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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Schaffer

Kelly Bomba, Attorney

### SUMMARY

- Prohibits, beginning six months after the bill's effective date, a person from recklessly performing residential construction with respect to heating, ventilating, and air conditioning; refrigeration; electrical; plumbing; or hydronics without a license from the Ohio Construction Industry Licensing Board (OCILB).
- Exempts an individual from the bill's license requirement if the person is employed by a licensee, performing work on the person's primary residence, or is a direct labor subcontractor.
- Makes acting as a residential contractor without a license a minor misdemeanor on the first offense and a fourth degree misdemeanor for each subsequent offense.
- Requires each OCILB specialty section, in accordance with rules the specialty section adopts, to issue, renew, or refuse to issue or renew licenses for the types of residential contractors that the section regulates.
- Allows the appropriate specialty section to authorize the OCILB Administrative Section to grant a license to an applicant without requiring the applicant to pass an examination if certain conditions are met.
- Prohibits an Ohio political subdivision, district, or agency from requiring a residential contractor licensed by OCILB to meet any additional eligibility requirements for registration by the political subdivision, district, or agency.
- Allows a political subdivision, district, or agency to charge a registration fee or require permits, approvals, or code compliance bonds, provided the political subdivision, district, or agency requires proof that the contractor holds a valid state license.
- Reduces the number of years an applicant must have been a tradesperson to be eligible to take an examination for a contractor's license from five years to three years

(continuing law allows an applicant with other acceptable experience to be eligible to take the examination).

- Requires the OCILB Administrative Section to adopt a rule requiring a contractor to earn a number of continuing education hours each year equal to the total number of hours of continuing education required for each valid, unexpired license the contractor holds.
- Reduces, from five to four, the number of hours per year in specific course requirements that a specialty section can adopt in a continuing education curriculum.
- Eliminates several provisions from the OCILB Law that relate to OCILB’s ability to refuse to issue or renew a license based on a person’s criminal history or moral character.
- Creates the Construction Industry Licensing Enforcement Fund in the state treasury.
- Requires a person who wishes to make a complaint against an unlicensed contractor to file a written complaint with the OCILB within one year after the date of the action or event on which the complaint is based.
- Increases, from \$5,000 to \$500,000, the amount of the bond that the OCILB Secretary must file with the Treasurer of State.

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## DETAILED ANALYSIS

### Residential contractor licensing

The bill prohibits, beginning six months after its effective date, a person from recklessly performing the duties, responsibilities, or functions associated with a licensed trade on a

residential building (a one-, two-, or three-family dwelling house or any structure incidental to that dwelling house), unless one of the following apply:

- The person is licensed by the Ohio Construction Industry Licensing Board (OCILB) to perform the trade;
- The person is employed by a person licensed by the OCILB;
- The person is performing the trade on the person’s primary residence;
- The person is a direct labor subcontractor.

Currently, a person is only required to be licensed by the OCILB if the person is performing a licensed trade on a commercial construction project or is employing tradespersons who are performing the licensed trade on the commercial project.<sup>1</sup>

The bill exempts direct labor subcontractors from the bill’s requirement to be licensed by the OCILB to perform a licensed trade on a residential building. However, the bill requires a contractor who uses direct labor subcontractors on a residential construction project to be licensed by the OCILB. A “direct labor subcontractor” means an individual who engages in construction, improvement, renovation, repair, or maintenance of residential construction projects under terms specified in an agreement with a contractor if both of the following apply:

- The contractor has the right to control or direct only the result of the construction, improvement, renovation, repair, or maintenance performed by the individual;
- The income the individual earns from the construction, improvement, renovation, repair, or maintenance is subject to the federal Self-Employment Contributions Act.<sup>2</sup>

Under continuing law, a “licensed trade” is a trade performed by a heating, ventilating, and air conditioning (HVAC) contractor, a refrigeration contractor, an electrical contractor, a plumbing contractor, or a hydronics contractor.<sup>3</sup> Licensed trades are regulated by the OCILB, which consists of an Administrative Section and three specialty sections: a plumbing and hydronics section, an electrical section, and an HVAC and refrigeration section.<sup>4</sup> Each specialty section is responsible for regulating licensees that practice the licensed trade for which the section is responsible. The specialty sections’ duties include: adopting rules for issuing licenses and disciplining licensees; investigating violations of the OCILB Law;<sup>5</sup> and establishing or approving continuing education curriculum for licensees.<sup>6</sup> The Administrative Section is responsible for administering the OCILB Law and must perform duties including overseeing

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<sup>1</sup> R.C. 4740.13(A), 4740.131, and 4740.01(H) and Section 3.

<sup>2</sup> R.C. 4740.131 and 4740.01(D)(2)(c),(G), and (J), by reference to 26 United States Code 1401 *et seq.*

<sup>3</sup> R.C. 4740.01(F).

<sup>4</sup> R.C. 4740.02, not in the bill.

<sup>5</sup> R.C. Chapter 4740.

<sup>6</sup> R.C. 4740.05.

examinations, issuing and renewing licenses, making annual reports to the Director of Commerce, and keeping records on every contractor who holds a license.<sup>7</sup>

To receive a license from the OCILB, a person must pass an examination after satisfying the requirements described under “**Eligibility**,” below. Licenses also may be issued pursuant to reciprocity agreements. Licenses are valid for one year and may be renewed. To renew a license, an applicant must complete the requirements described under “**Continuing education**,” below. All licenses must be assigned to a contracting company as described under “**License assignment**,” below.<sup>8</sup>

### **Universal and residential only licenses**

The bill distinguishes between a universal license and a residential only license. Under the bill, a “universal license” is a license issued by the OCILB allowing a person to perform a licensed trade on any construction project. A “residential only” license allows a person to perform a licensed trade on a residential construction project only. Each type of license must indicate whether it is universal or residential only.<sup>9</sup>

The bill does not establish different qualifications or examinations for the different types of licenses. Instead, it requires each specialty section, in accordance with rules the specialty section adopts, to issue, renew, or refuse to issue or renew licenses for the classes of contractors for which the section has primary responsibility.<sup>10</sup>

### **Licensing without examination**

Under the bill, the appropriate specialty section may authorize the Administrative Section to grant a license to an applicant without requiring the applicant to pass an examination if the applicant applies within six months after the bill’s effective date, pays a \$50 fee, and does all of the following:

1. Identifies a contracting company with which the applicant is associated as a full-time officer, proprietor, or partner and to which the applicant will assign the applicant’s license as described under “**License assignment**,” below;
2. Undergoes a criminal records check the results of which the OCILB determines do not disqualify the applicant from receiving a license;
3. Submits evidence that the applicant is the primary insured under a contractor’s liability insurance policy in the name of a single company for an amount of at least \$500,000, including complete operation coverage;

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<sup>7</sup> R.C. 4740.04.

<sup>8</sup> R.C. 4740.06 and 4740.07 and R.C. 4740.08, not in the bill.

<sup>9</sup> R.C. 4740.01(A), (B), and (C) and 4740.04(C).

<sup>10</sup> R.C. 4740.05(H) and 4740.06.

4. Submits evidence that the applicant is in compliance with the Workers' Compensation Law<sup>11</sup> and the Unemployment Compensation Law;<sup>12</sup>
5. Submits evidence that the applicant is in compliance with any other requirements the OCILB determines to be necessary;
6. Demonstrates that the applicant has not been convicted of or pleaded guilty to a crime of moral turpitude as defined in continuing law, a disqualifying offense (a felony that has a direct nexus to the applicant's proposed work as a contractor), or a violation of the OCILB Law or rules adopted under it;
7. Demonstrates that the applicant has not obtained or renewed a contractor's license, or obtained any OCILB order, ruling, or authorization through fraud, misrepresentation, or deception;
8. Demonstrates that the applicant has not engaged in fraud, misrepresentation, or deception in the conduct of business;
9. Meets either of the following criteria:
  - a. Holds a valid, unexpired registration or license issued in the licensed trade by a municipal corporation, county, or health department before the bill's effective date;
  - b. Has been actively engaged in a licensed trade on residential construction projects for at least three consecutive years immediately before the bill's effective date.

If an applicant seeks a license without examination by demonstrating experience under (9)(b), above, the applicant must submit to the OCILB any evidence necessary for the OCILB to verify that the applicant has the experience required to receive a license and must satisfy any other experience acceptable to the appropriate specialty section. At least three members of the specialty section must review an application filed by an applicant seeking a license without an examination by demonstrating experience under (9)(b).

The appropriate specialty section must act on a complete application within 90 days after the application is submitted. The bill allows a specialty section to withdraw its authorization to the Administrative Section for issuance of a license for good cause shown at any time before the Administrative Section issues the license.

The OCILB must issue a universal license to any person who holds a license to perform a licensed trade that is in good standing and was issued by the OCILB before the bill's effective date. The license is effective for the term of the license that it replaced.<sup>13</sup>

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<sup>11</sup> R.C. Chapters 4121, 4123, 4127, and 4131.

<sup>12</sup> R.C. Chapter 4141.

<sup>13</sup> Section 4.

## Enforcement

The bill applies the same criminal penalty to an unlicensed residential contractor that continuing law applies to an unlicensed commercial contractor. A person who acts as a residential contractor without a license is guilty of a minor misdemeanor for the first violation and a fourth degree misdemeanor for each subsequent violation. The bill specifies that the culpable mental state, meaning the state of mind with which a person must act in order to be legally responsible for the offense, is recklessly for the criminal prohibitions against unlicensed residential and commercial contractors. Current law does not specify a culpable mental state for the criminal prohibition against unlicensed commercial contractors; however, recklessly is the default mental state for any existing offense that does not specify a culpable mental state.<sup>14</sup>

Additionally, the bill allows the Attorney General, on the appropriate specialty section's request, to sue a person who is operating as a residential contractor without a license for appropriate relief, including a temporary restraining order or permanent injunction. This is the same authority the Attorney General has under continuing law with respect to commercial contractors.<sup>15</sup>

A person who acts as a residential contractor without a license also may be subject to an administrative penalty assessed by the appropriate specialty section. The penalty and assessment process are the same as the penalty and process used by the OCILB with respect to commercial contractors as revised by the bill. Under that process, an investigator appointed by the Director, on behalf of the appropriate specialty section, may investigate any person allegedly operating as an unlicensed contractor. Under the bill the Director may limit an investigation to areas or activities related to licenses, permits, or approvals.

If after the investigation, the section or the section's designee, as added by the bill determines that reasonable evidence exists that a violation occurred, the section or the investigator must send a written notice to the person who allegedly violated the license requirement and hold a hearing. If a majority of the section's members determine that a violation has occurred, the section may issue a fine of up to \$1,000 per violation per day and may file a complaint against the person with the appropriate local prosecutor for criminal prosecution.

If a person fails to request a hearing within 30 days after the specialty section sends written notice, the section, by a majority vote of a quorum of the section's members, may take action against the person without holding a hearing. The section must forward the name of any person who fails to pay a civil penalty imposed by the section to the Attorney General for the purpose of collecting the civil penalty. If the Attorney General collects the penalty, the person must pay any fee assessed by the Attorney General for that collection.<sup>16</sup>

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<sup>14</sup> R.C. 4740.13(A) and R.C. 4740.99 and 2901.21, not in the bill.

<sup>15</sup> R.C. 4740.13(B).

<sup>16</sup> R.C. 4740.13(C) and 4740.16.

Under the bill, any person who wishes to make a complaint against an unlicensed contractor must file the complaint in writing with the appropriate specialty section within one year after the date of the action or event on which the complaint is based. The one-year statute of limitations applies to complaints against both residential and commercial contractors. Current law does not specify a time period to file a complaint.<sup>17</sup>

### **Regulation by other entities**

The bill prohibits a political subdivision, district, or agency of the state from requiring a contractor licensed by the OCILB to meet any additional eligibility requirements for registration by the political subdivision, district, or agency (see **COMMENT** below).<sup>18</sup>

Under current law, a municipal corporation may require licensing of residential HVAC contractors, residential refrigeration contractors, residential electrical contractors, residential plumbing contractors, and residential hydronics contractors. Similarly, a board of county commissioners may license residential electrical contractors and residential HVAC contractors to perform work in the unincorporated parts of the county and within a municipal corporation located in the county under certain circumstances. A municipal corporation or board of county commissioners that licenses residential contractors may accept a commercial contractor license issued by the OCILB as satisfying the requirements for a residential license. Neither a municipal corporation nor a board of county commissioners may require a commercial contractor who is licensed by the OCILB to complete an examination or a demonstration of skill to engage in the type of contracting covered by the OCILB license.<sup>19</sup>

Nothing in the bill prohibits or limits the ability of a political subdivision, district, or state agency from requiring residential and commercial contractors to pay a registration fee or requiring permits, approvals, or code compliance bonds.<sup>20</sup> However, a political subdivision, district, or state agency that oversees a type of construction that requires a valid state license must require proof that the contractor holds the state license before registering the contractor, issuing a building permit, or otherwise accepting or approving plans and specifications under the Ohio Residential or Nonresidential Building Code.<sup>21</sup>

### **Eligibility**

An applicant for a license under the bill is subject to the same application requirements to which an applicant for a commercial license is subject. The bill adds the following new requirements to the list of requirements that a person must satisfy to take an examination for a contractor's license (regardless of type):

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<sup>17</sup> R.C. 4740.16(A).

<sup>18</sup> R.C. 4740.12(B).

<sup>19</sup> R.C. 715.27 and 3781.102, with conforming changes in R.C. 4740.14 and 4764.03.

<sup>20</sup> R.C. 4740.12(C).

<sup>21</sup> R.C. 4740.12(A), by reference to R.C. 3791.04, not in the bill.

- Comply with the Workers' Compensation Law and the Unemployment Compensation Law;
- Identify a contracting company with which the applicant is associated as a full-time officer, proprietor, or partner and to which the applicant will assign the applicant's license.

Under continuing law that currently applies to a commercial license applicant, a person must also satisfy the following additional requirements to take an examination:

1. Be at least 18 years old;
2. Be a U.S. citizen or legal alien who produces valid documentation to demonstrate the person is a legal resident of the U.S.;
3. Either have been a tradesperson (for a licensed contractor as added by the bill) in the type of licensed trade for which the application is filed for not less than three years (current law requires five years) immediately before the date the application is filed, be a currently registered engineer in Ohio with three years of business experience in the construction industry in the trade for which the engineer is applying to take an examination, or have other acceptable experience;
4. Maintain contractor's liability insurance in an amount the appropriate specialty section determines and only in one contracting company name;
5. Not have engaged in any of the activities described under "**Criminal activity and moral character**," below;
6. Pay a fee established by the OCILB.

If the applicant passes the examination, the appropriate specialty section must authorize the Administrative Section to license the applicant.<sup>22</sup>

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

Under the bill and current law, an applicant for a contractor's license cannot qualify for a license or license renewal if any of the following apply:

1. The applicant has been convicted of or pled guilty to a crime of moral turpitude or a disqualifying offense;
2. The applicant has violated the OCILB Law or rules adopted under it;
3. The applicant has obtained or renewed an OCILB license, or any order, ruling, or authorization of the OCILB or a section of the OCILB by fraud, misrepresentation, or deception;

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<sup>22</sup> R.C. 4740.06.

4. The applicant has engaged in fraud, misrepresentation, or deception in the conduct of business.<sup>23</sup>

The bill allows a specialty section, when considering whether to renew a license, to consider convictions or guilty pleas for any crimes listed above that occurred before or after initial licensure. 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.

Currently, a person is ineligible for licensure based on the reasons listed above, but a specialty section also has discretion to deny a license or refuse to renew a license if the applicant was convicted of or pleaded guilty to any misdemeanor less than one year before applying or any felony less than three years before applying. The bill eliminates the specialty section's discretion to deny a license or renewal based on these crimes.

The bill also eliminates conditional licenses. Currently, a specialty section may grant a conditional license to a person whose past criminal activity or moral character would otherwise make the person ineligible. A conditional license lasts for one year. After the one-year period expires, the license is no longer considered conditional, and the person is considered fully licensed.<sup>24</sup>

Under current law, if a specialty section denies a person a license or license renewal, the OCILB Law requires the section to put the reasons for the denial in writing. The bill eliminates the requirement for a written denial from the OCILB Law. However, the Administrative Procedure Act,<sup>25</sup> which governs adjudications by licensing agencies, requires written notice and an opportunity for a hearing when an agency denies a license or renewal.<sup>26</sup>

## **License assignment**

Under continuing law, contractor licenses are issued and renewed in the name of the person who applies for the license and who meets the requirements for issuance. At the time an applicant applies, the applicant must request that the applicant's license be assigned to a contracting company that employs the person. The Administrative Section must assign the license to that contracting company. Under the bill, a license can only be assigned to a contracting company that employs the licensee on a full-time basis.<sup>27</sup>

The bill also requires that, for the period of time during which more than one license for the same type of trade is assigned to a contracting company, the appropriate specialty section must determine under which license any violation of the OCILB Law was committed. Any person named in another license cannot be held liable for violations. Additionally, under the bill any

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<sup>23</sup> R.C. 4740.06(B) and (E).

<sup>24</sup> R.C. 4740.06(I), repealed, and Ohio Administrative Code 4101:16-2-07 and 4101:16-2-11.

<sup>25</sup> R.C. Chapter 119.

<sup>26</sup> R.C. 4740.06(I)(1), repealed, and R.C. 119.06 and 119.07, not in the bill.

<sup>27</sup> R.C. 4740.07(A) and (B).

licensee who assigns a license to a contracting company must be available for consultation with any investigator appointed by the Director.<sup>28</sup>

## Continuing education

A licensee, under current law and the bill, may renew a license without reexamination by completing a continuing education curriculum established or approved by the specialty section that is responsible for the license and satisfying other requirements. The bill prohibits a specialty section from adopting a continuing education curriculum that requires more than four hours per year in specific course requirements. Currently, a continuing education curriculum may not require more than five hours per year.

The bill also eliminates a ten-hour cap on the total number of continuing education hours a contractor can be required to take per year. Instead, the bill requires the Administrative Section to adopt a rule requiring a licensed contractor to earn a number of continuing education hours each year equal to the total number of hours of continuing education required for each valid, unexpired license the contractor holds.<sup>29</sup>

## Licensee discipline

As with commercial contractors under continuing law, the appropriate specialty section may impose any of the following disciplinary actions on a residential contractor required to be licensed under the bill:

1. Suspend, revoke, or refuse to issue any license;
2. Require additional continuing education hours;
3. Issue a fine.

The residential contractor may be disciplined for any of the following reasons:

1. Having been convicted of or pleading guilty to a crime of moral turpitude or disqualifying offense;
2. Violating the OCILB Law or any rule adopted pursuant to it;
3. Obtaining or attempting to obtain a license or a renewal of a license by means of fraud, deception, or misrepresentation;
4. Obtaining an order, ruling, or authorization from any OCILB section by means of fraud or misrepresentation;
5. Engaging in fraud, misrepresentation, or deception in the conduct of business;
6. Transferring the person's license to another person without the appropriate specialty section's approval;

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<sup>28</sup> R.C. 4740.07(E) and (G)(2).

<sup>29</sup> R.C. 4740.04(G), 4740.05(F), and 4740.06(E).

7. Allowing the person's license to be used by an unlicensed person or entity;
8. Failing to comply with a disciplinary action imposed by the appropriate specialty section;
9. Failing to maintain insurance throughout the license year, unless the license has properly been placed in inactive status.

Additionally, the appropriate specialty section may take disciplinary action against an applicant or licensee on receiving notice that a municipal corporation or any other governmental agency has suspended or revoked the local contracting license or registration of an individual or contracting company that also holds a license pursuant to the OCILB Law. A licensee also may be subject to discipline for failing to comply with child support orders, convictions of the offense of human trafficking, and the return of checks for insufficient funds.<sup>30</sup>

## **Administration**

### **Construction Industry Licensing Enforcement Fund**

The bill creates the Construction Industry Licensing Enforcement Fund in the state treasury. The fund consists of 20% of all receipts and fines collected under the OCILB Law and is used to enforce the law.

Under the bill, the OCILB must deposit the remaining 80% of fines and receipts collected under the OCILB Law into the Industrial Compliance Operating Fund, which is used to pay for a share of the Department of Commerce's operating costs. Under current law, all of the receipts and fines collected under the OCILB Law are deposited in the Industrial Compliance Operating Fund.<sup>31</sup>

### **Secretary bond**

Under continuing law, the Administrative Section employs a secretary who is not a member of the OCILB. The Secretary keeps records, issues licenses in the OCILB's name, sends out notices, handles the OCILB's correspondence, and receives and deposits fees paid by licensees. Currently, the Secretary must file a \$5,000 bond with the Treasurer of State before performing the Secretary's duties. The bill increases the amount of the bond to \$500,000. Under continuing law, the OCILB pays the premium on the bond.<sup>32</sup>

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<sup>30</sup> R.C. 4740.10, 4740.101, 4740.15, and 4740.17, not in the bill.

<sup>31</sup> R.C. 4740.03(B)(2) and 4740.11.

<sup>32</sup> R.C. 4740.03(B)(3).

## Administrative Section votes required to take action

The bill requires the Administrative Section to have the concurrence of a majority of its members to take any action. Current law requires the concurrence of at least three members for the Administrative Section to take any action.<sup>33</sup> Under continuing law, the Administrative Section has five members.<sup>34</sup>

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## COMMENT

Under Article XVIII, Section 3 of the Ohio Constitution, municipalities “have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws” (Home Rule authority). A county that has adopted a charter also may exercise Home Rule authority. Political subdivisions that exercise Home Rule authority have the power to license occupations within their jurisdictions.<sup>35</sup> The bill prohibits political subdivisions from imposing additional eligibility requirements on construction contractors. It is unclear whether the bill’s prohibition violates Home Rule

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## HISTORY

Action	Date
Introduced	07-11-19

S0176-I-133/ts

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<sup>33</sup> R.C. 4740.03(A).

<sup>34</sup> R.C. 4740.02, not in the bill.

<sup>35</sup> See, e.g., *Village of West Jefferson v. Robinson*, 1 Ohio St.2d 113 (1965), and *Ohio Assn. of Private Detective Agencies, Inc. v. North Olmsted*, 65 Ohio St.3d 242 (1992).