

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 756

By: Leftwich

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 1000.2, as amended by Section 3, Chapter 318, O.S.L. 2003 and 1000.4, as last amended by Section 1, Chapter 163, O.S.L. 2004 (59 O.S. Supp. 2004, Sections 1000.2 and 1000.4), which relate to the authority of the Construction Industries Board; placing elevator construction and maintenance trades under Board authority; increasing Board membership; placing the Elevator Safety Act under the authority of the Board; creating the Elevator Safety Act; providing short title; declaring legislative findings; prohibiting acts related to construction, installation, maintenance and servicing by unlicensed persons after specific date; requiring elevator inspections; stating exceptions to requirements of act; providing for construction of act; defining terms; creating Committee on Elevator Safety; providing for number of members, qualifications, appointments, deadline for initial appointments, role of designees, length of initial and regular terms, service limits, removal for missing meetings, filling of vacancies, election of officers, frequency of meetings, quorum, and travel reimbursement; assigning administrative responsibilities to Construction Industries Board; stating powers and duties of Committee; setting fees; stating legislative intent; creating Elevator Safety Revolving Fund; providing for codification; repealing Sections 1, 2 and 3, Chapter 191, O.S.L. 2002 (59 O.S. Supp. 2004, Sections 3009, 3010 and 3011), which relate to elevators and reports of injuries, definitions and authority to collect and maintain certain reports; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 1000.2, as amended by Section 3, Chapter 318, O.S.L. 2003 (59 O.S. Supp. 2004, Section 1000.2), is amended to read as follows:

Section 1000.2 A. The Construction Industries Board is hereby created to continue until July 1, 2007, in accordance with the provisions of the Oklahoma Sunset Law. Beginning January 1, 2002,

the Board shall regulate the plumbing, electrical and mechanical trades, elevator construction and maintenance trades, and building and construction inspectors through the powers and duties set forth in the Construction Industries Board Act and in the respective licensing acts for such trades.

B. 1. The Board shall be composed of ~~eleven (11)~~ thirteen (13) members appointed by the Governor with the advice and consent of the Senate, as follows:

- a. two members shall have at least ten (10) years' experience in the plumbing trade, of which one shall be a plumbing contractor and one shall be a journeyman plumber,
- b. two members shall have at least ten (10) years' experience in the electrical trade, of which one shall be an electrical contractor and one shall be a journeyman electrician,
- c. two members shall have at least ten (10) years' experience in the mechanical trade, of which one shall be a mechanical contractor and one shall be a mechanical journeyman,
- d. two members shall have at least ten (10) years' experience as a building and construction inspector,
- e. one member shall be a licensed professional engineer and shall have at least ten (10) years' experience in the construction industry,
- f. two members shall have at least ten (10) years' experience in the elevator construction and maintenance trade. Of those members initially appointed pursuant to this subparagraph, one shall be appointed for a term to expire on September 1, 2005, and one member shall be appointed for a term to expire on September 1, 2007. Thereafter, the members shall

serve a four-year term as provided in paragraph 2 of this section,

~~f.~~ g. one member shall represent a statewide organization of cities and towns, and

~~g.~~ h. one member shall represent the public and shall not practice, have practiced, or be licensed to practice any of the trades regulated by the Board nor be employed by or be related by blood or marriage within the third degree to any person who practices, has practiced, or is licensed to practice any such trades.

2. Members shall be appointed for terms of four (4) years; provided, of those members initially appointed to the Board, five members shall be appointed for two-year terms, beginning September 1, 2001, and four members shall be appointed for four-year terms, beginning September 1, 2001, as designated by the Governor. Members shall continue in office until a successor is appointed by the Governor. The Governor shall fill all vacancies and unexpired terms in the same manner as the original appointment of the member whose position is to be filled. Such members may be removed by the Governor for cause.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 1000.4, as last amended by Section 1, Chapter 163, O.S.L. 2004 (59 O.S. Supp. 2004, Section 1000.4), is amended to read as follows:

Section 1000.4 A. 1. Beginning September 1, 2001, pursuant to and in compliance with Article I of the Administrative Procedures Act, the Construction Industries Board shall have the power to adopt, amend, repeal, and promulgate rules as may be necessary to regulate the plumbing, electrical and mechanical trades, and building and construction inspectors. Rules authorized under this section shall not become effective prior to January 1, 2002.

2. Beginning January 1, 2002, the Board shall have the power to enforce the provisions of the Construction Industries Board Act, The

Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, the Elevator Safety Act, and the Mechanical Licensing Act.

3. In addition to rules promulgated by the Construction Industries Board, rules promulgated by the State Board of Health prior to January 1, 2002, shall be the rules of the Construction Industries Board and shall continue in effect until such rules are amended or repealed by rules promulgated by the Construction Industries Board.

4. Any order made or action taken prior to January 1, 2002, by the State Board of Health, the State Department of Health, or the State Commissioner of Health pursuant to the provisions of, or rules promulgated pursuant to, The Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, the Elevator Safety Act or the Mechanical Licensing Act shall be considered valid and in effect unless rescinded by the Construction Industries Board.

B. The Board shall have the following powers:

1. Exercise all incidental powers and duties which are necessary to effectuate the provisions of The Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, the Elevator Safety Act and the Mechanical Licensing Act;

2. Serve as a code variance and appeals board for the trades and industries it regulates which do not have statutory code variance and appeals boards;

3. Order or subpoena the attendance of witnesses, the inspection of records and premises, and the production of relevant books and papers for the investigation of matters that may come before the Board;

4. Initiate disciplinary proceedings, request prosecution of and initiate injunctive proceedings against any person who violates any of the provisions of the Plumbing License Law of 1955, the

Oklahoma Inspectors Act, the Electrical License Act, the Elevator Safety Act and the Mechanical Licensing Act;

5. Maintain an administrative staff including, but not limited to, a Construction Industries Administrator whose appointment shall be made as provided in Section 1000.6 of this title;

6. Establish and levy administrative fines against any person or entity denying the Board or its representatives access to a job site for purposes of enforcing any of the provisions of the Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, the Elevator Safety Act and the Mechanical Licensing Act; and

7. Direct such other expenditures as may be necessary in the performance of its duties including, but not limited to, expenditures for office space, equipment, furnishings and contracts for legal services. All expenditures shall be made pursuant to the Oklahoma Central Purchasing Act.

C. After July 1, 2004, the Board shall account for all receipts and expenditures of the monies of the Board, including annually preparing and publishing a statement of receipts and expenditures of the Board for each fiscal year. The Board's annual statement of receipts and expenditures shall be audited by the State Auditor and Inspector or an independent accounting firm, and the audit report shall be certified to the Governor of this state to be true and correct, under oath, by the chair and vice-chair of the Board.

D. Effective January 1, 2002, all powers, duties, responsibilities, employees, records, and equipment of the State Board of Health, the State Department of Health, and the State Commissioner of Health relating exclusively to the regulation of the plumbing, electrical and mechanical trades, elevator construction and maintenance trades and building and construction inspectors shall be placed under the authority of the Construction Industries Board. To the extent practicable, this shall include all computer

hardware and software used in regulating industries listed in this section. Until July 1, 2004, the State Department of Health shall provide all necessary administrative support, including, but not limited to, office space, equipment, furnishings, and legal staff support for the Board and may manage the Board's funds, subject to Board approval. The Construction Industries Board may contract for additional legal and administrative services as necessary, pursuant to the Oklahoma Central Purchasing Act. Employees shall be under the direction of the Construction Industries Administrator and the Construction Industries Board.

E. The Construction Industries Board and the State Board of Health may enter into an agreement for the transfer of personnel into the unclassified service under the direction of the Construction Industries Board effective January 1, 2002. No employee shall be transferred into the unclassified service under the direction of the Construction Industries Board except on the freely given written consent of the employee. All classified employees under the Merit System of Personnel Administration who are not transferred into the unclassified service as provided shall retain the status in the class occupied by the employee on July 1, 2001, as allocated by the Office of Personnel Management. The salary of such an employee shall not be reduced as a result of such position allocation. Employees who are transferred as provided shall not be required to accept a lesser grade or salary than that in effect on July 1, 2001. All employees shall retain leave, sick and annual time earned, and any retirement and longevity benefits which have accrued during their tenure in the classified service. The transfer of personnel shall be coordinated with the Office of Personnel Management.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3020 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Elevator Safety Act".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3021 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Legislature, finding that the protection of public health and safety requires that elevators and similar devices be installed, maintained, and regularly inspected in compliance with recognized safety standards and codes, declares that elevator contractors, mechanics, and inspectors shall be licensed by this state pursuant to the Elevator Safety Act.

B. Effective November 1, 2006, no person shall erect, construct, wire, alter, replace, maintain, remove, or dismantle any elevator unless the person holds a valid elevator mechanic's license pursuant to the Elevator Safety Act and is employed by a person or business entity licensed as an elevator contractor pursuant to the Elevator Safety Act. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, subject to a fine of not more than One Hundred Dollars (\$100.00) and imprisonment in the county jail for not more than ten (10) days, or both such fine and imprisonment. Each day's violation shall constitute a separate offense. Conviction as provided herein shall not preclude any filing of a civil action.

C. Effective November 1, 2006, except as otherwise provided by the Elevator Safety Act, every elevator in this state shall be inspected not less than once each year by an elevator inspector licensed pursuant to the Elevator Safety Act. Not later than November 1, 2006, the owner or lessee of every elevator already in service or put into service by November 1, 2006, shall register the elevator with the Committee on Elevator Safety, giving the type, rated load and speed, name of manufacturer, location of the elevator, and purpose for which used, as well as such other

information as the Committee on Elevator Safety may require.
Elevators newly constructed or installed on or after November 1, 2006, shall be registered and inspected before being put into service.

D. The provisions of this act shall not apply to elevators:

1. In or adjacent to buildings or excavations owned by the government of the United States or located on federal property; or

2. In an existing owner occupied private residence; provided, such elevators shall be inspected if the property owner so requests and pays inspection fees established pursuant to the Elevator Safety Act. Inspection of an elevator in a private residence pursuant to this paragraph shall not cause any other provision of the Elevator Safety Act to apply to the owner with respect to the private residence.

E. Nothing in the Elevator Safety Act shall be construed as prohibiting municipalities, counties, or other political subdivisions of the state from enacting and enforcing licensure requirements or safety standards exceeding those required by the Elevator Safety Act.

F. Provisions of Sections 863.1 et seq. of Title 19 of the Oklahoma Statutes that are in conflict with provisions of the Elevator Safety Act shall prevail over provisions of the Elevator Safety Act unless the provisions of Section 863.1 et seq. of Title 19 of the Oklahoma Statutes are less stringent than the provisions of the Elevator Safety Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3022 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Elevator Safety Act:

1. "Board" means the Construction Industries Board;

2. "Certificate of operation" means a document issued by the Board and affixed to an elevator that indicates that the elevator

has been inspected and tested and found to be in compliance with all applicable standards of operation as determined by the Committee on Elevator Safety;

3. "Certificate of operation - temporary" means a document issued by the Board that permits temporary use of a noncompliant elevator by the general public for not more than thirty (30) days while minor repairs are being completed;

4. "Committee" means the Committee on Elevator Safety;

5. a. "Elevator" means any device for lifting or moving people, cargo, or freight within, or adjacent and connected to, a structure or excavation, and includes any escalator, power-driven stairway or stairway chair lift.

b. The term "elevator" does not mean any:

(1) amusement ride or device subject to inspection and regulation by the Oklahoma Department of Labor,

(2) mining equipment subject to inspection and regulation by the Department of Mines,

(3) aircraft, railroad car, boat, barge, ship, truck, or other self-propelled vehicle or component thereof;

6. "Elevator apprentice" means an unlicensed person who works under the direct supervision of a licensed elevator mechanic;

7. "Licensed elevator contractor" means a person or business entity that possesses a valid elevator contractor's license issued pursuant to the provisions of the Elevator Safety Act and is thus entitled to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators;

8. "Licensed elevator inspector" means a person who possesses a valid elevator inspector's license issued pursuant to the provisions

of the Elevator Safety Act and is thus entitled to engage in the business of inspecting elevators;

9. "Licensed elevator mechanic" means a person who possesses a valid elevator mechanic's license in accordance with the provisions of the Elevator Safety Act and is thus, when employed by a licensed elevator contractor, entitled to install, construct, alter, service, repair, perform electrical work on, test, and maintain elevators; and

10. "Private residence" means a separate dwelling or a separate apartment in a multiple dwelling that is occupied by members of a single family unit.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Committee on Elevator Safety, which shall consist of nine (9) members, one of whom shall be the Director of the Department of Central Services or the Director's designee, one of whom shall be the Administrator of the Construction Industries Board or the Administrator's designee, and one of whom shall be the State Fire Marshal or the State Fire Marshal's designee. Designees shall serve at the pleasure of the designating authority and shall be voting members. The Governor shall appoint six members of the Committee, one of whom shall have at least five (5) years' experience as an elevator contractor, one of whom shall have at least five (5) years' experience as an elevator mechanic, one of whom shall own property which includes a regulated elevator device, one of whom shall be a licensed architect, one of whom shall be a registered engineer, and one of whom shall be a lay person. Appointments shall be to three-year terms ending June 30; provided, initial terms shall be staggered so that two appointees serve initial terms of one (1) year, two serve initial terms of two (2) years, and two serve full terms initially. No appointed member

shall serve more than six (6) consecutive years. Positions held by appointed members who are absent from three consecutive meetings shall be vacated. Vacancies shall be filled for the remainder of the term of appointment in the manner of regular appointments.

B. The Governor shall make initial appointments not later than February 1, 2006, and shall convene the Committee not later than March 1, 2006. At its first meeting, the Committee shall elect from among its membership a chair and a vice chair and may at any time elect such other officers as the members deem appropriate. Officers shall be elected annually to terms ending September 30. No member shall serve as chair for more than two (2) consecutive terms.

C. The Committee shall meet quarterly and at such other times as the chair determines necessary. The Committee shall be subject to the Oklahoma Open Meeting Act. The chair or vice chair and four additional members shall constitute a quorum. The chair or, in the chair's absence, the vice chair, shall only vote in case of a tie.

D. Members who are not state officers or employees shall be entitled to reimbursement for travel expenses pursuant to the State Travel Reimbursement Act.

E. Office space, record-keeping, and such other administrative, investigative, and legal services as are necessary for the Committee to perform its duties, including procurement of codes, execution of contracts for consultation with experts, purchase of tests, test materials, and test expertise, preparation and distribution of publications, and arrangements for and conduct of appeal hearings, shall be provided by the Construction Industries Board. Records shall be open to access in compliance with the Oklahoma Open Records Act; provided, test bank items for future use, materials relevant to the development of examination questions, test scoring devices or information, and individual scores shall be confidential, as shall all matters relating to ongoing investigations.

F. The Committee is authorized to adopt and promulgate rules pursuant to the Administrative Procedures Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3024 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Committee on Elevator Safety shall have the following powers and duties:

1. The Committee shall:
 - a. adopt or determine standards of elevator safety,
 - b. license elevator contractors, elevator mechanics, and elevator inspectors,
 - c. register elevator apprentices,
 - d. determine qualifications for examination, establish application processes, and examine applicants for licensure,
 - e. establish terms of licensure and renewal procedures,
 - f. attempt to achieve reciprocity agreements whereby licenses issued by other jurisdictions may be accepted in this state in lieu of examination,
 - g. establish grounds for revocation, suspension, and nonrenewal of licenses and policies for reinstatement of licenses and for imposition of lesser disciplinary measures,
 - h. establish continuing education requirements,
 - i. provide for the inspection and certification of elevators,
 - j. provide for the enforcement of the Elevator Safety Act,
 - k. hear appeals pursuant to the Administrative Procedures Act, and
 - l. establish a procedure for the reporting of accidents;

2. The Committee shall periodically publish examination pass rates, together with such comparative data and analysis as may be useful for interpretation, and the Committee shall publish informational brochures about license examinations that indicate the scope of the examinations, include suggestions about how to prepare for the examinations, and may include sample questions of the type to be expected but shall never include test items that will be used in future examinations. In no case shall information about forthcoming examinations that is not generally available be given to any school, coaching service, or individual privately;

3. The Committee shall have subpoena powers and shall have the right to seek injunctive relief to prevent the operation of elevators lacking a certificate of operation after November 1, 2006, or failing inspection. For any violation of the Elevator Safety Act, the Committee may assess an administrative fine of not more than One Hundred Dollars (\$100.00), which fine may be assessed in addition to any other penalties provided pursuant to this act; and

4. Fees shall be as follows:

Elevator contractor examination	\$100.00
Elevator inspector examination	\$100.00
Elevator mechanic examination	\$100.00
Initial and renewal elevator contractor license	\$100.00
Initial and renewal elevator inspector license	\$75.00
Initial and renewal elevator mechanic license	\$50.00
Annual elevator apprentice registration	\$25.00
Late renewal - in addition to license fee	\$10.00
Replacement of lost or mutilated license	\$10.00
Reinstatement - in addition to license fee	\$100.00
Existing elevator - inspection and certification	\$15.00
New elevator - inspection and certification	

six-tenths (6/10) of one percent (1%) of the total cost of construction of the elevator

Elevator temporary certification \$25.00

Elevator temporary mechanic \$10.00 for 30 days

All fees received shall be deposited to the Elevator Safety Revolving Fund. It is the intent of the Legislature that fees charged pursuant to the Elevator Safety Act be adjusted to provide sufficient income, but not substantially more than sufficient income, to ensure elevator safety as provided by the Elevator Safety Act. Accordingly, the Committee on Elevator Safety shall make an annual study of the revenues to and expenditures from the Elevator Safety Revolving Fund and shall prepare a report indicating what fee adjustments, if any, the Committee recommends. The report shall be submitted by September 1 each year to the Director of State Finance, the Chair of the Appropriations Committee of the Senate, and the Chair of the Appropriations and Budget Committee of the House of Representatives, and shall be filed with the Construction Industries Board.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3025 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Committee on Elevator Safety, to be designated the "Elevator Safety Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all fees, fines, and other monies received by the State Department of Health pursuant to the provisions of the Elevator Safety Act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department with the concurrence of the Committee on Elevator Safety for the purpose of implementing, administering, or enforcing the provisions of the Elevator Safety Act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 9. REPEALER Sections 1, 2 and 3, Chapter 191, O.S.L. 2002 (59 O.S. Supp. 2004, Sections 3009, 3010 and 3011), are hereby repealed.

SECTION 10. This act shall become effective November 1, 2005.

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