements. All licenses must be assigned to a contracting company. These provisions apply to commercial licenses under continuing law.⁵

The bill includes transitional provisions that (1) allow OCILB to issue a license without requiring an examination if certain conditions are met and the contractor applies within six months after the bill’s effective date and (2) require OCILB to issue a universal license to any contractor who holds a license and is in good standing with OCILB on the bill’s effective date. A universal license issued under the second transitional provision is effective for the term of the license that it replaced.⁶

Regulation by other entities

The bill prohibits a political subdivision, district, or state agency from requiring a contractor licensed by OCILB to meet any additional eligibility requirements for registration by the political subdivision, district, or agency.⁷

Other changes

Finally, the bill also makes general changes to the OCILB Law (applying to both universal and residential only contractors), including:

- Requiring a contractor to earn the full number of continuing education hours each year for each valid license the contractor holds, rather than capping the contractor’s continuing education requirement at ten hours per year;⁸

³ R.C. 4740.01(F).

⁴ R.C. 4740.01, 4740.04, and 4740.06.

⁵ R.C. 4740.06 and 4740.07; R.C. 4740.08, not in the bill.

⁶ Section 4.

⁷ R.C. 4740.12(B).

⁸ R.C. 4740.04(G) and 4740.05(F).

- Reducing, from five hours to four per year, the specific course requirements that a specialty section of OCILB can adopt in a continuing education curriculum;
- Adding the following to the requirements a contractor must meet to take an examination for a license:
 - Comply with the Workers' Compensation Law and the Unemployment Compensation Law;
 - Identify a contracting company with which the contractor is associated as a full-time officer, proprietor, or partner and to which the contractor will assign the license.⁹
- Eliminating conditional licenses, which are one-year licenses issued to a contractor whose criminal history or moral character would otherwise disqualify the contractor for a license;¹⁰
- Specifying that a license can only be assigned to a contracting company that employs the licensee on a full-time basis, rather than a contracting company that simply employs the licensee;¹¹
- Reducing, from five years to three the time a contractor must work as a tradesperson to be eligible to take a contractor's license examination (continuing law allows a contractor with other acceptable experience to take the examination);¹² and
- Requiring a person who wishes to make a complaint against an unlicensed contractor to file a written complaint with OCILB within one year after the action or event on which the complaint is based.¹³

Residential contractors licensed under the bill are subject to the same types of and reasons for discipline as licensed commercial contractors under continuing law.¹⁴

For a full explanation of the bill's provisions see the [S.B. 176 Bill Analysis](#).

⁹ R.C. 4740.06(B).

¹⁰ R.C. 4740.06(I).

¹¹ R.C. 4740.06 and 4740.07(B).

¹² R.C. 4740.06.

¹³ R.C. 4740.16(A).

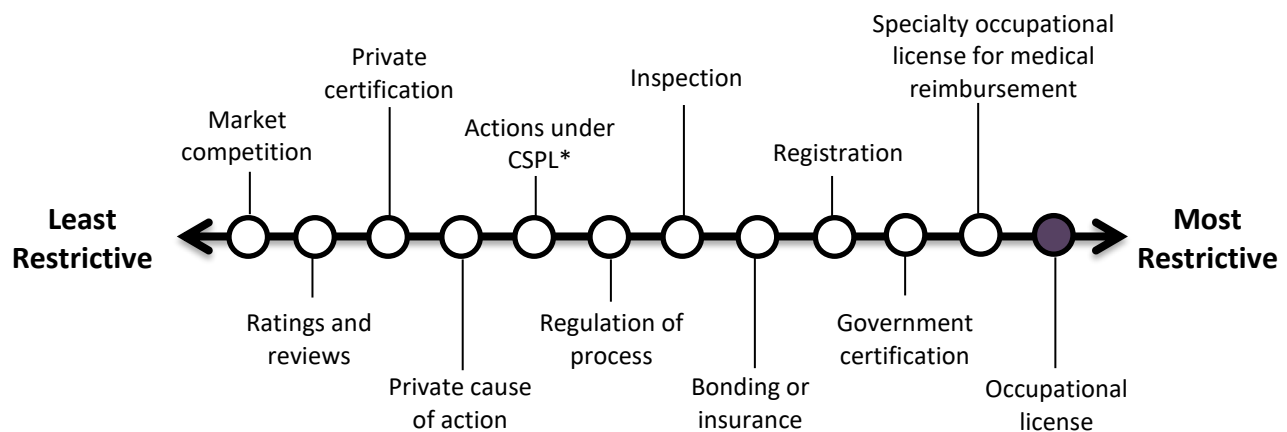
¹⁴ R.C. 4740.10, not in the bill.

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from “present, significant, and substantiated harms that threaten health, safety, or welfare,” the state’s expressed intent is to enact the “least restrictive regulation that will adequately protect consumers from such harms.”¹⁵

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:



*CSPL – The Consumer Sales Practices Law

The bill establishes new licensure requirements for residential HVAC, refrigeration, electrical, plumbing, and hydronics contractors, and modifies existing licensure requirements for commercial contractors engaged in those trades. It creates new regulatory hurdles by extending licensure requirements to more contractors and by increasing the restrictiveness of some regulations that currently apply to commercial contractors. The bill also includes provisions that would seemingly make it easier for contractors to obtain a license and remain in good standing with OCILB.

Necessity of regulations

Senator Schaffer, the bill’s sponsor, testified that licensure of residential contractors is necessary to address the major risks associated with substandard home repairs and improvements. He cited several examples of homeowners who narrowly avoided serious harm stemming from work performed by untrained or negligent contractors. According to Senator

¹⁵ Section 3; R.C. 4798.01 and 4798.02, neither in the bill.

Schaffer's testimony, the residential contractor license proposed by the bill "provides an unbiased, unquestionable foundation based on health and safety for all," and "assure[s] consumers that the business and their employees are qualified and accountable for the work performed."¹⁶

Restrictiveness of regulations

Licensure is the most restrictive of all regulatory options identified within the state's general policy on occupational regulations. Accordingly, the policy prescribes a narrow range of situations in which it is appropriate. Specifically, when all of the following circumstances are present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.¹⁷

HVAC, refrigeration, electrical, plumbing, and hydronics contractors are subject to a framework of process regulations under the International Residential Code (IRC) and the International Building Code (IBC). The IRC and IBC prescribe minimum construction standards for commercial, industrial, and residential buildings but they do not require, recommend, or provide uniform standards for licensure of contractors. The codes have been adopted by Ohio and nearly all other U.S. states (Delaware is the lone exception).¹⁸

Under continuing law, a commercial contractor who is licensed, registered, or certified by a state with which Ohio has a reciprocity agreement may obtain an Ohio license in the same trade without passing an examination. Such a contractor need only send a copy of the reciprocity agreement along with their licensure application to the appropriate specialty section of OCILB. The bill extends the same exemption to out-of-state contractors seeking one of the new residential contractor licenses.¹⁹ Clearly, Ohio's limited reciprocity provision stops short of allowing all out-of-state licensees to practice their profession in Ohio. However, it does remove one of the hurdles to obtaining licensure in this state.

There does not appear to be a national consensus regarding the licensure of residential HVAC, refrigeration, electrical, plumbing, and hydronics contractors. As discussed below, 35 states require licensure of residential contractors. Of those states, the bill's regulatory framework would not be the most restrictive or the least restrictive; it falls somewhere in the middle. In many states, including Ohio, local governments impose licensure requirements for contractors performing services within the local government's jurisdiction.

¹⁶ Senator Tim Schaffer, *S.B. 176 Sponsor Testimony*, October 2, 2019.

¹⁷ R.C. 4798.02, not in the bill.

¹⁸ Ohio Administrative Code (O.A.C.) 4101:1-1-01 and 4101:8-1-01; International Code Council, *2018 International Building Code* and *2018 International Residential Code*; Insurance Institute for Business & Home Safety, *Building Codes by State*.

¹⁹ R.C. 4740.08, not in the bill.

The contractors' licenses created and modified by the bill do not appear to be entirely consistent with the state's general policy on occupational regulations. Whether this inconsistency is offset by the ways in which the bill decreases the restrictiveness of existing regulations for commercial contractors is a policy determination. The authority of local governments to require licensure or registration of contractors might also be relevant for this analysis. By prohibiting local governments from requiring contractors to meet additional eligibility requirements (other than those established by state law and OCILB rules), the bill provides for some standardization and predictability for contractors who practice in more than one local jurisdiction.

Other regulatory policies

The bill modifies an established regulatory framework that applies to contractors practicing licensed trades in Ohio. For commercial contractors, the existing framework includes both regulations of process and licensure requirements.²⁰ For residential contractors, the framework includes only regulations of process.²¹ Current law does not contain a general statement explaining the state's intent in regulating contractors and no such statement is added by the bill.

IMPACT STATEMENT

Opportunities for employment

The bill's prohibition against individuals recklessly acting as residential contractors in the specified fields, though it provides for exceptions,²² will likely reduce opportunities for employment in at least some political subdivisions, and likely in most. In those subdivisions it effectively restricts self-employment opportunities. Under current law, municipalities may require residential contractors in the specified fields to be licensed locally, and counties may require licenses for residential contractors in some of the fields under specified circumstances. The bill provides that no political subdivision may require additional eligibility requirements from individual license-holders beyond OCILB standards. This preemption of local licensing implies that it is possible the bill could expand opportunities for employment in some political subdivisions if they impose very restrictive eligibility requirements under current law. The bill also removes the authority of county commissioners or municipalities to require examination or testing of persons who hold a valid state license.

Other bill provisions increase barriers to entry for potential license applicants, thereby limiting opportunities for employment. The bill allows a specialty section of OCILB to adopt rules for the approval or renewal of licenses in cases involving past criminal activity or interpretation of moral character, providing an avenue for exclusion of certain individuals that

²⁰ See R.C. Chapter 4740; O.A.C. Chapters 4101:1-1, 4101:16-1, 4101:16-2, 4101:16-3, and 4101:16-4.

²¹ O.A.C. Chapter 4101:8-1.

²² For direct labor subcontractors and for individuals working on their own residences.

is not set in current law. But the bill reduces barriers to entry for potential applicants for a commercial contractor’s license (or a universal license, under the bill) in other ways, thereby mitigating the effects listed above. Specifically, the bill reduces the number of years of experience as a tradesperson required for a contractor to qualify to take a licensure exam. The net effects of the various provisions are difficult to predict, and would vary by political subdivision, but are likely to reduce opportunities for self-employment in many political subdivisions.

The bill removes the cap in current law on required continuing education (CE) hours an individual must complete in cases where the holder has more than one valid and unexpired OCILB-issued license. The annual number of CE hours required for each license is reduced from five to four. CE hours for separate licenses could add up to as many as 20 hours per year,²³ whereas the number of required annual CE hours is capped at ten under current law. These changes slightly reduce barriers to entry for residential contractors focused on no more than two specialties, but increase barriers to entry for such contractors who are less specialized.

In FY 2019, 17,024 specialty contractors were licensed by OCILB.²⁴ The Bureau of Labor Statistics (BLS) estimates that approximately 50,000 persons in Ohio were employed in North

American Industry Classification System (NAICS) code 236000, “construction of buildings”, in 2019; of that total, around 27,700 worked exclusively in the nonresidential industry segment. The table documents the number of persons employed in each occupation in 2019, according to the BLS Occupational Employment Statistics.

| | |
|---|--------|
| Electricians | 25,180 |
| Plumbers, Pipefitters, and Steamfitters | 13,330 |
| HVAC Mechanics | 12,100 |

Consumer choice and cost and market competition

The bill’s effects on consumer choice and cost will depend on the strength of the opposing forces outlined in the “opportunities for employment” section. The most likely result is that increased barriers to entry reduce market competition and apply upward pressure on consumer costs in many political subdivisions. But there may be political subdivisions that currently apply very restrictive requirements to obtain licenses, and in those subdivisions it is possible that the bill results in an overall reduction of employment barriers and downward pressure on consumer costs.

In addition, the bill allows persons to file investigatory complaints against unlicensed contractors to OCILB. The likely effect of this provision is to reduce consumer choice and market competition.

²³ Calculated as the number of specialty contractor licenses currently offered by OCILB times the maximum number of CE hours per license under S.B. 176.

²⁴ Specialty contractors include electrical contractors, plumbing contractors, hydronics contractors, refrigeration contractors, as well as heating, ventilation, and air conditioning (HVAC) contractors.

Cost to government

For the costs of the bill to government, please see the [LBO fiscal note](#).

STATE-BY-STATE COMPARISON

Thirty-five states – including three of the five surrounding states (Michigan, Pennsylvania, and West Virginia) – have licensing or registration requirements for residential contractors. This figure includes states where the licensure or registration requirement for general contractors includes residential contractors. The table below compares the residential contractor regulations in a selection of these states with the regulations proposed by the bill. It includes information concerning project cost exceptions to the licensure or registration requirement and also specifies whether the law requires an applicant to obtain a surety bond or liability insurance to obtain a license, to have experience or education, or to pass an examination. Lastly, the table indicates whether the state’s regulation of contractors includes regulation of contracts entered into by the contractors.

| Regulation of residential contractors | | | | | | |
|---------------------------------------|--------------------------------|---------------------------------|--------------------------|---|-----------------------|--------------------------------|
| | Type of license/registration | Minimum project cost exception? | Bond/Insurance required? | Education or experience required? | Examination required? | Contract provisions regulated? |
| Ohio ²⁵ | Residential contractor license | No | Liability insurance | Experience required; continuing education may be required for renewal | Yes | No |

²⁵ Proposed by the bill.

| Regulation of residential contractors | | | | | | |
|---------------------------------------|--|----------------------------------|-----------------------------|--|-----------------------|--|
| | Type of license/registration | Minimum project cost exception? | Bond/Insurance required? | Education or experience required? | Examination required? | Contract provisions regulated? |
| Georgia ²⁶ | Residential contractor | Projects \$2,500 or under exempt | General liability insurance | Experience required; education required in specified cases; continuing education may be required for renewal | Yes | Written warranty required |
| Michigan ²⁷ | Residential builder and residential maintenance and alteration contractor licenses | Projects under \$600 exempt | No | Education required; continuing education required for renewal | Yes | Licensure information must be included in contract |
| West Virginia ²⁸ | Residential contractor license | Projects under \$2,500 exempt | No | No | Yes | Written contract required for projects over \$10,000 |

²⁶ Georgia Code Annotated 43-41-2 *et seq.*

²⁷ Michigan Compiled Laws 339.2401 *et seq.*

²⁸ West Virginia Code 21-11-2 *et seq.*

| Regulation of residential contractors | | | | | | |
|---------------------------------------|--|---|---|---|-----------------------|---|
| | Type of license/registration | Minimum project cost exception? | Bond/Insurance required? | Education or experience required? | Examination required? | Contract provisions regulated? |
| Pennsylvania²⁹ | Home improvement contractor registration | Projects under \$500 exempt; exempt if the total cash value of all of that person's home improvements is less than \$5,000 during the previous taxable year | Liability insurance required covering personal injury in an amount not less than \$50,000 and insurance required covering property damage in an amount not less than \$50,000 | No | No | Written contract with specified provisions required |
| Florida³⁰ | Residential contractor license | Projects under \$1,000 exempt | Liability insurance | Education or experience required; continuing education required for renewal | Yes | No |

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²⁹ 73 Pennsylvania Statutes Annotated 517.1 *et seq.*

³⁰ Florida Statutes 489.101 *et seq.*