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# OHIO LEGISLATIVE SERVICE COMMISSION

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**S.B. 142\***  
**134<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for S.B. 142's Bill Analysis / Fiscal Note](#)

**Primary Sponsor:** Sen. Schaffer

**Impacted Professions:** Specialty 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.<sup>1</sup>

## LEAST RESTRICTIVE REGULATION COMPARISON

### Ohio's general regulatory policy

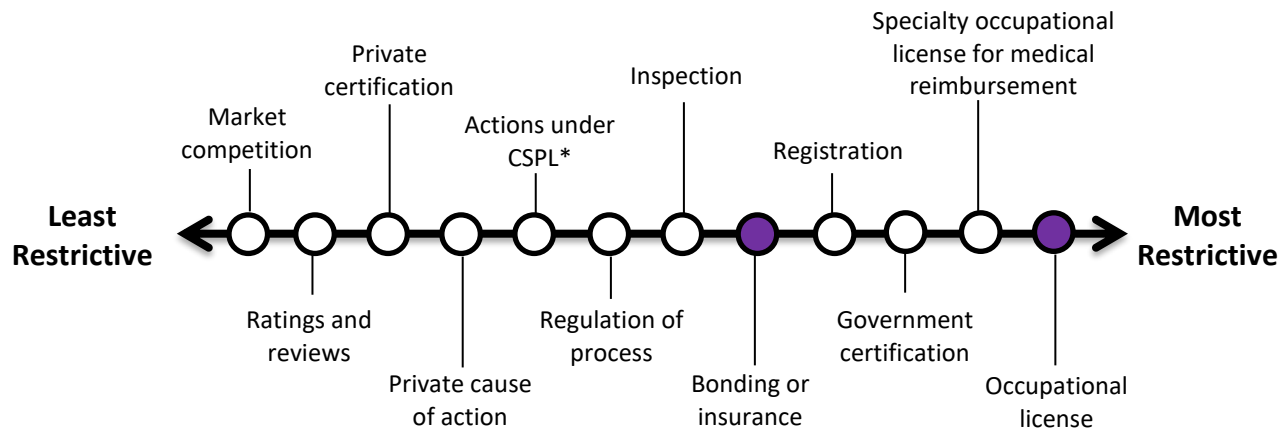
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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."<sup>2</sup>

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:

\* This report addresses the "As Introduced" version of S.B. 142. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> R.C. 4798.01 and 4798.02, neither in the bill.



\*CSPL – The Consumer Sales Practices Law

The bill extends existing licensure requirements for HVAC (heating, ventilation, and air conditioning), refrigeration, electrical, plumbing, and hydronics contractors (specialty contractors) engaged in commercial construction to contractors engaged in residential construction. It also requires residential specialty contractors to obtain insurance as a precondition of licensure and eliminates a ten-hour cap on the total number of continuing education hours that may be required, annually, of specialty contractors. Furthermore, the bill allows the Ohio Construction Industry Licensing Board (OCILB) to reconsider the applicant's prior history of disqualifying offenses in determining whether to renew a specialty contractor license.

The bill also includes measures that seemingly reduce the restrictiveness of existing regulations by prohibiting local governments from imposing additional eligibility requirements on state-licensed residential specialty contractors; reducing the number of hours of specific course requirements that may be required by OCILB for the continuing education curriculum of a licensed trade; reducing the number of years of experience required to sit for a specialty contractor examination; eliminating OCILB's discretion to deny a specialty contractor license or renewal based on an offense that is not a crime of moral turpitude, disqualifying offense, fraud, misrepresentation, or deception; and requiring complaints against unlicensed specialty contractors to be filed with OCILB within one year.

## Necessity of regulations

The bill's sponsor, Senator Tim Schaffer, testified that the regulations are aimed at addressing the major risks associated with substandard home repairs and improvements and assuring consumers that contractors are qualified and accountable for the work performed. According to Senator Schaffer's testimony, mistakes by unlicensed and untrained persons performing residential plumbing, HVAC, and electrical work may lead to fires and floods as well as cross connections that put communities at risk of injuries, sickness, and death. The testimony states that local permit and inspection requirements do not provide adequate protection to

consumers; licensing assures consumers that the business and their employees are qualified and accountable for the work performed.<sup>3</sup>

## Restrictiveness of regulations

### Licensure

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.<sup>4</sup>

Specialty contractors are subject to numerous 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 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 appears to be the lone exception.<sup>5</sup>

Under continuing law, a commercial specialty 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 reexamination. Such a contractor need only send a copy of the reciprocity agreement along with their licensure application to the appropriate specialty section of the Board. The bill extends the same exemption to out-of-state contractors seeking one or more of the new residential specialty contractor licenses.<sup>6</sup> This limited reciprocity provision stops short of allowing all out-of-state licensees to practice their profession in Ohio, but it removes one of the hurdles to obtaining licensure in this state.

There does not appear to be a national consensus regarding the licensure of residential specialty contractors. As discussed below in **“Comparison to other states,”** 35 states require licensure. Of those states, the bill's proposed regulations would not be the most restrictive or the least restrictive. In many states, including Ohio, local governments impose

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<sup>3</sup> See, Senator Tim Schaffer, [Senate Bill 142 – Sponsor Testimony \(PDF\)](#), Senate Small Business and Economic Opportunity Committee, May 5, 2021, which is available on the General Assembly's website: [legislature.ohio.gov](http://legislature.ohio.gov), by searching for “SB 142” and looking under the Committee Activity tab.

<sup>4</sup> R.C. 4798.02, not in the bill.

<sup>5</sup> Ohio Administrative Code (O.A.C.) 4101:1-1-01 and 4101:8-1-01; International Code Council (ICC), [2018 International Building Code](#) and [2018 International Residential Code](#), which are available on the ICC's website: [codes.iccsafe.org](http://codes.iccsafe.org), by clicking on the search bar and selecting the desired code under Popular Titles; [Building Codes by State](#), which is available on the Insurance Institute for Business and Home Safety website: [ibhs.org](http://ibhs.org), by searching for “building codes by state.”

<sup>6</sup> R.C. 4740.08, not in the bill.

licensure requirements for contractors performing services within the local government's jurisdiction. Therefore, it is possible that some of the states with no state licensure requirement have local regulations that are on par with, or more restrictive than, those proposed by the bill.

The specialty contractors' licenses created or 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 specialty contractors might also be relevant to this analysis. By prohibiting local governments from requiring state-licensed contractors to meet additional eligibility requirements, the bill provides for some standardization and predictability for contractors who practice in more than one local jurisdiction.

### **Insurance**

The bill requires residential specialty contractors to carry liability insurance as a condition for obtaining or renewing a state license. The same requirement applies to commercial contractors under continuing law. Under the state's general policy on occupational regulations, a bonding or insurance requirement is appropriate when the intent of the regulation is to protect against potential damages to third parties other than the seller or the buyer and other types of externalities.<sup>7</sup> As emphasized in Senator Schaffer's sponsor testimony, residential construction, maintenance, and repair can be dangerous when it is not preformed properly. That danger extends to the person occupying the home as well as neighbors, guests, and other persons close in proximity. The bill's insurance requirement would seemingly increase the likelihood that a person who is injured or incurs property damage resulting from negligent work of a specialty contractor will be compensated for those damages. For that reason, the regulation appears to be consistent with the state's policy.

### **Other regulatory policies**

The bill modifies an established regulatory framework that applies to specialty contractors in Ohio. For commercial contractors, the existing framework includes both regulations of process and licensure requirements.<sup>8</sup> For residential contractors, the framework includes only regulations of process.<sup>9</sup> 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.

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## **IMPACT STATEMENT**

### **Opportunities for employment**

Requiring state licensure of the specified residential contractors would tend to reduce opportunities for employment. However the bill does contain provisions that would mitigate that

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<sup>7</sup> R.C. 4798.02(B)(3), not in the bill.

<sup>8</sup> 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.

<sup>9</sup> O.A.C. Chapter 4101:8-1.

effect, most notably by preempting local licensing requirements, which in some cases may be more restrictive than the proposed state requirements. Other provisions that may mitigate a potential reduction in opportunities include the decrease in the number of years that a tradesperson must have been working in a trade before taking an examination to become a (commercial) contractor and the reduction in the required hours of continuing education for any one trade. Both of the latter provisions would tend to increase opportunities for employment as a commercial contractor in the relevant construction trades. The net effect of the bill's provisions is likely still to reduce opportunities for employment, but there is some uncertainty about that, and the net effect may vary from one area of Ohio to another (depending on the current restrictiveness of local licensing).

In FY 2021, 12,350 specialty contractors were licensed by OCILB (down from 17,086 in FY 2020). The Bureau of Labor Statistics (BLS) estimates that approximately 49,300 persons in Ohio were employed in North American Industry Classification System (NAICS) code 236000, "construction of buildings," in 2021; of that total, around 27,300 worked exclusively in the nonresidential industry segment. The table below documents the number of persons employed in selected occupations in 2021, according to the BLS Occupational Employment Statistics.

| Occupation                              | Number Employed |
|---|-----------------|
| Electricians                            | 23,890          |
| Plumbers, Pipefitters, and Steamfitters | 12,430          |
| HVAC Mechanics                          | 11,580          |

## 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 above. The most likely result is that increased barriers to entry somewhat reduce market competition and apply upward pressure on consumer costs in many political subdivisions. But there may be political subdivisions that currently apply more 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.

## Cost to government

For information on the bill's cost to government, please refer to the [LBO fiscal note \(PDF\)](#).

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## SUMMARY OF PROPOSED REGULATIONS

### Residential specialty contractors

#### Licensure

The bill requires licensure, through OCILB, of specialty contractors engaged in residential work unless the contractor is employed by a licensee, is working on their primary residence, or a is direct labor subcontractor. Currently, a specialty contractor is required to obtain a license only if they are working on a commercial construction project or if they employ specialty contractors working on a commercial project.<sup>10</sup> The bill creates a distinction between a “universal license” and a “residential only license.” A universal license allows a contractor to perform HVAC, refrigeration, electrical, plumbing, or hydronics work on any construction project (commercial and residential). A “residential only” license allows a contractor to perform such work on residential construction projects only.<sup>11</sup>

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 (including an insurance requirement) and pass an examination. Licenses may be issued pursuant to reciprocity agreements. Licenses are valid for one year and may be renewed, subject to continuing education requirements. Specialty contractors who qualify for the compliant contractor program may choose to renew their license triennially and are required to complete fewer hours of continuing education. The same provisions apply to commercial licenses under continuing law.<sup>12</sup>

#### Regulation by other entities

The bill prohibits a political subdivision, district, or state agency from requiring a residential specialty contractor licensed by OCILB to meet any additional eligibility requirements for registration by the political subdivision, district, or agency. The same provision applies to licensed commercial specialty contractors under continuing law. The bill does not prohibit or limit the ability of a political subdivision from requiring residential or universal specialty contractors to pay a registration fee or requiring permits, approvals, or code compliance bonds.<sup>13</sup>

### All specialty contractors (universal and residential)

#### Continuing education

The bill reduces, from five hours per year to four hours per year, the number of specific course requirements that may be required as part of the continuing education curriculum for

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<sup>10</sup> R.C. 4740.13(A), 4740.131, and 4740.01 and Section 3.

<sup>11</sup> R.C. 4740.01, 4740.04, and 4740.06.

<sup>12</sup> R.C. 4740.06 and 4740.07; R.C. 4740.08, not in the bill; O.A.C. 4101:16-1-08, not in the bill.

<sup>13</sup> R.C. 4740.12(B).

each licensed trade. The bill eliminates the ten-hour cap on the number of continuing education hours that must be completed annually by a specialty contractor. Under the bill, such a contractor must earn the full number of continuing education hours for each license the contractor holds.<sup>14</sup>

Current OCILB rules require ten hours of continuing education for each specialty contractor, regardless of how many licensed trades in which the contractor is engaged. Five of the ten continuing education hours for specialty contractors that hold an electrical license must be a specific course of instruction in electrical code. All other specialty contractors may complete ten hours of continuing education in any course approved by the appropriate specialty section of OCILB.<sup>15</sup> In effect, the bill requires OCILB to reduce the number of hours of specific course instruction required of electrical licensees but allows it to increase the number of general continuing education hours required for each specialty contractor license.

### **Experience**

Current law requires prospective specialty contractors to complete five years of experience as a tradesperson before taking the license exam. The bill reduces the duration of the experience requirement to three years. Continuing law allows a contractor with other acceptable experience to take the examination.<sup>16</sup>

### **Criminal activity and moral character**

The bill eliminates the discretion of specialty sections of OCILB to deny a license or request for renewal based on a conviction or guilty plea for an offense other than (1) crimes of moral turpitude, (2) violations of OCILB laws or rules, or (3) fraud, misrepresentation, or deception in connection with obtaining or renewing an OCILB license or in the conduct of business. However, the bill allows a specialty section of OCILB to consider convictions or guilty pleas to any of those disqualifying offenses, regardless of when it occurred. Under current law, the sections can only consider a conviction or guilty plea if it occurred after initial licensure or after the most recent renewal. The bill also eliminates conditional licenses, which may be granted under current law to a person whose past criminal activity or moral character would otherwise make them ineligible for licensure.<sup>17</sup>

### **Other eligibility criteria**

The bill expressly requires applicants for a specialty contractor license to comply with Workers' Compensation Law and Unemployment Compensation Law.<sup>18</sup> It also specifies that a

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<sup>14</sup> R.C. 4740.04(G) and 4740.05(F).

<sup>15</sup> O.A.C. 4101:16-2-08, not in the bill.

<sup>16</sup> R.C. 4740.06.

<sup>17</sup> R.C. 4740.06.

<sup>18</sup> R.C. 4740.06(B).

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.<sup>19</sup>

### **Complaints**

The bill requires 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.<sup>20</sup>

### **Transitional provisions**

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 transitional provisions is effective for the term of the license that it replaced.<sup>21</sup>

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<sup>19</sup> R.C. 4740.06 and 4740.07(B).

<sup>20</sup> R.C. 4740.16(A).

<sup>21</sup> Section 4.



## COMPARISON TO OTHER STATES

Thirty-five states – including three of the five surrounding states (Michigan, Pennsylvania, and West Virginia) – have license or registration requirements for residential specialty contractors. This includes states where the licensure or registration requirement for general contractors applies to 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 have experience or education, or to pass an examination. Lastly, the table indicates whether the state’s regulation of contractors includes process regulations respecting contracts entered into by the contractors.

| Regulation of Residential Contractors                        |                                  |                                    |                              |   |                          |                                      |
|--|----------------------------------|------------------------------------|------------------------------|---|--------------------------|--------------------------------------|
| State  | Type of License/<br>Registration | Minimum Project<br>Cost Exception? | Bond/Insurance<br>Required?  | Education or<br>Experience<br>Required?   | Examination<br>Required? | Contract<br>Provisions<br>Regulated? |
| <b>Ohio</b> ( <i>under the bill</i> )                        | Residential contractor license.  | No.                                | Liability insurance.         | Experience required; continuing education may be required for renewal.  | Yes.                     | No.                                  |
| <b>Georgia</b> ( <i>Georgia Code Ann. 43-41-2, et seq.</i> ) | 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.           |

| Regulation of Residential Contractors                            |   |  |  |  |                       |   |
|--|---|--|--|--|-----------------------|---|
| State  | Type of License/Registration  | Minimum Project Cost Exception?  | Bond/Insurance Required?   | Education or Experience Required?                              | Examination Required? | Contract Provisions Regulated?                        |
| <b>Michigan</b> ( <i>Mich. Comp. Laws 339.2401, et seq.</i> )    | 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.   |
| <b>West Virginia</b> ( <i>W. Va. Code 30-42-1, et seq.</i> )     | Contractor's license.   | Projects under \$5,000 exempt.   | No.  | No.  | Yes.                  | Written contract required for projects over \$10,000. |
| <b>Pennsylvania</b> ( <i>73 Pa. Cons. Stat. 517.1, et seq.</i> ) | 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.  |

| Regulation of Residential Contractors                 |                                 |                                 |                          |   |                       |                                |
|---|---------------------------------|---------------------------------|--------------------------|---|-----------------------|--------------------------------|
| State   | Type of License/Registration    | Minimum Project Cost Exception? | Bond/Insurance Required? | Education or Experience Required?   | Examination Required? | Contract Provisions Regulated? |
| <b>Florida</b> ( <i>Fla. Stat. 489.101, et seq.</i> ) | Residential contractor license. | Projects under \$2,500 exempt.  | Liability insurance.     | Education or experience required; continuing education required for renewal | Yes.                  | No.                            |