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Bill Analysis
Legislative Service Commission

Sub. H.B. 444
127th General Assembly
(As Reported by H. Commerce and Labor)

Reps. J. Stewart, Szollosi, Luckie

BILL SUMMARY

- Removes the requirement that an individual or business entity perform specified construction work *for compensation* in order to be considered a contractor for the purposes of the Construction Industry Licensing Board Law.
- Requires an individual or business entity to have employees who are tradespersons, rather than to employ tradespersons, to be considered a contractor for the purposes of that law.
- Requires, instead of permits as under current law, an individual to assign the individual's license to one business entity with whom the individual is associated as a full-time officer, proprietor, partner, or employee.
- Requires that the license assignment request be made at the time of applying for a license and eliminates the option to request it at a later date.
- Specifies additional procedures an individual must follow when the individual ceases to be associated with the business entity to whom that individual assigned the individual's license.
- Allows the appropriate section of the Ohio Construction Industry Licensing Board to investigate and fine an unlicensed individual for acting as or claiming to be a contractor that is licensed under the Construction Industry Licensing Board Law.
- Specifies notice and hearing requirements the appropriate section of the Board must follow regarding an alleged violation of the prohibition of

acting as or claiming to be a type of contractor that is licensed under the Construction Industry Licensing Board Law without a license.

- Specifies that an individual must have attained a score on the examination that the appropriate section authorizes for the licensed trade within the 12 months preceding the individual's application for licensure in order to receive a license.
- Renames the Plumbing Section of the Board the Plumbing and Hydronics Section.

CONTENT AND OPERATION

Background

Under continuing law, no person can act as or claim to be a type of contractor that is licensed under the Construction Industry Licensing Board Law (R.C. Chapter 4740.) unless that person holds or has been assigned a license issued pursuant to that law for the type of contractor that person is acting as or claiming to be (sec. 4740.13(A), not in the bill). The following types of contractors are licensed under the Construction Industry Licensing Board Law: (1) a heating, ventilating, and air conditioning contractor, (2) a refrigeration contractor, (3) an electrical contractor, (4) a plumbing contractor, and (5) a hydronics contractor (sec. 4740.01(A)).

Definition of contractor

Under current law, "contractor" means any individual or business entity that satisfies both of the following:

(1) For compensation, directs, supervises, or has responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance on a construction project with respect to one or more trades and who offers, identifies, advertises, or otherwise holds out or represents that the individual or business entity is permitted or qualified to perform, direct, supervise, 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;

(2) Performs or employs tradespersons who perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to the contractor's trades. (Sec. 4740.01(C).)

The bill redefines "contractor" by removing "for compensation" from (1) above and by specifying that an individual or business must have employees who are tradespersons as described under (2) above, rather than requiring that an individual or business employ tradespersons, as under current law. (Sec. 4740.01(C).)

Assignment of a license

Assignments under current law

Current law permits an individual to request, at the time of applying for a license *or at any time thereafter*, that the individual's license be assigned to a business entity with whom the individual is associated as a full-time officer, proprietor, partner, or employee. If the individual is issued or holds a license and meets the requirements specified in continuing law for the assignment of the license to a business entity, the Administrative Section of the Board must assign the license to and issue a license in the name of the business entity. Continuing law prohibits any license from being assigned to more than one business entity at a time. (Sec. 4740.07(B) and (H).)

Under continuing law, any work a business entity conducts under an assigned license is deemed to be conducted under the personal supervision of the individual named in the license, and any violation of any term of the license is deemed to have been committed by the individual named in the license. For the period of time during which more than one license for the same type of contracting is assigned to a business entity, any work the business entity conducts under any of those licenses is deemed to be conducted under the personal supervision of the individuals named in those licenses and any violation of any term of any license is deemed to have been committed by the individuals named in all of the licenses. (Sec. 4740.07(E).)

Current law states that if an individual who assigned a license to a business entity ceases to be associated with the business entity for any reason, including the death of the individual, the individual or business entity immediately must notify the appropriate section of the Board of the date on which the individual ceased to be associated with the business entity. Under continuing law, a license assigned to a business entity is invalid 90 calendar days after the date on which the individual who assigned the license ceases to be associated with the business entity or at an earlier time to which the business entity and the individual agree. (Sec. 4740.07(D).)

Assignments under the bill

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 (sec. 4740.07(B)). The bill also requires that that request be made at the time of applying for a license and eliminates the option to request it at a later date. Under the bill, if a license assigned to a business entity becomes invalid because the individual who assigned the license is no longer associated with the business entity, the individual must do one of the following:

- At least 90 days before the date the license assigned to the business entity becomes invalid, or, if the business entity and the individual agree to an invalidation date that is prior to the expiration of that 90-day period as permitted under continuing law, on that invalidation date, request the appropriate section of the Board to reassign the individual's license to a business entity with whom the individual is associated as a full-time officer, proprietor, partner, or employee;
- If the individual is not a full-time officer, proprietor, partner, or employee of a new business entity on the date the license assigned to the former business entity becomes invalid, request that the appropriate section of the Board place the individual's license in escrow until the date the individual requests the appropriate section of the Board to assign the license to another business entity with whom the individual is associated as a full-time officer, proprietor, partner, or employee. (Sec. 4740.07(D).)

The bill does not change the liability of an individual who assigns a license for the business entity's work.

Sanctions against unlicensed individuals

Under continuing law, a person who acts as or claims to be a type of contractor that is licensed under the Construction Industry Licensing Board Law without such a license is guilty of a minor misdemeanor on the first violation and a fourth-degree misdemeanor on subsequent violations (sec. 4740.99, not in the bill). Additionally, upon the request of the appropriate section of the Board, continuing law permits the Attorney General to bring a civil action for appropriate relief, including but not limited to a temporary restraining order or permanent injunction, in the court of common pleas of the county where the unlicensed person resides or is acting as or claiming to be a licensed contractor (sec. 4740.13(B), not in the bill).

The bill adds an additional sanction against unlicensed activity. The bill permits the appropriate section of the Board to investigate any person who allegedly has violated the prohibition against acting as or claiming to be a type of contractor that is licensed under the Construction Industry Licensing Board Law without such a license. If, after an investigation, the appropriate section determines that reasonable evidence exists that a person has violated that prohibition, within seven days after that determination, the appropriate section must send a written notice to that person in the same manner as prescribed in the Administrative Procedure Act for licensees. The bill requires the appropriate section to specify in the notice that a hearing will be held and specify the date, time, and place of the hearing. (Sec. 4740.16(A).)

The bill requires the appropriate section to hold a hearing regarding the alleged violation in the same manner prescribed for an adjudication hearing under the Administrative Procedure Act. If the appropriate section, after the hearing, determines a violation has occurred, the appropriate section may impose a fine on the person, not exceeding \$1,000 per violation per day. The appropriate section's determination is an order that the person may appeal in accordance with the Administrative Procedure Act. (Sec. 4740.16(B).)

If the person who allegedly committed a violation fails to appear for a hearing, the appropriate section may request the court of common pleas of the county where the alleged violation occurred to compel the person to appear before the appropriate section for a hearing. If the appropriate section assesses a person a civil penalty for a violation and the person fails to pay that civil penalty within the time period prescribed by the appropriate section, the appropriate section must forward to the Attorney General the name of the person and the amount of the civil penalty for the purpose of collecting that civil penalty. In addition to the civil penalty assessed pursuant to the bill, the person also must pay any fee assessed by the Attorney General for collection of the civil penalty. (Sec. 4740.16(C) and (D).)

Timeline to apply for a contractor license

Under continuing law, any individual who applies for a license must file a written application with the appropriate section of the Board, accompanied with the application fee. The individual must file the application not more than 60 days nor less than 30 days prior to the date of the examination. The appropriate section determines whether the applicant satisfies the criteria specified in continuing law to take the appropriate examination. When an applicant for licensure as a contractor in a licensed trade meets those qualifications and passes the examination, the appropriate section of the Board, within 90 days after the application was filed, must authorize the Administrative Section of the Board to

license the applicant for the type of contractor's license for which the applicant qualifies. (Sec. 4740.06, not in the bill.)

Current law requires the Administrative Section of the Board to issue a license to any individual who the appropriate section of the Board determines is qualified as described above and has attained a score on the examination that the appropriate section authorizes for the licensed trade. The bill specifies that the individual must have attained that score on the examination within the 12 months preceding the individual's application for licensure in order to receive a license. (Sec. 4740.04(C)(1).)

Plumbing and Hydronics Section

The Board consists of the following sections: the Administrative Section, the Plumbing Section, the Electrical Section, and the Heating, Ventilating, Air Conditioning, and Refrigeration Section. Continuing law specifies duties that each section must perform. The Plumbing Section has primary responsibility for the licensure of plumbing contractors and hydronics contractors. The bill renames the Plumbing Section the Plumbing and Hydronics Section. (Sec. 4740.02.)

HISTORY

ACTION	DATE
Introduced	01-23-08
Reported, H. Commerce & Labor	04-09-08

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