



## Occupational Licensing Review

### Board Questionnaire

Board Name Ohio Construction Industry Licensing Board

Point of Contact Rachael Carl, Legislative Director

Describe the board's primary purpose and its various goals and objectives

The primary purpose of the Ohio Construction Industry Licensing Board (the "Board") is to oversee the licensure of individuals working in the specialty trades regulated by Chapter 4740 of the Ohio Revised Code, which includes those working as a heating, ventilating, and air conditioning contractor; a refrigeration contractor; an electrical contractor; a plumbing contractor; or a hydronics contractor. The primary goal and objective of the Board is to promote the safety of the public, those working in the specialty trades, as well as those working in the construction industry generally, by verifying that individuals working in the "licensed trades" have sufficient education, training, and experience to ensure that the work performed in these trades is done properly and competently. The trades specifically regulated by the Board require exceptional levels of knowledge and expertise and the underlying works plays a tremendous role in the overall safety of occupants of the regulated commercial projects. The Board also strives to promote an efficient licensing process for those working in the specialty trades, as well as approves training agencies that provide continuing education programming for licensees.

Describe and identify the board's past and anticipated workload, number of staff required to complete workload, and total number of staff

The Board issues approximately 18,000 licenses to roughly 13,000 specialty contractors working in the "licensed trades," which include heating, ventilating, and air conditioning contractors; refrigeration contractors; electrical contractors; plumbing contractors; and hydronics contractors. As part of its licensing function, the Board investigates complaints made against licensees as well as cases where an individual is performing work without the required license and, thereafter, conducting disciplinary proceedings should an infraction be found. The Board also approves or renews training agencies that offer continuing education programming for those licensed in the specialty trades, as well as approves the specific courses offered by these training agencies. To perform this work (not including the members of the Board itself, which is discussed more fully in question 4 below), the Board's staff includes six office employees and four investigators working in the field.

In addition to the oversight and regulation of the "licensed trades" subject to the jurisdiction of Chapter 4740 of the Ohio Revised Code, the Board also utilizes employees of the Division of Industrial Compliance to assist with the licensing of Manufactured Home Installers and Manufactured Home Park Operators, as part of the Ohio Department of Commerce's Manufactured Homes Program. While the Board utilizes four additional office staff members to complete work dealing exclusively with manufactured homes licenses, the four field investigators mentioned above perform work dealing with both the specialty trades and the regulation of manufactured homes.

Describe and identify the board's past and anticipated budgets and its sources of funding

The Ohio Construction Industry Licensing Board is part of the operating function of the Ohio Department of Commerce's Division of Industrial Compliance. Since responsibilities for operating the Board vary over time, to increase efficiency and reduce indirect costs, the Board shares responsibilities with other licensing and inspection service boards. For these reasons, costs are not separately identified. The Board's revenue is generated through the collection of licensing and renewal fees as well as fees paid by continuing education course providers. The Board generated \$1,325,132.00 in 2013; \$1,319,372.75 in 2014; \$1,301,365.50 in 2015; \$1,480,103.15 in 2016; \$1,416,578.75 in 2017; \$1,061,373.75 in 2018; and \$1,263,740.00 in 2019. Expenditures for the Board, including administrative costs of the Department allocated to the Board, were \$1,100,084.85 in 2013; \$1,209,518.17 in 2014; \$1,065,072.19 in 2015; \$1,141,512.93 in 2016; \$1,114,589.05 in 2017; \$1,293,523.10 in 2018; and \$1,331,440.00 in 2019. The revenue generated and costs incurred resulted in a net gain or loss as follows: a net gain of \$225,047 in 2013; a net gain of \$109,855 in 2014; a net gain of \$236,293 in 2015; a net gain of \$338,590 in 2016; a net gain of \$301,990 in 2017; a net loss of \$232,149 in 2018; and a net loss of \$67,700 in 2019.

Identify the number of members of its governing board or other governing entity and their compensation, if any

The Ohio Construction Industry Licensing Board is made up of seventeen total members. These seventeen members serve on four sections of the Board, including the Administrative Section; Electrical Section; Heating, Ventilating, Air conditioning, and Refrigeration Section; and the Plumbing and Hydronics Section. Of the seventeen Board members that are divided amongst the four specialty sections mentioned above, three members are completely uncompensated for their participation on the Board, including the Superintendent of the Division of Industrial Compliance (the "Division"), who is a member of the Administrative Section, and two employees of the Division, one serving on the Plumbing Section and the other on the Electrical Section of the Board. Whereas the other fourteen members of the Board receive no compensation aside from a "per diem," to cover costs associated with participation on the Board, in the amount of \$187.60 per meeting and mileage. Members are also entitled to receive reimbursement for all actual and necessary expenses incurred in the discharge of their official duties pursuant to section 4740.02(G) of the Revised Code.

Is the preservation of the board necessary to protect the public's health, safety, or welfare? If so, is the authority of the board narrowly tailored to protect the public's health against present, recognizable, and significant harms to the public's health safety and welfare?

Yes, the preservation of the Board is necessary to protect the public's health, safety, or welfare. Licensure of individuals working in the "licensed trades" ensures that the public can identify individuals with sufficient education, training, and experience to safely perform such work.

Yes, the authority of the Board is narrowly tailored to protect the public's health against present, recognizable, and significant harms to the public's health, safety, and welfare. Only five specialty trades are subject to the jurisdiction of Chapter 4740 of the Ohio Revised Code, as opposed to licensing a broader category of construction industry workers, which ensures only those areas of work requiring a higher degree of training and experience to obtain competency are subject to the licensure requirements.

Could the public be protected or served in an alternate or less restrictive manner?

No, it is not likely that the public could be protected or served in an alternate or less restrictive manner. Having minimum requirements to obtain licensure in the licensed trades helps to ensure that those working in those fields have sufficient education, training, and experience to perform such work competently and safely. Moreover, the Board's use of background checks to screen out applicants and licensees that have committed certain violent offenses, crimes of moral turpitude, and disqualifying offenses also helps to ensure the public's health, safety, and welfare.

Does the board serve a specific private interest?

No, the Board does not serve a specific private interest.

Are the board's rules consistent with the legislative mandate expressed in the statutes that created and empowered the board?

Yes, the Board's rules are consistent with the legislative mandate expressed in the statutes that created and empowered the Board. Section 4740.05 of the Revised Code mandates that the Board, "Adopt rules in accordance with Chapter 119 of the Revised Code that are limited to the following: (1) Criteria for the section to use in evaluating the qualifications of an individual; (2) Criteria for the section to use in deciding whether to issue, renew, suspend, revoke, or refuse to issue or renew a license; (3) The determinations and approvals the section make under the reciprocity provision of section 4740.08 of the Revised Code; (4) Criteria for continuing education courses conducted pursuant to this chapter; (5) A requirement that any training agency seeking approval to provide continuing education courses submit the required information to the appropriate specialty section of the Board at least thirty days, but not more than one year, prior to the date on which the course is proposed to be offered; (6) A prohibition against any training agency providing a continuing education course unless the administrative section of the Board approved that training agency not more than one year prior to the date the course is offered; (7) A list of disqualifying offenses pursuant to sections 4740.06, 4740.10, and 4776.10 of the Revised Code." R.C. 4740.05(A).

The Board has narrowly tailored its application and renewal processes in its rules to ensure that those applying for licensure can be processed quickly and efficiently and, thereby, begin working in their respective licensed trade as quickly as possible. In addition, the Board offers incentives to those contractors participating in the "Compliant Contractor Program," including reduced continuing education requirements and reduced renewal frequency.

If applicable, please identify any licenses or functions of the board that could be eliminated or consolidated

There are no licenses or functions of the Board that could be eliminated or consolidated. (See answer to question 5 above.)

Describe the extent to which the board's jurisdiction and programs overlap or duplicate those of other boards, the extent to which the board coordinates with those other boards, and the extent to which the board's programs could be consolidated with the programs of other state departments or boards.

The Board's jurisdiction and programs do not overlap or duplicate those of other boards.

How many other states regulate the occupation or occupations under the board's jurisdiction? Is a license required to engage in that occupation or those occupations in other states? Are the initial licensing and license renewal requirements for the occupation or occupations substantially equivalent in every state? How does the amount of regulation exercised by the board compare to the regulation of the occupation or occupations, if any, in other states?

According to the National Association of State Contractors Licensing Agencies, all states, except Illinois, Kansas, Missouri, New York, and Pennsylvania, license specialty trades similar to those trades subject to the jurisdiction of Chapter 4740 of the Revised Code.

Yes, the initial licensing and license renewal requirements for these occupations are substantially equivalent in every state. The amount of regulation exercised by the Board compared to the regulation of these occupations, if any, in other states is generally comparable.

Would significant changes in the board's rules prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction without obtaining an occupational license for that occupation in that other jurisdiction?

Yes, changes in the Board's rules could potentially prevent an individual licensed in Ohio from practicing the same occupation in another jurisdiction without obtaining an occupational license for that occupation in the other jurisdiction. The Board has entered into reciprocity agreements with six states, and other jurisdictions may have parity standards that allow an out-of-state licensee to practice the same occupation in their jurisdiction, so long as the requirements of that out-of-state license are comparable to their jurisdiction. Any changes to the Board's rules could affect whether other jurisdictions will agree to continue having reciprocity with the Board's licensees and could change whether an Ohio licensee satisfies any parity standards of other jurisdictions.

Does the board recognize national uniform licensure requirements for one or more occupations under the board's jurisdiction?

No, the Board does not recognize national uniform licensure requirements for one or more occupations under its jurisdiction, because no such national standard exists. The Board, however, does have reciprocity agreements with six other states that issue licenses in specialty trades similar to those subject to the jurisdiction of Chapter 4740 of the Revised Code, including Kentucky, West Virginia, North Carolina, South Carolina, Louisiana, and Tennessee.

Could private contractors be used, in an effective and efficient manner, either to assist the board in the performance of its duties or to perform these duties instead of the board?

The Board already uses private contractors to assist it in those duties where the General Assembly determined private contractors would be effective or efficient, including providers of continuing education courses, training agencies, and providers offering the examination for applicants to obtain their license. It is unlikely that private contractors could be used in an effective and efficient manner to assist the Board in its performance of any other of its duties.

Has the operation of the board inhibited economic growth, reduced efficiency, or increased the cost of government?

No, the operation of the Board has not inhibited economic growth, reduced efficiency or increased the cost of government.

Describe the authority of the board regarding fees, inspections, enforcement, and penalties.

The Board has the authority to charge a fee to applicants for administration of the contractor examination (R.C. 4740.04(B)(3)) as well as the initial application fee (R.C. 4740.06(A)); a fee to licensed contractors to renew their license as well as a late filing fee should the contractor apply for renewal late (R.C. 4740.06(E)); and fees associated with continuing education courses (see, e.g., R.C. 4740.04(G)(2)(b)). The Board has authority to levy penalties such as when a fee payment instrument is returned NSF (R.C. 4740.15); suspend, revoke, or refuse to renew a license; require additional continuing education hours; and issue a fine (R.C. 4740.10). In addition, violation of section 4740.13 of the Revised Code, which deals with contractors operating without a license, constitutes a minor misdemeanor on the first violation and a fourth-degree misdemeanor on subsequent violations (R.C. 4740.99).

Describe the extent to which the board has permitted qualified applicants to serve the public.

The licensed trades regulated by Chapter 4740 of the Revised Code are limited to work performed in buildings or structures subject to Chapter 3781 of the Revised Code, and, as such, do not concern public service projects.

Describe the extent to which the board has permitted individuals to practice elements of the occupation without a license.

An unlicensed worker in one of the specialty trades is permitted to work as a “tradesperson” by being employed by a “contractor” holding a valid license, as well as formal apprentice programs and working as a journeyman in these trades. This enables unlicensed workers to seek employment in the specialty trades without the need of obtaining a license, but also helps to provide a means by which to obtain the necessary education and training experience to obtain a license should they choose to do so.

Assess the cost-effectiveness of the board in terms of number of employees, services rendered, and administrative costs incurred, both past and present.

The Board strives to promote an efficient licensing process for those working in the specialty trades. The Board's paid staff, limited to six office employees and four field investigators, is capable of processing and issuing roughly 17,000 licenses to roughly 13,000 contractors as such licenses come due for renewal. Furthermore, the Board also shares responsibilities with other licensing and inspection service boards within the Department of Commerce to increase efficiency and reduce indirect costs.

Has the board's operation been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices?

Previously, the definition of "tradesperson" included, "any individual who is supervised or directed by a contractor or who is otherwise employed by contractor and who engages in construction, improvement, renovation, repair, or maintenance of buildings or structures without assuming responsibility for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance." R.C. 4740.01(D) (former version) (emphasis added). That definition was changed in 2014 to eliminate individuals merely "directed or supervised by a contractor," thereby requiring that tradespersons be employed by contractors. This change has enhanced the operations of the Board by enabling it to more easily investigate violations of section 4740.10 of the Revised Code, which prohibits a licensed contractor from allowing his or her license to be used by an unlicensed person or entity. See R.C. 4740.10(B)(1)(h)(i).

Has the board recommended statutory changes to the general assembly that would benefit the public as opposed to the persons regulated by the board, if any, and have those recommendations and other policies been adopted and implemented?

No, the Board has not recommended statutory changes to the General Assembly that would benefit the public as opposed to persons regulated by the Board. Instead, the Board endeavors to utilize its rule-making authority to best serve the interests of both the public and contractors subject to the requirements of Chapter 4740 of the Revised Code.

Has the board required any persons it regulates to report to it the impact of board rules and decisions on the public as they affect service costs and service delivery?

No, the Board does not require any persons it regulates to report to it the impact of the Board's rules and decisions on the public as they affect service costs and service delivery. However, as part of the every rulemaking proposal, the Board does solicit feedback from the public and licensees regarding the impact of its rules and decisions on the public and licensees in terms of service costs and service delivery.

Are persons regulated by the board, if any, required to assess problems in their business operations that affect the public?

No, neither persons regulated by the Board or others are required to assess problems in their business operations that affect the public.

Has the board encouraged public participation in its rule-making and decision-making?

Yes, in accordance with Chapter 119 of the Ohio Revised Code, public hearings are held to promote public participation in the Board's rule-making process. In addition, hearings of the Board, where decisions involving license applications, renewals, and other matters coming before the Board, are open to the public and notice of the meetings is provided to encourage such participation.

Assess the efficiency with which formal public complaints filed with the board have been processed to completion.

In general, the Board investigates complaints received by the public within two business days. After an investigation is completed, the findings of the investigator and the complaint are provided to the Board at its next scheduled Board meeting for consideration. At that time, if the Board votes to issue a notice of opportunity for hearing to the alleged violator, the matter will then proceed through the Chapter 119 administrative review process.

Has the purpose for which the board was created been fulfilled? Has it changed? Does it still exist?

The purpose of the Board is to promote and protect the public's health, safety, and welfare. The need to promote and protect the public's safety and welfare continues to exist, and the Board is fulfilling that purpose for which it was created.

Does federal law require that the board be renewed in some form?

No, federal law does not require that the Board be renewed in some form.

Assess the administrative hearing process of a board if the board has an administrative hearing process, and whether or not the hearing process is consistent with due process rights.

The Board's statutes and rules reference Chapter 119 of the Revised Code with regard to the administrative hearing procedure. As such, the due process rights of individuals affected by the decisions of the Board are protected by the processes established in Chapter 119.

Is the requirement for the occupational license or licenses under the board's jurisdiction consistent with the policies expressed in section 4798.02 of the Revised Code? Does the license serve a meaningful, defined public interest? Does it provide the least restrictive form of regulation that adequately protects the public interest?

The Board's requirements are consistent with the policies expressed in section 4798.02 of the Revised Code. The Board does require a license to be obtained to perform work on specialized systems (HVAC, refrigeration, electrical, plumbing, or hydronics) in a commercial construction project, but that license is narrowly tailored to limit any barriers to employment.

The Board's regulations mandate that a contracting company, not an individual, possess the license in order to perform work on the specialized systems. Section 4740.07 of the Revised Code requires all individuals who apply for a license from the Board to assign it to a contracting company, and when the license is issued, it is issued in the name of the contracting company. The contracting company that is then authorized to work on commercial construction projects that involve working with the specialized system covered under the license. Section 4740.01 specifically says that the contracting company can employ "tradespersons" to do the actual work authorized by the license, and a "tradesperson" is "any individual who is employed by a contractor and who engages in construction, improvement, renovation, repair, or maintenance of buildings or structures[.]" A "tradesperson" is not required to have a license issued by the Board. So, any individual may perform contractor work, even contractor work involving one of the five specialized systems, without a license issued by the Board.

The requirement of a license also serves a meaningful, defined public interest in that it protects the public and the employees of the contracting company from the critical life safety harms that can result from improper work performed on an HVAC, refrigeration, electrical, plumbing, or hydronics system. The license is not required for all construction, all commercial construction, or all construction projects involving a specialized system. Instead, it is intentionally limited to be required only in those circumstances where there is the highest risk of the most substantial harms to the greatest amount of people.

Other potentially less restrictive regulations do not adequately protect the safety and welfare of the public. Inspections, which are required under other agencies and regulatory programs, are beneficial, but, by themselves, are incapable of sufficiently protecting the public interest at issue. An inspector can only look at and review a small portion of construction in an inspection. Particularly when dealing with the specialized systems covered under the Board's license, all five systems are not well-suited for inspections alone because the majority of their components are intentionally not easily accessible or visible for review. There are also some problems that cannot be caught just by an inspection, as the systems are very complex and require a certain minimum level of technical skill and knowledge to safely interact with them.

Bonding and insurance also do not adequately protect the public from the harms that can result from an improperly constructed or maintained specialized system, as they provide remedies for parties already injured or damaged. They are not preventative measures, and with the potential harms being serious injury or death, they cannot sufficiently protect the public interest.

Assess the extent to which licensing ensures that practitioners have occupational skill sets or competencies that are substantially related to protecting consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare, and the impact that those criteria have on applicants for a license, particularly those with moderate or low incomes, seeking to enter the occupation or profession.

In order to obtain a license as a contractor in the specialty trades, an applicant meet several requirements, including: 1) be at least eighteen years of age; 2) successfully pass a criminal background check; not have violated any provisions of Chapter 4740 of the Ohio Revised Code, or any rule adopted pursuant to that chapter; 3) not have obtained or renewed a license issued pursuant to Chapter 4740 of the Revised Code by fraud, misrepresentation, or deception; 4) Not have engaged in fraud, misrepresentation, or deception in the conduct of business; and 5) have sufficient education, training, or experience to perform work in the licensed trade safely and competently. These criteria strike the appropriate balance to ensure that applicants are competent to perform the work while not overly restricting the pool of available workers in the field.

Assess the extent to which the requirement for the occupational license stimulates or restricts competition, affects consumer choice, and affects the cost of services.

The requirement for the occupational license stimulates competition. A licensed contractor can employ unlicensed tradespersons to assist with the work being performed on a construction project. Possession of the license provides a means by which a worker in the field can distinguish himself from that of unlicensed tradespersons, thereby being more marketable to those looking to have such work performed.

Are changes needed in the enabling laws of the board in order for it to comply with the criteria suggested by the considerations listed in this questionnaire?

No, changes are not needed in the enabling laws of the Board in order for it to comply with the criteria suggested by the considerations listed in this questionnaire.

Additional Notes

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