

2016 Regular Session

HOUSE BILL NO. 1109

BY REPRESENTATIVE HOFFMANN

FIRE PROTECT/FIRE MARSHAL: Provides for the revision and creation of regulations relative to certain water boilers

1 AN ACT

2 To amend and reenact R.S. 23:531(A), 532(A), 534, 535(A), (B), and (C)(introductory
3 paragraph), 536(B), (C)(1)(c) and (2), 537(A)(1) and (2), (B), and (C), 539, 540,
4 541(A)(introductory paragraph), (C), and (E), 542, 543(A) and (C), and 544(A), to
5 enact R.S. 23:530, 534.1 through 534.6, 541(F), and 541.1, and to repeal R.S. 23:533
6 and 541(D), relative to regulations affecting boilers; to provide for definitions; to
7 change the designated title of authority from the "assistant secretary" of the office
8 of state fire marshal to the "fire marshal"; to provide certain licensing of third-party
9 inspection agencies and inspectors; to provide certain authorities of the fire marshal
10 with respect to certain licensing and inspections; to require inspections for certain
11 boilers; to provide certain conditions and notifications relative to licensure; to
12 provide applicable licensing and renewal fees; to provide for prohibitions and
13 penalties; to repeal law requiring printing and public distribution of certain rules; to
14 repeal a provision exempting water boilers of fifty gallon capacity or less from the
15 applicability of certain inspection fees; to provide for technical corrections; and to
16 provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. R.S. 23:531(A), 532(A), 534, 535(A), (B), and (C)(introductory
19 paragraph), 536(B), (C)(1)(c) and (2), 537(A)(1) and (2), (B), and (C), 539, 540,
20 541(A)(introductory paragraph), (C), and (E), 542, 543(A) and (C), and 544(A) are hereby

1 amended and reenacted and R.S. 23:530, 534.1 through 534.6, 541(F), and 541.1 are hereby
2 enacted to read as follows:

3 §530. Definitions

4 As used in this Part, the following terms have the meanings specified in this
5 Section:

6 (1) "ASME" means the American Society of Mechanical Engineers.

7 (2) "ASME Code" means the American Society of Mechanical Engineers
8 (ASME) Boiler and Pressure Vessel Code published by that society, including
9 addenda and code cases, approved by its council and adopted by the office of state
10 fire marshal. This code may also be referred to as the Louisiana Boiler Construction
11 Code.

12 (3) "Authorized inspection agency" means one of the following:

13 (a) The office of state fire marshal which has adopted and administers one
14 or more sections of the ASME Code, one of which is Section I.

15 (b) An agency with one or more employees who hold valid commissions
16 issued by the National Board of Boiler and Pressure Vessel Inspectors.

17 (c) An insurance company which is properly licensed or registered by the
18 Louisiana Department of Insurance to write boiler and pressure vessel insurance in
19 this state, provides inspection service of boilers and pressure vessels insured by the
20 company, and whose inspectors, referred to as "special inspectors" meet the
21 requirements of an "authorized inspector" as defined in this Section.

22 (d) An "authorized third-party inspection agency" as defined in this Section.

23 (4) "Authorized inspector" means an office of state fire marshal deputy or
24 an inspector who holds a current commission as an inspector of boilers and other
25 pressure vessels, issued by the National Board of Boiler and Pressure Vessel
26 Inspectors, who has been issued a license by the office of state fire marshal. The
27 term includes "authorized third-party inspectors" and "special inspectors."

28 (5) "Authorized third-party inspection agency" means an office of state fire
29 marshal licensed firm providing third-party inspections and design reviews for

1 boilers, and whose inspectors, referred to as "authorized third-party inspectors" meet
2 the requirements of an "authorized inspector" as defined in this Section.

3 (6) "Authorized third-party inspector" means an individual employed by an
4 authorized third-party inspection agency and licensed by the office of state fire
5 marshal.

6 (7) "Boiler" means a vessel in which water is heated, steam is generated,
7 steam is superheated, or any combination thereof, under pressure or vacuum for use
8 external to itself, by the direct application of heat resulting from the combustion of
9 fuel, electrical elements, nuclear fuel, or waste gases.

10 (8) "Boiler inspection" means the inspection of a boiler as defined in this
11 Section.

12 (9) "Certificate of competency" means a certificate issued to a person who
13 has passed an examination prescribed by the office of state fire marshal.

14 (10) "Certificate inspection" means an inspection and the report of which is
15 used by the office of state fire marshal as justification for issuing, withholding, or
16 revoking the inspection certificate. When required, the certificate inspection is an
17 internal inspection as defined in this Section. Otherwise, the certificate inspection
18 is as complete an inspection as possible.

19 (11) "External inspection" means an inspection, if possible, made when a
20 boiler or pressure vessel is in operation.

21 (12) "Firm" means a business entity that is a partnership, corporation, limited
22 liability company, or other business entity. The term does not include a sole
23 proprietorship.

24 (13) "Firm license" means the document authorizing a firm to operate as an
25 authorized inspection agency within the confines of the endorsements held by that
26 firm.

27 (14) "In-service inspection" means an inspection of repairs and alterations
28 to boilers. The term includes a "certificate inspection".

1 ~~assistant secretary~~ fire marshal may fix, and shall thereafter have the force and effect
2 of law.

3 * * *

4 §534. Duties of ~~assistant secretary~~ fire marshal

5 The ~~assistant secretary~~ fire marshal shall:

6 (1) Employ and compensate, ~~with the approval of the governor, inspectors~~
7 ~~and other assistants and~~ employees as he may deem necessary for the exercise of the
8 powers and the performance of the duties prescribed in this Part.

9 (2) License authorized third-party inspection agencies and inspectors as
10 required by this Part.

11 ~~(2)~~(3) Have free access for himself or authorized representatives to any
12 premises in the state where a boiler is being constructed, installed, or operated, for
13 the purpose of ascertaining whether such boiler is built, repaired, installed, or
14 operated in accordance with the provisions of this Part.

15 ~~(3)~~(4) Prosecute all violators of the provisions of this Part.

16 ~~(4)~~(5) Issue, suspend, or revoke inspection certificates allowing boilers to be
17 operated, as provided in this Part.

18 ~~(5)~~(6) Draw upon the state treasurer for funds necessary to meet any expense
19 authorized by this Part which, in addition to the salaries of employees, shall include
20 necessary traveling expenses and the expenses incident to the maintenance of any
21 offices required in the state.

22 ~~(6)~~(7) Enforce the laws governing the use of boilers and ~~to~~ enforce the rules
23 and regulations of the ~~assistant secretary~~ fire marshal.

24 ~~(7)~~(8) Keep a complete record of the type, dimensions, age, condition,
25 pressure allowed upon, location, and date of the last inspection, of all boilers to
26 which this Part applies.

27 (9) Formulate and administer such rules as may be determined essentially
28 necessary for enforcement of this Part.

1 (10) Evaluate the qualifications of agencies and inspectors applying for or
2 maintaining a license pursuant to the provisions of this Part.

3 (11) Have authority to conduct examinations to ascertain the qualifications
4 and fitness of applicants for a license pursuant to the provisions of this Part.

5 (12) Issue full or provisional licenses to agencies and inspectors who meet
6 the qualifications established in this Part.

7 (13) Have authority, after notice and opportunity for hearing, to increase or
8 decrease the limits of insurance coverage and authorize acceptance of surplus lines
9 coverage if the state fire marshal determines that due to experience of loss, market
10 conditions, or other good reason, the liability insurance coverage required by this
11 Part is unavailable to applicants for or holders of licenses.

12 (14) Have authority to conduct inspections of agencies with firm licenses,
13 whether in state or out-of-state, for the purpose of observation and collection of facts
14 and data relating to proper enforcement of this Part.

15 (15) Investigate all written complaints lodged against an individual or firm
16 alleged to have violated provisions of this Part, regardless of whether such individual
17 or firm holds a license as prescribed in this Part, and pursue administrative action in
18 accordance with the Administrative Procedure Act against such individual or firm.

19 §534.1. Authorized inspection agency; license required

20 A. An authorized inspection agency may perform inspections as specified
21 in this Part.

22 B. No authorized inspection agency or authorized inspector shall engage in
23 the inspection of boilers without holding a current and valid license issued by the
24 state fire marshal as provided in this Part.

25 C. No person or authorized inspection agency shall aid, abet, facilitate, or
26 otherwise assist any unlicensed individual or firm in the engagement of boiler
27 inspections, as defined in this Part and office of state fire marshal promulgated rules,
28 when such person or authorized inspection agency knew or should have known the
29 assisted individual or firm was unlicensed.

1 §534.2. Exemptions from licensure; authorized third-party inspection agency
2 application for license; requirements to maintain; inspections; conditions

3 A. Special inspectors, as defined in this Part, are exempt from the provisions
4 of this Section.

5 B.(1) In order to conduct boiler inspections, a firm shall apply for and obtain
6 a license for each operating location doing business in the state and shall apply for
7 and obtain a license endorsement.

8 (2) A firm shall obtain one or both of the following endorsements:

9 (a) New construction inspection.

10 (b) In-service inspection.

11 (3) A "new construction inspection" endorsement requires an authorized
12 third-party inspection agency to be accredited per the ASME QAI-1 and by the
13 National Board of Boiler and Pressure Vessel Inspectors NB-360, "Accreditation of
14 Authorized Inspection Agencies Performing In-service Inspection Activities," as
15 adopted by the office of state fire marshal in conformity with the Administrative
16 Procedure Act.

17 (4) An "in-service inspection" endorsement requires an authorized
18 third-party inspection agency to be accredited by the National Board of Boiler and
19 Pressure Vessel Inspectors NB-369, "Accreditation of Authorized Inspection
20 Agencies Performing In-service Inspection Activities," as adopted by the office of
21 state fire marshal in conformity with the Administrative Procedure Act.

22 C. An applicant for a firm license shall submit all of the following to the
23 state fire marshal:

24 (1) A completed firm application.

25 (2) Documentation that the firm is an entity duly authorized to conduct
26 business within this state. If the firm is physically located in Louisiana,
27 documentation shall be in the form of a local or parish occupational license and if
28 incorporated, documentation shall include proof of registration with the secretary of
29 state. If the firm is physically located outside of the state, documentation shall be in

1 the form of registration with the secretary of state as a foreign corporation including
2 the name of the firm's registered agent of service.

3 (3) An original certificate of insurance documenting that the agency has
4 general liability coverage in a minimum amount of one million dollars.

5 (4) An original certificate of insurance documenting that the agency has a
6 current and valid worker's compensation insurance policy as required by state law.

7 (5) The name of the person who will serve as the designated agent of the
8 firm.

9 (6) Proof of employment of a supervising individual with the proper
10 certification and training at each of its operating locations for each endorsement held.

11 (7) The application fee authorized in this Part.

12 D. As a condition of licensure, each licensed firm shall be open for
13 inspection by the state fire marshal or his designated representative, at any
14 reasonable time, for the purpose of observation and collection of facts and data
15 relating to proper enforcement of this Part. No person acting on behalf of the firm
16 shall refuse to admit the state fire marshal or his designated representative to any
17 operating location. Agencies physically located outside of this state may be charged
18 for the travel expenses of the state fire marshal to conduct such an inspection.

19 E. As a further condition of licensure, the acceptance of a license by a firm
20 shall be deemed as the firm's consent to submit to reasonable requests for
21 documentation by the office of state fire marshal, code enforcement and building
22 safety, or his designated representatives and to cooperate in a lawful investigation
23 by the office of state fire marshal, code enforcement and building safety. Refusal to
24 cooperate with any lawful investigation by the office of state fire marshal, code
25 enforcement and building safety, shall be subject to any penalty as described in this
26 Part, including suspension or revocation of a license.

27 F. Each firm shall clearly display its license in a conspicuous location at its
28 place of business.

1 G. The designated agent of an authorized third-party inspection agency shall
2 notify the state fire marshal within ten days of the following:

3 (1) Any change in the business address of the firm.

4 (2) Any change in ownership of or interest in the firm.

5 (3) Any change in the employment of a person holding an individual license.

6 H. No authorized third-party inspection agency shall contract for the
7 independent services of a person who holds an individual license pursuant to the
8 provisions of this Section.

9 §534.3. Application for an authorized third-party inspector license; requirements to
10 maintain

11 A. To engage in the inspection of boilers, an individual shall apply for and
12 obtain a license and endorsement as prescribed in R.S. 23:534.2. Such license shall
13 authorize its holder to engage in boiler inspections for the endorsements listed. Each
14 individual license holder shall maintain his license on his person while engaging in
15 inspection activity. Each such license holder shall present his license for inspection
16 upon demand of any employee of the office of state fire marshal, fire department, or
17 any law enforcement officer.

18 B. As a condition of licensure, the acceptance of a license by an authorized
19 third-party inspector shall be deemed as consent of such inspector's submission to
20 reasonable requests for documentation by the office of state fire marshal or his
21 designated representatives and to cooperate in a lawful investigation by the office of
22 state fire marshal. Any person refusing to cooperate with any lawful investigation
23 by the office of state fire marshal shall be subject to any penalty as described in this
24 Part, including suspension or revocation of a license.

25 C. Each authorized third-party inspector shall notify the state fire marshal,
26 on a form specified and provided by the state fire marshal, within ten days of the
27 following:

28 (1) Any change in business or home address.

29 (2) Any separation from an employer or change in employer.

1 D. No authorized third-party inspector shall contract his services as an
2 independent contractor or agent to any other authorized third-party inspection agency
3 or with any other licensee holding a license pursuant to the provisions of this Part.

4 E. An authorized third-party inspector shall meet all certification, continuing
5 education, training, and testing requirements as established by any rule or regulation
6 promulgated by the office of state fire marshal in conformity with the Administrative
7 Procedure Act.

8 §534.4. Prohibited acts

9 No authorized third-party inspection agency or inspector shall do any of the
10 following:

11 (1) Engage in boiler inspections without a valid license.

12 (2) Aid and abet an unlicensed agency or unlicensed person.

13 (3) Submit an application or any other document to the office of state fire
14 marshal when the agency or inspector reasonably should have known the document
15 contained false or misleading information.

16 (4) Engage in false, misleading, or deceptive acts or practices.

17 (5) Fail to maintain a valid license as required by this Part.

18 (6) Fail to maintain a valid insurance policy as required by this Part.

19 (7) Refuse to admit the state fire marshal or his designated representative to
20 an operating location or refuse to cooperate in the purposes of such admittance as
21 required by this Part.

22 (8) Fail to maintain his license on his person and to present it for inspection
23 as required by this Part.

24 (9) Refuse to cooperate with any lawful investigation by the office of state
25 fire marshal.

26 (10) Fail to abide by the administrative rules promulgated pursuant to the
27 provisions of this Part.

1 §534.5. Notice; hearing; revocation of certificate or license

2 The license as provided in this Part may be revoked or suspended after notice
3 and hearing in accordance with the Administrative Procedure Act and upon a finding
4 that the authorized third-party agency or inspector did any of the following:

5 (1) Willfully violated any provision of this Part or any adopted rule,
6 regulation, or order of the state fire marshal.

7 (2) Used deceit or false or misleading information to obtain any certificate
8 or license pursuant to the provisions of this Part.

9 (3) Demonstrated professional incompetence or gross negligence.

10 (4) Assisted any person attempting to evade the provisions of this Part or any
11 related adopted rules or regulations.

12 §534.6. Penalties; licensed persons and firms

13 A.(1) In addition to or in lieu of administrative sanctions as authorized in this
14 Part, the state fire marshal is empowered to issue an order to any licensed person or
15 firm engaged in any activity, conduct, or practice constituting a violation of any
16 provision of this Part, directing such person or firm to cease and desist from such
17 activity, conduct, or practice. The cease and desist order shall be issued in the name
18 of the state of Louisiana under the official seal of the state fire marshal.

19 (2) If the licensed person or firm to whom the state fire marshal directs a
20 cease and desist order does not cease and desist the prohibited activity, conduct, or
21 practice immediately after service of such cease and desist order delivered by
22 certified mail or personal service, the state fire marshal may seek, in any court of
23 competent jurisdiction and proper venue, a writ of injunction enjoining such person
24 or firm from engaging in any activity, conduct, or practice prohibited by this Part.

25 (3) Upon a proper showing by the state fire marshal that a person or firm has
26 engaged in any activity, conduct, or practice prohibited by this Part, the court shall
27 issue a temporary restraining order restraining the person or firm from engaging in
28 unlawful activity, conduct, or practices pending the hearing on a preliminary
29 injunction, and in due course, a permanent injunction shall be issued after a hearing,
30 commanding the cessation of the unlawful activity, conduct, or practices.

1 (4) A temporary restraining order, preliminary injunction, or permanent
2 injunction issued pursuant to the provisions of this Section shall not be subject to
3 being released upon bond.

4 (5) In the suit for an injunction, the state fire marshal may demand of the
5 defendant a penalty of fifty dollars per day for each violation, reasonable attorney
6 fees, and court costs. Judgment for penalties, attorney fees, and court costs may be
7 rendered in the same judgment in which the injunction is made final.

8 B. If the state fire marshal finds that any person or firm has violated any
9 provision of this Part or any promulgated rule, regulation, or issued order, he may
10 impose upon that person or firm a fine in an amount not to exceed five thousand
11 dollars for each violation.

12 C. Procedures for the imposition of fines and appeals of such fines shall be
13 governed by the provisions of the Administrative Procedure Act.

14 §535. Special inspectors

15 A. In addition to the personnel authorized by R.S. 23:534(1), the ~~assistant~~
16 ~~secretary~~ fire marshal may, upon the request of any company authorized to insure
17 against loss from explosion of boilers in this state, appoint the boiler inspectors of
18 the ~~said~~ company as special inspectors, who shall serve at his pleasure, provided that
19 each such inspector holds a certificate of competency as an inspector of boilers from
20 the National Board of Boiler and Pressure Vessel Inspectors. These special
21 inspectors shall receive no salary from nor shall any of their expenses be paid by the
22 state. The continuance of a special inspector's appointment shall be conditioned
23 upon his continuing in the employ of a boiler inspection and duly authorized
24 insurance company ~~duly authorized as aforesaid~~, and upon his maintenance of the
25 standards imposed by this Part. These special inspectors shall inspect all boilers
26 insured by their respective companies, and the owners or users of such insured
27 boilers shall be exempt from the payment of inspection fees required in R.S. 23:541.
28 Each company employing such special inspectors shall, within thirty days following
29 each annual internal inspection made by them, file a report of such inspection with
30 the ~~assistant secretary~~ office of state fire marshal in the manner prescribed by the fire

1 ~~marshal upon appropriate forms as promulgated by the American Society of~~
2 ~~Mechanical Engineers.~~

3 B. In addition to the personnel authorized by R.S. 23:534(1), the ~~assistant~~
4 ~~secretary~~ fire marshal may, upon the request of director of safety and permits for the
5 city of New Orleans, appoint boiler inspectors of the city of New Orleans as special
6 inspectors, who shall serve at his pleasure, provided that each such inspector holds
7 a certificate of competency as an inspector of boilers from the National Board of
8 Boiler and Pressure Vessel Inspectors, or the equivalent if the national board refuses
9 to certify local inspectors due to population limits. These special inspectors shall
10 receive no salary from nor shall any of their expenses be paid by the state. The
11 continuance of a special inspector's appointment shall be conditioned upon his
12 continuing in the employ as a boiler inspector of the city of New Orleans duly
13 authorized as aforesaid, and upon his maintenance of the standards imposed by this
14 Part. These special inspectors shall inspect all boilers in the city of New Orleans,
15 and the owners or users of such boilers shall be exempt from the payment of
16 inspection fees required in R.S. 23:541. The director of safety and permits for the
17 city of New Orleans shall, within thirty days following each annual internal
18 inspection made by such special inspectors, file a report of such inspection with the
19 ~~assistant secretary~~ office of state fire marshal in the manner prescribed by the fire
20 ~~marshal upon appropriate forms as promulgated by the American Society of~~
21 ~~Mechanical Engineers.~~

22 C. The ~~assistant secretary~~ fire marshal shall have the authority to do all of
23 the following:

- 24 * * *
- 25 §536. ~~Annual inspection~~ Inspection of boilers
- 26 * * *

27 B. Upon the approval of the ~~assistant secretary~~ fire marshal or his designated
28 representative, the interval between internal inspections may be extended for a period
29 not to exceed twenty-four months on stationary boilers provided: (1) continuous
30 water treatment under competent and experienced supervision has been in effect

1 since the last internal inspection for the purpose of controlling and limiting corrosion
 2 and deposits, (2) accurate and complete records are available showing that since the
 3 last internal inspection samples of boiler water have been taken at regular intervals
 4 not greater than twenty-four hours of operation and that the water condition in the
 5 boiler is satisfactorily controlled, (3) accurate and complete records are available
 6 showing the dates, if any such boiler has been out of service and the reasons therefor
 7 since the last internal inspection, and such records shall include the nature of all
 8 repairs to the boiler, the reasons why such repairs were necessary and by whom the
 9 repairs were made, and (4) the last internal and current external inspection of the
 10 boiler indicates the inspection period may be safely extended. When such an
 11 extended period between internal inspections has been approved by the ~~assistant~~
 12 ~~secretary~~ fire marshal or his designated representative, as outlined in this Section, a
 13 new certificate of operation shall be issued for that extended period of operation, and
 14 the inspection certificate fees shall be double the annual fees provided by law.

15 C.(1)

16 * * *

17 (c) Potable water boilers having a capacity of one hundred twenty gallons
 18 and above and at least two hundred thousand BTUs (British Thermal Units) shall
 19 have an external certificate inspection every two years.

20 (2) Inspections shall include the functions of all controls and devices. If at
 21 any time a hydrostatic test is deemed necessary to determine the safety of a boiler,
 22 the test shall be made at the discretion of the ~~assistant secretary~~ fire marshal or his
 23 designated representative.

24 §537. Certificates of inspection; fees; issuance and suspension

25 A.(1) If, upon inspection, a boiler is found to be suitable and to conform to
 26 the rules and regulations of the ~~assistant secretary~~ fire marshal, he shall issue to the
 27 owner or user ~~thereof~~ an inspection certificate specifying the maximum pressure
 28 which the boiler may be allowed to carry.

29 (2) A fee of twenty dollars shall be charged by the ~~assistant secretary~~ fire
 30 marshal for the issuance of each inspection certificate, which shall be valid for not

1 more than fourteen months from its date. A fee of forty dollars shall be charged for
2 a certificate issued relative to an extension of internal inspection, and when
3 inspection frequencies may be extended to two years for certain boilers. A fee of
4 two hundred dollars shall be charged by the ~~assistant secretary~~ fire marshal for the
5 issuance of each inspection certificate valid for a time period not to exceed five years
6 as permitted by R.S. 23:536(A).

7 * * *

8 B. The ~~assistant secretary~~ fire marshal or his representative may at any time
9 suspend an inspection certificate when, in his opinion, the boiler for which it was
10 issued cannot continue to be operated without menace to the public safety, or when
11 the boiler does not comply with ~~the adopted~~ rules issued hereunder. The suspension
12 of an inspection certificate shall continue in effect until the boiler has been made to
13 conform to the rules and regulations of the ~~assistant secretary~~ fire marshal governing
14 the use of boilers, and until the inspection certificate has been reinstated.

15 C. The boiler inspection certificate fee provided for in this Section is
16 intended to cover the cost of the issuance of the ~~said~~ certificates and the same shall
17 be retained and disbursed by the ~~assistant secretary~~ fire marshal.

18 * * *

19 §539. Installation of boilers

20 A. No boiler shall be installed until after six months from the date upon
21 which the rules and regulations formulated by the ~~assistant secretary~~ fire marshal
22 governing new installations ~~shall have~~ become effective, unless the boiler conforms
23 to such rules and regulations.

24 B. All boilers installed and ready for use, or being used, before the six
25 months ~~shall have~~ elapsed, shall be made to conform to the rules and regulations of
26 the ~~assistant secretary~~ fire marshal governing existing installations, and the ~~formulas~~
27 ~~therein~~ prescribed formulas shall be used in determining the maximum allowable
28 working pressure ~~therefor~~.

29 C. All boilers to be installed after six months from the date upon which the
30 rules and regulations of the ~~assistant secretary~~ fire marshal ~~shall~~ become effective;

1 shall be inspected during construction by ~~an inspector~~ individuals authorized to
2 inspect boilers in this state or, if constructed outside the state, by an inspector
3 holding a certificate from the National Board of Boiler and Pressure Vessel
4 Inspectors, or a certificate of authority from the ~~assistant secretary~~ fire marshal,
5 which may be issued by him to any inspector who holds a certificate of authority to
6 inspect boilers from a state which has adopted boiler rules that require standards of
7 construction and operation substantially equal to those of this state.

8 §540. Exemptions from provisions

9 (A) ~~This~~ The provisions of this Part shall not be construed as in any way
10 preventing the use or sale of boilers which have been installed or in use in this state
11 prior to July 7, 1938, and which have been made to conform to the rules and
12 regulations of the ~~assistant secretary~~ fire marshal governing existing installations, as
13 provided in R.S. 23:539;

14 (B) ~~nor shall this~~ The provisions of this Part ~~apply~~ are not applicable to any
15 of the following:

16 (1) ~~boilers~~ Boilers subject to inspection by any department or agency of the
17 federal government; ~~or to.~~

18 (2) ~~air~~ Air tanks located on vehicles used for transporting passengers or
19 freight; ~~or to.~~

20 (3) ~~boilers~~ Boilers of steam fire engines brought into the state for temporary
21 use in times of emergency; ~~or to.~~

22 (4) ~~portable~~ Portable boilers used for agricultural purposes only; ~~or to.~~

23 (5) ~~steam~~ Steam heating boilers carrying not more than fifteen pounds
24 pressure; ~~and.~~

25 (6) ~~hot~~ Hot water heating and supply boilers used exclusively for
26 noncommercial purposes located in any private home; ~~or to.~~

27 (7) ~~boilers~~ Boilers located in any private home.

1 §541. Fees for inspection

2 A. The owner or user of a boiler required by this Part to be inspected by the
3 ~~assistant secretary~~ fire marshal or his representative shall pay to the ~~assistant~~
4 ~~secretary~~ fire marshal an inspection fee based on the following schedule:

5 * * *

6 C. The fees for inspection provided for in this Section are intended to defray
7 the cost of employment of boiler and pressure vessel inspectors and the same shall
8 be retained and disbursed by the ~~assistant secretary~~ fire marshal for this purpose.

9 * * *

10 E.(1) The manufacturer of a boiler or pressure vessel required by this Part
11 to be inspected shall pay to the ~~assistant secretary~~ fire marshal an inspection fee for
12 the ASME, or National Board of Boiler and Pressure Vessel Inspectors "Shop
13 Reviews for Certificate of Authorization", or both, in ~~the an~~ an amount of one thousand
14 ~~five hundred dollars~~ not to exceed five thousand dollars per location review.

15 (2) The fire marshal may contract with outside parties to perform the
16 functions detailed in this Subsection.

17 F. The fee schedule provided in this Section shall not apply to authorized
18 third-party inspections.

19 §541.1. Licensing fees

20 A. The state fire marshal may assess and collect fees as provided in this Part.
21 License endorsements are separated as follows into the two distinct categories:

22 (1) New construction inspection.

23 (2) In-service inspection.

24 B. The licensing fees for a firm are as follows:

25 (1) New construction inspection

26 (a) Initial Fee: \$250.00

27 (b) Renewal Fee: \$50.00

28 (2) In-service inspection

29 (a) Initial Fee: \$250.00

30 (b) Renewal Fee: \$50.00

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 C. The licensing fees for an individual are as follows:

2 (1) New construction

3 (a) Initial Fee: \$100.00

4 (b) Renewal Fee: \$50.00

5 (2) In-service inspection

6 (a) Initial Fee: \$100.00

7 (b) Renewal Fee: \$50.00

8 D. All licenses are valid for one year from the date of issuance, unless a
9 multi-year license is created, and shall be renewed by the license holder within thirty
10 days prior to its expiration date. The state fire marshal may create a prorated fee
11 system to allow employee license renewal dates to coincide with the firm license
12 renewal date.

13 E. Any license not renewed within the thirty days prior to its expiration date
14 is past due for renewal and subject to late fees. The license holder shall pay a late
15 fee penalty of twenty-five dollars for a license renewed within the first forty-five
16 days past the license expiration date. The license holder shall pay a late fee penalty
17 of fifty dollars for a license renewed between forty-six and sixty days past the license
18 expiration date.

19 F. The state fire marshal shall suspend a license if the license is not renewed
20 within sixty days past its expiration date or if the license holder has not maintained
21 the license. The cost to reinstate a suspended license is the cost of the respective
22 licensed holder's initial fee plus twenty dollars.

23 G. The cost for a duplicate or replacement firm or individual license is
24 twenty dollars, regardless of how many endorsements are carried.

25 H. The cost to transfer an individual license from one firm to another is
26 twenty dollars.

27 I. The fees established in this Section are not refundable, except when certain
28 conditions apply as the state fire marshal may establish.

1 installation is to be completed, the trade name of the boiler, the type of boiler, and
2 the manufacturer's and National Board's identifying number.

3 * * *

4 Section 2. R.S. 23:533 and 541(D) are hereby repealed their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1109 Original

2016 Regular Session

Hoffmann

Abstract: Makes revisions and creates new provisions relative to licensing, inspections, and fees applicable to the state fire marshal's regulation of certain individuals, firms, and water boilers.

Present law provides that the "assistant secretary" of the office of state fire marshal, code enforcement and building safety of the Dept. of Public Safety and Corrections, has the exclusive power to investigate, promulgate rules and regulations for the proper construction, installation, repair, use, operation, and safety of boilers in the state of La., and issue orders for the enforcement of such rules and regulations as well as any provisions of law affecting boilers.

Present law (R.S. 40:1596.2) provides that the "assistant secretary" of the Dept. of Public Safety in charge of the office of state fire protection is commonly known as the "state fire marshal".

Proposed law changes all references in present law from the "assistant secretary" to the "fire marshal" or "office of state fire marshal".

Proposed law provides for certain definitions.

Proposed law provides certain duties of the fire marshal with respect to the administration of present law and proposed law. Proposed law adds to present law the following duties of the fire marshal:

- (1) Licensing of authorized third-party inspection agencies and inspectors.
- (2) Formulation and administration of such rules as may be determined essentially necessary.
- (3) Evaluation of the qualifications of agencies and inspectors applying for or maintaining a license.
- (4) Conduction of examinations to ascertain the qualifications and fitness of applicants for a licensure.
- (5) Issuance of full or provisional licenses to agencies and inspectors who meet certain qualifications.
- (6) Authority, after notice and opportunity for hearing, to increase or decrease the limits of insurance coverage and to accept surplus lines coverage, if determined that due to experience

of loss, market conditions, or other good reason, the liability insurance coverage required in proposed law (R.S. 534.2(C)) is unavailable to applicants for or holders of licenses.

(7) Authority to conduct inspections of licensed agencies, whether in state or out-of-state, for the purpose of observation and collection of facts and data.

(8) Investigate written complaints lodged against individuals or firms alleged to have violated provisions of present law and proposed law and pursue administrative action in accordance with the Administrative Procedure Act (APA) against such individuals or firms.

Proposed law authorizes inspection agencies with firm licenses to perform certain boiler inspections. Prohibits an authorized third-party inspection agency or authorized third-party inspector from engaging in boiler inspections unless the agency or inspector holds a current and valid license issued by the fire marshal. Further prohibits a person or agency from acts of aiding, abetting, facilitating, or otherwise assisting any unlicensed person or agency in the engagement of boiler inspections when such person or agency knew or should have known the assisted person or agency was unlicensed.

Proposed law provides for certain licensure and requirements of authorized third-party inspection agencies. Proposed law exempts "special inspectors" from these provisions of proposed law.

To conduct boiler inspections, proposed law requires an agency to apply for and obtain a firm license for each operating location doing business in the state of La. and to apply for and obtain a license endorsement.

Proposed law authorizes an agency firm to receive 2 types of endorsements with respect to licensing: (1) New construction inspection and (2) In-service inspection.

Proposed law provides that a "new construction inspection" endorsement requires an authorized third-party inspection agency to be accredited per the ASME QAI-1 and by the National Board of Boiler and Pressure Vessel Inspectors NB-360, "Accreditation of Authorized Inspection Agencies Performing In-service Inspection Activities," as adopted by the fire marshal in conformity with the APA.

Proposed law provides that an "in-service inspection" endorsement requires an authorized third-party inspection agency to be accredited by the National Board of Boiler and Pressure Vessel Inspectors NB-369, "Accreditation of Authorized Inspection Agencies Performing In-service Inspection Activities," as adopted by the fire marshal in conformity with the APA.

Proposed law requires an applicant for a firm license to submit certain information, including a complete firm application, documentation of registration with the secy. of state for both in and out-of-state firms, an original certificate of insurance documenting that the applicant has general liability coverage in a minimum amount of \$1,000,000 and a current and valid worker's compensation policy, the name of the designated registered agent, proof of employment of a supervising individual with the proper certification and training at each of the applicant's operating locations for each endorsement held, and the application fee.

As a condition of licensure, proposed law requires each licensed firm to be open for inspection by the fire marshal or his designated representative at any reasonable time for the observation and collection of facts and data relating to proper enforcement of present law and proposed law.

Proposed law prohibits a person acting on behalf of a firm to refuse to admit the fire marshal or his designated representative to any operating location. Further provides that agency firms physically located outside of this state may be charged for travel expenses of the fire marshal to conduct such an inspection.

Proposed law provides a firm's acceptance of a license to be deemed as the firm's consent to submit to reasonable requests and to cooperate in a lawful investigation by the fire marshal or his designated representative. A firm's refusal to cooperate with any lawful investigation subjects the firm to any penalty described in present law and proposed law, including suspension or revocation of a license.

Proposed law requires a firm to clearly display its license in a conspicuous location at its place of business.

Proposed law requires the designated agent of an authorized third-party inspection agency to notify the fire marshal within 10 days of the following: (1) Any change in the business address of the firm, (2) Any change in ownership of or interest in the firm, and (3) Any change in the employment of a person holding an individual license.

Proposed law prohibits an authorized third-party inspection agency from contracting the independent services of the holder of an individual license.

Proposed law requires an individual to apply for and obtain a license and certain endorsements to engage in the inspection of boilers. Requires each individual license holder to maintain his license on his person while engaging in inspection activity. Further requires each license holder to present his license for inspection upon demand of any employee of the fire marshal, fire department, or a law enforcement officer.

As a condition of licensure, proposed law provides that an authorized third-party inspector's acceptance of a license is deemed as the individual's consent to submit to the reasonable requests for documentation by the fire marshal or his designated representatives and to cooperate in a lawful investigation by the fire marshal. Provides that any person refusing to cooperate with any lawful investigation of the fire marshal is subject to any penalty as outlined in present law and proposed law including suspension or revocation of a license.

Proposed law requires each licensed authorized third-party inspector to notify the fire marshal on a form specified and provided by the fire marshal within 10 days of the following: (1) Any change in business or home address and (2) Any separation from an employer or change in employer.

Proposed law prohibits a licensed authorized third-party inspector from contracting his services as an independent contractor or agent with any authorized third-party inspection agency or with any other licensee holding a license as provided in present law and proposed law.

Proposed law requires an authorized third-party inspector to meet all certification, continuing education, training, and testing requirements as established by any rule promulgated by the office of state fire marshal in conformity with the APA.

Proposed law provides that an authorized third-party inspection agency or inspector is prohibited from following acts:

- (1) Engaging in boiler inspections without a valid license.
- (2) Aiding and abetting an unlicensed agency or unlicensed person.
- (3) Submitting an application or any other document to the fire marshal when the person reasonably should have known the document contained false or misleading information.
- (4) Engage in false, misleading, or deceptive acts or practices.
- (5) Failing to maintain a valid license.
- (6) Failing to maintain a valid insurance policy.

- (7) Refusing to admit the fire marshal or his designated representative to an operating location or refusal to cooperate for the purposes of such admittance.
- (8) Failing to maintain his license on his person and to present it for inspection as required.
- (9) Refusing to cooperate with any lawful investigation by the office of the state fire marshal.
- (10) Failing to abide by adopted administrative rules.

Proposed law provides that a license may be revoked or suspended after notice and hearing in accordance with the APA and upon a finding that the authorized third-party agency or inspector did any of the following:

- (1) Willfully violated any provision of present law or proposed law or any adopted rule, regulation, or order of the fire marshal.
- (2) Used deceit or false or misleading information to obtain any certificate or license.
- (3) Demonstrated professional incompetence or gross negligence.
- (4) Assisted any person attempting to evade applicable law or any related adopted rules or regulations.

Proposed law authorizes the fire marshal, in addition to or in lieu of administrative sanctions, to issue an order to an individual or firm to cease and desist from engagement in an activity, conduct, or practice which constitutes a violation of present law and proposed law.

If the individual or firm does not immediately cease and desist after service of such cease and desist order, the fire marshal may seek, through court proceeding, a writ of injunction enjoining such individual or firm from the prohibited activity.

Proposed law requires a court, upon a proper showing by the fire marshal that such individual or firm has engaged in any prohibited activity, conduct, or practice, to issue a temporary restraining order restraining the individual or firm from engaging in the prohibited activity pending the hearing on a preliminary injunction. Provides a permanent injunction to be issued after a hearing, commanding the cessation of the unlawful activity, conduct, or practice.

Proposed law provides that an issued temporary restraining order, preliminary injunction, or permanent injunction is not subject to being released upon bond. In the suit for an injunction, the fire marshal may demand of the defendant a penalty of \$50 per day for each violation in addition to reasonable attorney fees and court costs.

Proposed law provides if the fire marshal finds that any individual or firm has violated any provision of present law or proposed law or any promulgated rule or issued order, he may impose a fine in an amount not to exceed \$5,000 for each violation. Procedures for imposition of fines and appeals of such fines are governed by the provisions of the APA.

Present law provides certain requirements with respect to special inspectors. Proposed law retains present law.

Present law requires special inspectors to file certain inspection reports on forms prescribed by the American Society of Mechanical Engineers. Proposed law changes present law to require the inspection reports to be filed with the office of state fire marshal in the manner prescribed by the fire marshal, but otherwise retains present law.

Present law requires all potable water boilers to have an external certificate inspection every 2 years. Proposed law changes present law require the potable water boilers for such inspections to have a capacity of 120 gallons and above and at least 200,000 BTUs (British Thermal Units).

Present law provides for the inspection of certain boilers. Requires the manufacturer of a boiler or pressure vessel to pay a certain inspection fee of \$1,500 for the ASME or for a certain national Certificate of Authorization. Proposed law changes the fee in present law from \$1,500 to an amount not to exceed \$5,000.

Proposed law adds that the fire marshal may contract with outside parties to perform the inspection functions described in present law.

Proposed law provides that the fee schedule in present law (R.S. 23:541) does not apply to authorized third-party inspections.

Proposed law provides a licensing fee schedule for firms and individuals. Further provides for 2 categories of required endorsements: (1) New construction inspection and (2) In-service inspection.

Proposed law provides an initial fee of \$250.00 and a renewal fee of \$50.00 for a firm applying to obtain a "New construction inspection" endorsement.

Proposed law provides an initial fee of \$250.00 and a renewal fee of \$50.00 for a firm applying to obtain an "In-service inspection" endorsement.

Proposed law provides an initial fee of \$100.00 and a renewal fee of \$50.00 for an individual applying to obtain an "New construction inspection" endorsement.

Proposed law provides an initial fee of \$100.00 and a renewal fee of \$50.00 for an individual applying to obtain an "In-service inspection" endorsement.

Proposed law provides that all licenses are valid for 1 year from the date of issuance, unless a multi-year license is created. Requires a license holder to renew a license within the 30 days prior to the license expiration date.

Proposed law authorizes the fire marshal to create a prorated fee system to allow employee license renewal dates to coincide with the firm license renewal date.

Proposed law provides that any license not renewed within the 30 days prior to its expiration date is past due for renewal and subject to late fees. Requires the license holder to pay a late fee penalty of \$25.00 for a license renewed within the first 45 days past the license expiration date. Further requires the license holder to pay a late fee penalty of \$50.00 for a license renewed between 46 and 60 days past the license expiration date.

Proposed law provides for the fire marshal's suspension of a license if the license is not renewed within the 60 days past its expiration date or if the license holder has not maintained the license. Provides for the reinstatement costs of a respective suspended license to be the initial licensing fee plus \$20.00.

Proposed law provides that the cost for a duplicate or replacement individual or firm license is \$20.00, regardless of how many endorsements are carried. Provides a \$20.00 cost to be paid by one who transfers and individual license from one firm to another.

The licensing fees in proposed law are non-refundable, except when certain conditions apply as the fire marshal may establish.

Proposed law provides that licensing fees are intended to defray the cost of employment of boiler and pressure vessel inspectors and such fees are retained and disbursed by the fire marshal for this purpose.

Proposed law retains provisions of present law with respect to the installation of boilers, exemptions of certain boilers, fees for inspection, required bonds of certain employees, and the application for installation, moving, or reinstallation of boilers, except proposed law changes all present law references of "assistant secretary" to "fire marshal".

Proposed law repeals a provision of present law (R.S. 23:533) that requires printing and public distribution of certain rules.

Proposed law repeals a provision of present law (R.S. 23:541(D)) which exempted water boilers of 50 gallon capacity or less from certain provisions relative to inspection fees.

(Amends R.S. 23:531(A), 532(A), 534, 535(A), (B), and (C)(intro. para), 536(B), (C)(1)(c) and (2), 537(A)(1) and (2), (B), and (C), 539, 540, 541(A)(intro. para), (C), and (E), 542, 543(A) and (C), and 544(A); Adds R.S. 23:530, 534.1 - 534.6, 541(F), and 541.1; Repeals R.S. 23:533 and 541(D))