

Natural Resources Committee

Nebraska Legislature

One Hundred Sixth Legislature

Second Session

Review of Regulations for Underground Storage Tank Installation and Closing

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

Committee Members

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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 Natural Resources Committee (“Committee”).¹ This report will address regulations for Underground Tank Installers and Closers.

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 State Fire Marshal oversees regulations for Underground Storage Tank Installers/Closers. The response for the installation and closure of underground storage tanks can be found at: https://nebraskalegislature.gov/reports/committeesurvey_view.php

Underground Storage Tank Installers/Closers Background

Licensing for the installation and closure of underground storage tanks was established by 1993 LB 720, which was introduced by Senator Preister of Bellevue. The bill passed Final Reading with 36 yes votes, 0 no votes, and 13 not voting and was approved by the Governor.

The rationale for this regulation stems from LB 217’s passage in 1986, which established the Petroleum Products and Hazardous Substances Storage and Handling Act. This law directed the State Fire Marshal to carry out measures to prevent leaking underground storage tanks, and to adopt rules governing release, detection, prevention, and correction procedures necessary to protect human health, public safety, and the environment. A licensing and certification requirement for tank installers and removers was established by the State Fire Marshal in 1989. In 1992, this licensing regulation was challenged for lack of statutory authority. LB 720 addressed this issue by specifically requiring that the State Fire Marshal implement the licensing of tank installation and removal contractors.

¹ (1) Wastewater Treatment Plant Operator, Certified; (2) Wastewater Treatment Professional, Certified Onsite; (3) Underground Storage Tank Licenses; (4) Geologist; and (5) Water Well Driller

During the February 18, 1993 hearing for LB 720, the Natural Resources Committee heard proponent testimony from Senator Preister and Charlotte Centuori, legal counsel for the State Fire Marshal; there was no opposition or neutral testimony. Ms. Centuori stated that the bill sought “both clarification and substantiation of our authority to license and certify contractors who install and remove underground storage tanks.”² She further testified that the State Fire Marshal tests installer/closers on “the state regulations, and very basic safety precautions that need to be used in tank removals. We use it as an educational tool...”³

Ms. Centuori cited two specific harms being addressed by requiring underground storage tank installers and closers to obtain a permit: one, that underground storage tanks can “explode and kill people,” and two, that there are significant contamination concerns associated with abandoned storage tanks.⁴ Requiring installers/closers to pass a minimum competency test minimizes these risks.

Agency Response

Neb. Rev. Stat. § 84-948 requires a committee’s OBRA report to include the following. The following answers were submitted by the Nebraska State Fire Marshal. (answers in bold):

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

Title of regulated occupation: Installation/Closers of Underground Storage Tanks

Name of occupational board: There is no occupational board for this profession. The certification program is administered by the Nebraska State Fire Marshal.

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

Neb. Rev. Stat. § 81-15,123

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

N/A

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

N/A

² Hearing transcript. Hearing on LB 72. Natural Resources Committee of the Nebraska Legislature, February 18, 1993, pg. 45.

³ *Id.*, pg. 48.

⁴ *Id.*, pg. 50.

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

N/A

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

- **FY 2019-2020 Budget: \$ 1,441**
- **FY 2018-2019 Budget: \$ 2,626**
- **FY 2017-2018 Budget: \$ 1,979**
- **FY 2016-2017 Budget: \$ 2,740**
- **FY 2015-2016 Budget: \$ 2,433**

(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;

226 Certificates Issued

3 Certificates Revoked; these licenses were suspended until all required paperwork was submitted to the State Fire Marshal Agency. Once received, the licenses were put back in good standing.

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

According to the LB 720's statement of intent: "LB 217 in 1986 established the Petroleum Products and Hazardous Substances Storage and Handling Act. This act directed the State Fire Marshal to carry out measures to prevent leaking underground storage tanks and to adopt rules governing release, detection, prevention, and correction procedures necessary to protect human health, public safety, and the environment. A licensing and certification requirement for tank installers and removers was established by the State Fire Marshal in 1989. In 1992, the State Fire Marshal licensing regulation was challenged for lack of statutory authority. Therefore, to remove any question regarding the State Fire Marshal's authority in this area, LB 720 is being proposed. The legislation specifically requires that the State Fire Marshal implement the licensing of tank installation and removal contractors.

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

The Licensing requirement for UST installers/closers has been effective because the tanks being installed or closed are being done utilizing proper procedures which has helped minimize the potential damage to the environment. When tanks are removed

the license holder is fully aware of all the requirements they must meet to ensure that any potential contamination is located, so that it can be dealt with in the appropriate manner. Additionally, there are steps required at the closure to ensure that the tank has been rendered inert to avoid any explosion dangers.

The testing of applicants helps to ensure that the license holders are familiar with Nebraska's specific geographic environments and the various safety factors required for work within those environments. The license holder bears responsibility for the work performed thus providing a level of professional installation/closure standards. This provides a level of quality assurance to the tank owners that all necessary steps were followed and that warranties are fully intact for the use of the tank.

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

See the following:

<https://nebraskalegislature.gov/pdf/SurveyDocs/comparison1603920719.pdf>

Committee Findings

(4) Pursuant to subsection (5) of OBRA, 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:

(1) To protect the fundamental right of an individual to pursue a lawful occupation;

Licensure of underground storage tank installers and closers does impose a minor barrier to entry for individuals wishing to engage in this kind of work. The installation and closure of underground storage tanks, however, poses significant public health risks. Improper installation or removal could lead to soil and groundwater contamination and an increased risk of explosive hazards. This threat of contamination is especially apparent, as the Legislature has created a fund specifically to fund cleanup efforts at leaking underground storage tank sites.⁵ Additionally, of the three certifications that have been revoked, all are now in good standing. It appears this is an area of significant public health concern, that the State Fire Marshal is exercising its regulatory authority judiciously, and that these regulations do not damage the right of an individual to pursue a lawful occupation.

(2) To use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest;

⁵ See Neb. Rev. Stat. § 81-15,121

Improperly installed underground storage tanks and improper removal of underground storage tanks pose a variety of serious public health, safety, and welfare threats. Licensure helps mitigate these serious risks and protect against undue risks of harm to public health, safety, and welfare, and is appropriate.

(3) To enforce an occupational regulation against an individual only to the extent that the individual sells goods or services that are included explicitly in the statutes that govern the occupation;

These regulations have only been applied to individuals installing or removing underground storage tanks.

(4) To construe and apply occupational regulations to increase opportunities, promote competition, and encourage innovation;

Testing and licensure ensure competence and familiarity with safety requirements. There is a large pool of certified installers/closers, and a certification test is administered every month, which provides ample opportunity for competition.

(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](#).

N/A, no changes recommended.

Conclusion

The licenses, certifications, and registrations for underground tank installers and closers overseen by the State Fire Marshal are intended to protect the health, safety, and welfare of Nebraskans. The current testing and certification regulations for underground storage tank installers and closers is appropriate. The Committee recommends that the certification and occupational

regulations for underground storage tank installers and closers be continued without modification.