

**REPORT OF THE GOVERNMENT, MILITARY AND VETERANS
AFFAIRS COMMITTEE OF THE NEBRASKA LEGISLATURE**

*Review of the Occupational Regulation of
Water-Based Fire Protection System Contractors*

Prepared in accordance with the Occupational Board Reform Act
(Neb. Rev. Stat. §§84-933 to 84-948)

*Submitted to the Clerk of the Legislature of the 106th Nebraska Legislature
on December 18, 2019*

Committee Members:

Sen. Tom Brewer, Chair
Sen. Andrew LaGrone, Vice Chair
Sen. Carol Blood
Sen. Matt Hansen
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INTRODUCTION

In 1997, the Nebraska Legislature passed LB 636 and imposed occupational regulations on “any water-based fire protection system contractor who installs, repairs, alters, adds to, maintains, or inspects water-based fire protection systems in this state[.]”¹ LB 636 is currently codified as Neb. Rev. Stat. §§81-5,158 to 81-5,164.

Water-based fire protection system contractors are required to obtain a “contractor certificate” from the State Fire Marshal (“SFM”) by obtaining insurance providing at least \$1 million in coverage, paying a certificate fee of up to \$100, and submitting an application which includes the name of a “responsible managing employee.”² Upon submission of a complete application and the other supporting materials, an examination is scheduled and administered by the SFM for the responsible managing employee. After successful completion of this examination, the SFM issues the certificate within thirty days.³

The certificate must be renewed annually. Renewal requires payment of a renewal fee of up to \$100 and submission of a sworn affidavit affirming that responsible managing employee previously examined by the SFM is still employed by the contractor holding the certificate.⁴

A responsible managing employee may only serve in that role for one contractor at a time, and no more than two such contractors in any twelve-month period. If that employee ceases employment with the contractor holding the certificate, that contractor has six months — or until expiration of the current certificate, if that is earlier — to submit a new application.⁵

Violation of the act is a Class V misdemeanor.⁶

¹ Neb. Rev. Stat. §81-5,159(1)

² Neb. Rev. Stat. §81-5,159(2)

³ Neb. Rev. Stat. §81-5,159(3)

⁴ Neb. Rev. Stat. §81-5,159(4)

⁵ Neb. Rev. Stat. §81-5,159(5)

⁶ Neb. Rev. Stat. §81-5,163

PROGRAM OPERATIONS DATA AND STATE-BY-STATE COMPARISON

On September 11, 2019, committee staff submitted a survey request to the SFM for the purpose of collecting historical information on its operation of this regulatory program. The committee received the agency's electronic response on October 31, 2019. Because this program is administered by a code agency and not by an independent board or commission, there are no data pertaining to occupational board membership, qualifications, or meetings.

The agency provided with its response a list of resources on the regulation of this occupation in other states. The agency response indicates that thirty states currently regulate water-based systems layout. Fifteen states regulate the inspection and testing of water-based systems. The agency response also references the standards for contractors performing work for the federal Government Services Administration. Many of these states, including Nebraska, use common language and organization that were no doubt drawn from model legislation distributed nationally.

Not every state adjacent to Nebraska is listed in the agency response as regulating water-based fire protection system contractors. Kansas inspects and tests water-based systems but does not appear to regulate the occupation as such. No relevant regulations of any kind were noted for Wyoming or Missouri. However, Iowa, South Dakota, and Colorado all regulate the occupation directly. Iowa and South Dakota additionally maintain regulations relating to the inspection and testing of the installed systems. The Nebraska policy of requiring one "responsible managing employee" for each contractor appears to also be the policy in Colorado.⁷ South Dakota has a similar requirement for a "qualified fire sprinkler system technician."⁸

(The full agency response with supporting documents is attached to this report as Appendix A.)

⁷ 8 C.C.R. 1507, §2.14

⁸ S.D. Admin. R. 20:38:38:02

REVIEW OF BASIC ASSUMPTIONS UNDERLYING CREATION OF THE OCCUPATIONAL REGULATIONS

In its hearing on LB 636 on February 21, 1997, the Government, Military and Veterans Affairs Committee received testimony from a number of proponents, including Sen. Cudaback (the bill's introducer), State Fire Marshal Mike Durst, individual contractors and firms working in this field, and the Fire Sprinkler Contractors Association. There was no opposition or neutral testimony presented at the hearing.⁹

In this public committee hearing, proponents of the proposed regulations emphasized the life safety issue at stake in the installation of fire sprinklers, the then-new changes in code requirements and construction practices, and enforcement challenges posed by existing building inspection procedures, under which a system was to be inspected only after completion and application for a certificate of occupancy.

Industry representatives emphasized the broad support among their colleagues for the new regulations (represented as being greater than 90 percent of trade organization members). One testifier speaking on behalf of a trade organization emphasized that he believed the proposed regulations were not excessively onerous and should not pose an insurmountable obstacle to "people [going] into business for themselves."¹⁰

It appears from this hearing testimony that the basic assumptions underlying the creation of the occupational regulations included the perceived:

- need for protection of future building occupants from fire sprinkler system defects that could result in loss of life and property;
- inadequacy of the previous practice of inspecting fire sprinkler systems and remedying any defects in such systems after installation is already completed; and
- need for assurance that all contractors working in this field employ at least one person in a supervisory role who has demonstrated proficiency in industry standards and government regulations pertaining to fire sprinkler systems installation.

⁹ Hearing transcript. Hearing on Legislative Bill 636. Government, Military & Veterans Affairs Committee of the 95th Nebraska Legislature, February 21, 1997.

¹⁰ *Id.* at 62.

OBRA POLICY ANALYSIS

The Occupational Board Reform Act (“OBRA”) makes several statements of policy which committees are instructed to apply as part of the regular OBRA review process.¹¹

1. Does the occupational regulation protect the fundamental right of an individual to pursue a lawful occupation?

- a. Analysis: The current occupational regulation of water-based fire protection contractors is limited in scope to require that every contractor employs one person who is responsible for compliance with laws and regulations pertaining to the installation of this specialized plumbing. Because the occupational regulation does not apply to every person working in this field, it does not pose a significant barrier to entry to employment in this occupation.

The regulation does create an additional obstacle for entrepreneurs wishing to go into business for themselves in this field. However, because the application and examination process entails an experience requirement, recommendation, and a minimal fee, but no educational prerequisite or other personal qualifications, it appears that this occupational regulation does not as it is currently enforced impair the right of an individual to pursue a lawful occupation.

2. Does the occupational regulation use the least restrictive regulation 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?

- a. Analysis: Committees completing their regular review of occupational regulations under OBRA shall determine whether an occupational regulation is the least restrictive regulation necessary to mitigate the risk of harms that might otherwise result from the practice of the occupation.¹²

Based on the legislative record, the concern of the Legislature addressed by these occupational regulations is that faulty installation of water-based fire protection systems may result in loss of life, serious injury, and property destruction. Remediation of faulty installations is expensive, and an inspection upon application for a certificate of occupancy was judged by the Legislature to be inadequate.

¹¹ See Neb. Rev Stat. §§84-946 and 84-948(7)

¹² Neb. Rev. Stat. §§84-937 and 84-948(4)

The requirement for insurance is justified by the need to protect a person who is not party to a contract with the regulated contractor, e.g., future owners or occupants of buildings fitted with water-based fire protection systems.¹³

An imbalance of knowledge about the service to be provided justifies the requirement for a certification requirement for one person employed by each such contractor. The current occupational regulation arguably acts as a certification and not a license as those terms are defined in OBRA because although the applicant must be examined and found proficient in the legal requirements for performance of this specialized type of plumbing work, the regulation does not impose other personal qualifications, e.g., educational prerequisites or moral standing.¹⁴ The one major exception is the requirement of five years experience in the field to qualify for the certification.

3. *Is the occupational regulation enforced only against individuals selling goods or services explicitly included in the governing statutes?*

- a. Analysis: Although plumbers are subject to different occupational regulations beyond the scope of this report, the insurance and certification requirements for water-based fire protection system contractors is only imposed on contractors actually engaged in the installation, repair, alteration, addition to, maintenance, or inspection of such systems.

4. *Is the occupational regulation construed and applied to increase opportunities, promote competition, and encourage innovation?*

- a. Analysis: According to the testimony of interested parties that is included in the legislative record for the enacting legislation, these regulations do not pose a significant obstacle to entrepreneurial opportunities. This committee is not aware of any evidence to the contrary. The statistics provided by the SFM indicate that no certifications have been denied during the period from FY 2014–2015 through FY 2018–2019. Similarly, the SFM reports that there have been no certifications revoked or penalties assessed during the review period, and that it has issued 262 certifications in total, 55 of which are currently active. Although it is possible that the certification requirement may be deterring some applications, it does not appear that the regulation is substantially interfering with opportunities to compete in this field.

¹³ See Neb. Rev. Stat. §84-948(4)(d)

¹⁴ See Neb. Rev. Stat. §§84-939 and 84-941

APPENDIX A: AGENCY SURVEY RESPONSE

General Information

- Committee of Jurisdiction:
Government, Military and Veterans Affairs
- Occupation Regulated:
Water-Base Fire Protection System Contractor
- Occupational Board:
N/A
- Contact:
John Dodds
- Purpose:
Fire Sprinkler systems are an integral part of ensuring public safety—simply put they save lives. The licensing requirement was put in place to ensure that the installation companies have a person on staff that had the required knowledge, training and experience to design, install, maintain, and operate the systems in accordance with the adopted code requirements. This person also serves as the point of contact for the Agency during the projects in case of questions or concerns.
- Regulated Professionals:
55
- Year Created:
1997
- Year Active:
22
- Sunset Date:
None

Authorization

- Statutory Authorization:
§81-5,158-§81-5,164
- Parent Agency:
State Fire Marshal

Memberships

- Number of Members: N/A
- Who Appoints: N/A
- Legislative Approval: N/A
- Qualifications of Members: N/A
- Per Diem: N/A
- Expense Reimbursement: N/A

- Term Length: N/A
- Terms Rotate or Expire at Once: N/A

Meetings

- Required FY 2018-2019:
0
- Held FY 2018-2019:
0
- Required FY 2017-2018:
0
- Held FY 2017-2018:
0
- Required FY 2016-2017:
0
- Held FY 2016-2017:
0
- Required FY 2015-2016:
0
- Held FY 2015-2016:
0
- Required FY 2014-2015:
0
- Held FY 2014-2015:
0

Operations

- Support Staff:
1
- Shared or Separate:
Shared
- FY 2018-2019 Budget:
409
- FY 2017-2018 Budget:
367
- FY 2016-2017 Budget:
342
- FY 2015-2016 Budget:
345
- FY 2014-2015 Budget:

- Other Funding Sources:
§81-5,159 allows for up to a \$100.00 fee to the State Fire Marshal Cash Fund
- Spending Authority:
§81-505.01

Other

- Government Certificates Issued:
262
- Issued Certificate Descriptions:
A letter acknowledging the certification of a specific individual for a specific company for a set time period accompanies a numbered certificate issued to the individual who was submitted as the Responsible Managing Employee.
- Government Certificates Revoked:
0
- Revoked Certificate Descriptions:
N/A
- Government Certificates Denied:
0
- Denied Certificate Descriptions:
N/A
- Government Certificates Penalties Against:
0
- Penalty Certificate Descriptions:
N/A
- Explanation of Effectiveness:
The required regulations have been effective because they have ensured that each company who wished to operate within the State has a Water Based Contractor on staff. This individual must maintain a nationally recognized licensed at a level three or higher, thus ensuring they are trained and have working knowledge of the applicable code requirements. This ensures that the sprinkler systems in the state, which are [a] vital part of public safety, are installed and maintained at the required levels. Additionally, the Agency requires proof of liability insurance that must be maintained by the companies in the event of disputes, thus providing a layer of protection to the public.
- Potential Harm:
The potential for harm would greatly increase if an acknowledgment and registration was not maintained to ensure that companies which are installing and maintaining sprinkler systems have a fully trained and tested water based contractor and that they are in full compliance with the adopted code, as well as any Nebraska specific concerns.

- Regulation Comparison:

Water-Based Systems Layout

Water-Based Systems Layout is aimed at engineering technicians whose work addresses the layout and detailing of water-based fire protection systems within the constraints of stringent code and statutory requirements.

Broadly, certifications cover such areas as plan and submittal preparation, application of various types of water-based systems, equipment selection and application, and technical management of layout projects. Technical areas include types of water-based systems and their components; water supply requirements; hydraulics; building features, hazards, and occupancy considerations; system installation, inspection, and maintenance requirements; codes and standards, and contract administration. Two exams are required for Level III certification: General Plan Preparation and Hydraulics and Water Supply Planning.

Level III – A minimum of five years of relevant experience and a personal recommendation. For layout certification, technicians must be able to work independently with standards, plans, and specifications to produce complete plans for standard systems. For inspection and testing certification, technicians must be able to work independently to perform complete system inspection and testing jobs, and supervise other technicians.

Water-Based Systems Layout

[Alabama](#)

[Alaska](#)

[Arizona](#)

[Arkansas](#)

[Colorado](#)

[Connecticut](#)

[Delaware](#)

[Georgia](#)

[Idaho](#)

[Illinois](#)

[Indiana](#)

[Iowa](#)

[Kentucky](#)

[Louisiana](#)

[Maine](#)

[Maryland](#)

[Minnesota](#)

[Nebraska](#)

[New Hampshire](#)

[North Carolina \(1\) \(2\)](#)

[Ohio](#)

[Pennsylvania](#)

[South Carolina](#)

[South Dakota](#)

[Tennessee](#)

[Texas](#)

[Vermont](#)

[Washington](#)

[West Virginia](#)

[Wisconsin](#)

Inspection and Testing of Water-Based Systems

[GSA Contractor](#) [Federal]

[Alaska](#)

[Arizona](#)

[Delaware](#)

[Florida](#)

[Georgia](#)

[Iowa](#)

[Kansas](#)

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