

BUSINESS AND LABOR COMMITTEE

NEBRASKA LEGISLATURE

Boiler Safety Code Advisory Board Report as required pursuant to the
Occupational Board Reform Act (OBRA)
Neb. Rev. Stat. § 84-948

One Hundred Eighth Legislature
Second Session

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Introduction

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) Boiler/Pressure Vessel Inspector; (2) Locksmith; (3) Professional Employer Organization; and (4) Contractor/Sub-Contractor.

Background and Legislative History

The Fire Marshal's office was organized on April 3, 1909 by a legislative act known as the Fire Commission Law. A. U. Johnson was appointed as the first State Fire Marshal with a staff of two deputies. Over the years the duties of the SFM office have evolved from safety inspections and fire investigations to include natural gas pipeline safety, aboveground and underground storage tank regulation, emergency responder training, hazardous materials response, fireworks licensing, fire alarm inspector licensing, building plan reviews and enforcement of accessibility guidelines. The current State Fire Marshal, Scott Cordes, oversees 65 full-time employees assigned to one of six divisions – Administrative, Enforcement, Investigations, Fuels, Plans Review and Training.

- The **Administrative Division** is comprised of the Fire Marshal, Assistant State Fire Marshal, Business Manager, Legal Counsel, Public Information Officer/Fire Prevention Deputy and the support staff. The Division is responsible for providing administrative leadership and clerical support to maintain and operate the Agency.
- The **Enforcement Division** is comprised of two districts, each supervised by a District Chief Deputy State Fire Marshal. The eighteen Deputies assigned to these districts perform various inspections for life safety.
- The **Fuels Division** is comprised of two programs, the Tank Program and the Pipeline Safety Program. The Division is overseen by a Chief Deputy State Fire Marshal, and employs ten Deputies and two support staff. Deputies and staff in the Tank Program inspect all underground storage tank (UST) facilities for compliance with federal EPA rules and regulations, inspect all new underground tank and piping installations, and existing tank removals, and oversee a licensing and certification system for tank installers, removers, and cathodic protection testers. The four deputies in the Pipeline Safety Program inspect all intrastate gas pipeline operators for compliance with federal DOT regulations and are also involved in promoting safe digging practices and the use of the Nebraska One-Call Notification System.
- The **Investigations Division** is comprised of a Chief Deputy State Fire Marshal and seven investigators. These investigators are all certified law enforcement personnel and are designated as Special State Sheriffs. The Division's responsibilities include investigation of suspicious fires and fire-related deaths, post-blast explosions and arson-related crimes. Investigators also inspect fireworks storage facilities and conduct investigations involving unlawful use and sale of fireworks.
- The **Plans Review Division** is responsible for the review of plans for compliance with fire and accessibility codes, coordination of enforcement with the delegated authority cities and general code enforcement.
- The **Training Division** is comprised of a Chief Deputy State Fire Marshal, six Training Specialists, a Staff Assistant and numerous part-time instructors. The Training Division operates a statewide training program for emergency responders, and is the only recognized source within the State of Nebraska for accredited firefighter professional certification, based on accreditation from the International Fire Service Accreditation Congress (IFSAC) and the Fire Service Professional Qualifications System (ProBoard).
- The Mechanical Safety Division is comprised of three programs, The Conveyance Safety Division, The Boiler and Pressure Vessels Division, and the Amusement Ride Division.

The Conveyance Safety Division and the Amusement Ride Division contain One Chief Deputy, three Deputy State Fire Marshal Inspectors and two support staff. The Boiler and Pressure Vessel Division has One Chief Deputy, one Inspection Deputy, and One support staff. The Chiefs and Deputies in each division are responsible for conducting inspections of regulated entities to ensure compliance with requirements listed in Statutes and adopted regulations. These inspections include new installations as well as ongoing routine inspections to ensure all required safety items are met.

Committee Findings

Pursuant to Nebraska Revised Statute §84-948, each report issued by a standing committee of the Legislature must contain the following information (**Answers in Bold**):

1. The title of the regulated occupation and the name of the occupational board responsible for the enforcement of the occupational regulations;

N/A no licensing authority for any occupations

2. 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

3. The number of members of the occupational board and how the members are appointed;

Seven members; Appointed by the Governor

4. 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.

5. 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. There have not been meetings the last two years due to Agency vacancies in the Chief Boiler position, Deputy Boiler position, and an increased inspection load due to a retirement and internal structural change in a city department.

6. Annual budget information for the occupational board for the five most recently completed fiscal years;

FY 2023-2024	\$0
FY 2022-2023	\$3
FY 2021-2022	\$300.00
FY 2020-2021	\$461.44
FY 2019-2020	\$300.00

7. 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

8. A review of the basic assumptions underlying the creation of the occupational regulations;

No occupational regulations are in effect

9. 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.

10. A comparison of whether and how other states regulate the occupation.

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

In addition, each report issued by a standing committee of the Legislature must analyze whether the occupational regulations meet the policy goals established under OBRA and consider the following recommended courses of action for meeting such policy goals (**Responses in Bold**):

1. 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

2. 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 are what the current law requires

3. 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

4. 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

5. If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the provider's knowledge, the likely recommendation will be to enact government certification; and

N/A

6. 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

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.