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## DIGEST

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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))