

Business and Labor Committee

Nebraska Legislature

LR 106

Interim Study to review the Boiler Safety Code Advisory Board and occupational regulations for boiler inspectors

Report as required by Neb. Rev. Stat. § 84-948

One Hundred Sixth Legislature

First Session

Committee Members

Senator Matt Hansen, Chair, District 26
Senator Ben Hansen, Vice Chair, District 16
Senator Ernie Chambers, District 11
Senator Sue Crawford, District 45
Senator Steve Halloran, District 33
Senator Steve Lathrop, District 12
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Occupational Board Reform Act

The Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920) with an operative date of July 1, 2019. The act requires that:

“Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.” (Neb. Rev. Stat. § 84-948)

There were five such occupational regulations identified under the jurisdiction of the Business and Labor Committee.¹ Therefore, the committee selects one occupational licensing regulation to review each year in the five year period. For 2019, the committee selected to review Boiler/Pressure Vessel Inspectors and introduced LR 106 to conduct the study.

The Executive Board of the Legislature created an electronic survey to help each committee accomplish the task of reviewing each occupational licensing agency. Survey results for all the committees are published on the Legislature’s website.

The Nebraska Fire Marshal is the agency who oversees the Boiler Safety Code Advisory Board. The response from the Fire Marshal can be found at: https://nebraskalegislature.gov/reports/committeesurvey_view.php.

¹ (1) Employment Agent; (2) Boiler/Pressure Vessel Inspector; (3) Locksmith; (4) Professional Employer Organization; and (5) Contractor/Sub-Contractor

Committee Findings

Neb. Rev. Stat. § 84-948 requires the report to include the following with answers in bold:

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

N/A no licensing authority for any occupations

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

Boiler Safety Code Advisory Board; Neb. Rev. Stat. §§ 81-5,184 to 81-5,188

(c) The number of members of the occupational board and how the members are appointed;

Seven members; Appointed by the Governor

(d) The qualifications for membership on the occupational board;

The membership of the board shall consist of one member who represents owners and users of boilers and has experience with boilers, one member who represents sellers of boilers, one member who represents the crafts involved in the construction, repair, or operation of boilers, one member who represents the insurance industry, one member who is a licensed professional engineer with experience with boilers, one member who represents the interest of public safety, and one member who represents the public. The state boiler inspector shall be a nonvoting member of the board.

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

The board is required to meet once a year and it has met once a year.

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

- **FY 2018-2019 Budget: \$521**
- **FY 2017-2018 Budget: \$398**
- **FY 2016-2017 Budget: \$417**
- **FY 2015-2016 Budget: \$446**
- **FY 2014-2015 Budget: \$390**

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

None

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

No occupational regulations are in effect

(i) A statement from the occupational board on the effectiveness of the occupational regulations; and

This Board does not have any occupational licensing regulations. They did provide input on the regulations for methods of testing equipment and construction and installation of new boilers required to be inspected by the Boiler Inspection Act and for inspection and certificate fees for such boilers. The Boiler Inspection Program has helped to maintain the health and safety of Nebraska citizens.

(j) A comparison of whether and how other states regulate the occupation.

<http://www.nationalboard.org/PrintAllSynopsis.aspx?Jurisdiction=Select>

(4) Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section [84-946](#) considering the following recommended courses of action for meeting such policies:

The regulations appear to be consistent with Neb. Rev. Stat. § 84-946

(a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services;

N/A

(b) If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

Periodic inspections of boilers is what the current law requires

(c) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

N/A

(d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

N/A

(e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

N/A

(f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

N/A

(g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

N/A

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section [71-6222](#).

N/A

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section [84-946](#).

Conclusion

Neither the Boiler Safety Code Advisory Board, nor the State Fire Marshal regulate the profession of boiler inspectors. The State Fire Marshal authorizes insurance company inspectors, with proper certifications and after paying a fee, to satisfy the inspection requirements of the Boiler Inspection Act. The State Fire Marshal authorizes private inspectors to act on behalf of state inspectors in order to prevent duplication of inspections.

After the committee's review, boiler inspectors are not a regulated profession and should fall outside the scope of the Occupational Board Reform Act. As such the Business and Labor Committee has no recommendations relevant to the purposes of the Act.

The committee recommends that Boiler/Pressure Vessel Inspector be removed from the list of occupations to be reviewed every five years as it is not a regulated occupation and as such should not need further review.