OLAC License Review/Recommendations
2019

LABOR, DEPARTMENT OF (09/09/2019)	
License	**Commission Recommendation**
Welder	

COSMETOLOGY AND BARBERING, OKLAHOMA STATE BOARD OF (09/09/2019)	
License	**Commission Recommendation**
Barber Instructor	
Cosmetologist	
Cosmetology Instructor	
Facialist	
Manicurist	

FUNERAL, BOARD OF (09/09/2019)	
License	**Commission Recommendation**
Embalmer	
Funeral Director	

CONSTRUCTION INDUSTRIES BOARD (09/09/2019)	
License	**Commission Recommendation**
Home Inspector	

Department of Labor

Application License Name	Required Education Level	Required Experience/Qualifications	Statutory Citation	Fees
Welder	There are no specific educational requirements; however, a working knowledge of the occupation is necessary. Possible knowledge areas include shielded metal arc welding, stud arc welding, submerged arc welding	Proof of having passed technical examination	59 O.S.,§. 1636	$25.00

Occupational Licensing Blueprint

Roadmap for Occupational Licensing

- Is there a compelling public interest that needs to be protected?
  - If yes, then continue
  - If no, then no regulation is required
  - Types public interests
    - Public health
    - Public safety
    - Fundamental rights
    - Substantial fiduciary interest
- Is the least restrictive means that would sufficiently protect the public interest used?
  - If yes, then continue
  - If no, then use a less restrictive means
  - Regulation options from least restrictive to most restrictive
    - Market Competition
    - Third-party or consumer created ratings and reviews
    - Private certification
    - Specific private civil cause of action or alternative dispute resolution
    - Deceptive trade practice act
    - Regulation of the process of providing specific goods or services to consumers
    - Public inspection
    - Mandatory bonding or insurance
    - Registration
    - Government certification
    - Business License
    - Specialty occupational license for medial reimbursement
    - Occupational license
- If occupational licensing is used, does the board in charge of such licensure have a controlling number of board members as market participants?
  - If yes, continue (board does not have antitrust immunity yet)
  - If no, stop (board has antitrust immunity)
- Is there active supervision of the board's actions by the state?
  - If yes, then board has antitrust immunity
  - If no, then board is subject to antitrust litigation

Occupational Regulation Blueprint

License Details

What is the license? Oklahoma Welding License

As of 1 July 2019 there were 6,722 licensed welders, 61 certified test facilities, and 104 state certified weld test inspectors.

What does the license cover? Any welded assembly in which the bulk of the component parts are prepared and joined by any combination of the cutting and welding processes covered by Section 1628 of the welding act.

What Board regulates the license? This license is not regulated by a board but is administered by the Safety Standards Division of the Oklahoma Department of Labor.

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? Public Safety

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)? Yes

Least Restrictive Means

What means is used to protect the public interest? Occupational Licensing

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? Yes. While the American Welding Society is the definitive certification entity in North America, it does not provide for a basic welding certification. The Oklahoma state welder license enables individual's employment opportunities that may otherwise not be available as there is no training or education requirement. Passing the weld test indicates the required proficiency.

If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? There is no regulatory board.

How many of them are active market participants (see Annex, item 5)? N/A

Is the board controlled by these active market participants (see Annex, item 6)? N/A

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? No, there is no board.

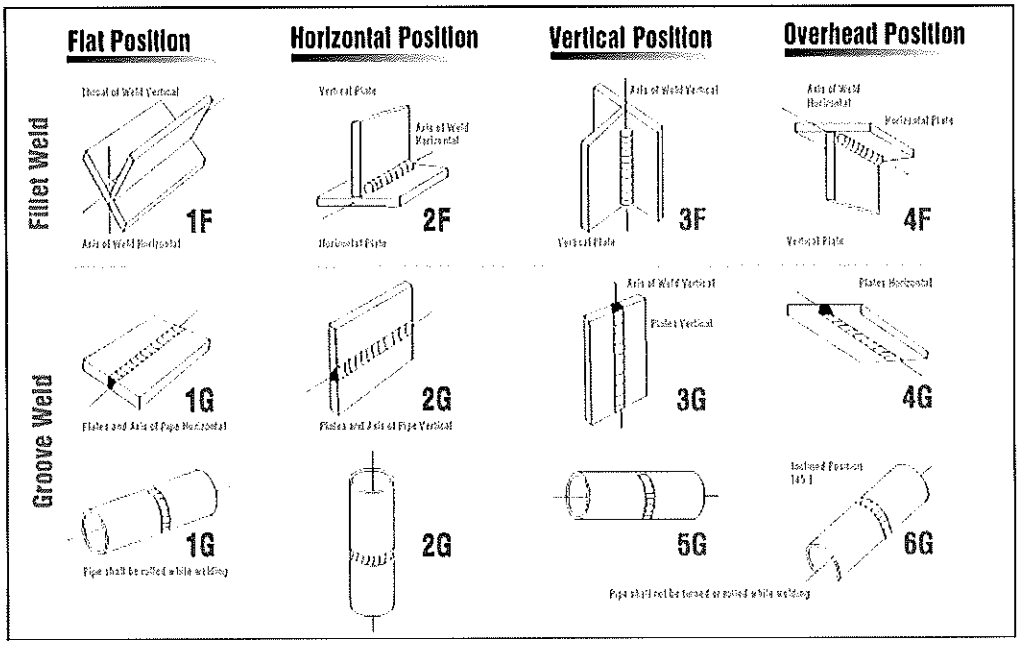
If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

In order to be certified the individual must pass a weld test administered by a state certified weld test inspector at a state certified weld test facility. The annual certification fee for a welding license is $25.00 (regardless of category or position) with a $10.00 late fee for up to one (1) year past expiration. After one year past expiration the welder must retake and pass the weld test examination for their respective category and position. There is no fee to upgrade a category.

Fees collected for the 2018 fiscal year included $184,770.00 in welder certification fees, $2,300.00 in weld inspector fees and $15,250.00 in weld test facility fees. The entirely of the $202,320.00 was deposited in the state's General Revenue Fund.

Felony convictions and military member/spouse reciprocity found in HB 1373 and SB 670, respectively, will have limited application to this license. A felony conviction does not prevent an individual from entering/performing within this industry. The Oklahoma Department of Labor shall apply all relevant provisions of the SB 670, however, the weld test requirements found in the Oklahoma Welding Act, 59 O.S. §§ 1624 – 1641, would remain in effect for any relocating military member or spouse to ensure public safety. There should be no limiting factors to obtaining a welding license within thirty (30) days of military transfer or honorable discharge to Oklahoma.

HB 2933, codified at 59 O.S. § 4003, which requires a one-time, one-year, fee waiver for low-income individuals has been implemented on a case-by-case basis. There is a process in place to waive the fee(s) for any individual demonstrating a financial need. The Department's default response is to approve any validated need giving the benefit of the doubt to the individual.


Flat Position
Horizontal Position
Vertical Position
Overhead Position
Fillet Weld
Groove Weld
1F
2F
3F
4F
1G
2G
3G
4G
1G
2G
5G
6G

Annex

1. *Definition of a compelling public interest.* A compelling public interest must be one of the following interests: public health, public safety, fundamental rights, or a substantial fiduciary interest.

2. *Definition of a demonstrated, significant, and probable harm.* A harm is demonstrated when it has occurred in the past. A harm is significant when it could cause damage that merits action by lawmakers. A harm is probable when its propensity to occur merits action by lawmakers. When determining whether a harm is significant and probable, lawmakers may analyze various sources of information, including whether similar activities are licensed or regulated in other states. If, in other states, a lack of licensing does not cause significant harms, the harm is not demonstrated, real, or probable.

3. *List of means from least to most restrictive.*

Private Governance Options

- Market Competition
- Third-party or consumer created ratings and reviews
- Private certification
- Specific private civil cause of action or alternative dispute resolution

Public Regulation

- Deceptive trade practice act
- Regulation of the process of providing specific goods or services to consumers
- Public inspection
- Mandatory bonding or insurance

Command and Control

- Registration
- Government certification
- Business license
- Specialty occupational license for medical reimbursement
- Occupational license

4. *Definition of sufficient protection.* A regulation sufficiently protects an interest if the regulation adequately remedies the harm or possible harm to the legitimate public interest so that the likelihood of such harm is appropriate considering the degree of damages which the harm may cause. "Sufficient" has not been uniformly defined by courts, but there should be some limitation on the choice to use a high standard of protection (like a guarantee) to justify the most restrictive mean every time.

5. *Definition of an active market participant.* The Court has found that active market participants possess strong private interests in a matter and pose a risk of self- dealing. A conservative interpretation of a "market participant" is any practitioner who works in the general industry, which is affected by the types regulations addressed by their respective boards. One could persuasively argue that these individuals possess strong interests and pose a threat of self-dealing.

6. *Definition of a controlling number.* Justice Alito, in his dissent in *NC Dental,* raises concerns that the Court did not define a "controlling number" on the board. He mentions how it could be a majority, a number required for a veto power, or even an obstructionist minority. To be safe, the State should consider all of these options to be a "controlling number," especially since simpler terms like a "majority"—which clearly indicate a specific standard—are not used by the Court.

7. *Definition of active state supervision.* Active state supervision constitutes more than simply authorizing and enforcing decisions made by the board. States need to establish, review, or monitor decisions to ensure they are clearly articulated and firmly expressed as state policy. Therefore, a state must be reasonably informed to the decisions of a board, and then ratify the board's conduct as proper state policy. The Court has made it clear that a "state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their violation is lawful.

Cosmetology Board Occupational Licenses

Application License Name	Required Education Level	Required Experience/Qualifications	Statutory Citation	Fees
Cosmetologist	Eighth-grade education or equivalent 1,500 hours of training in an approved beauty school or an apprenticeship of 3,000 hours Possible areas of study include theory and practical training in hairstyling (cutting), finger waving, thermal, perms, and chemical hair relaxing; manicuring and pedicuring; scalp treatments; skin care, makeup; personality; shop management; beard grooming; and Oklahoma cosmetology law and board rules and regulations.	16 years of age	59 O.S. §§ 199	Application/Initial fee - $25 Renewal fee - $25
Cosmetology Instructor	Hold a High School Diploma or a General education Development Certificate 1,000 hours of instructor courses at licensed school of cosmetology or 500 hours if 2 years of recent licensed experience is verified (or equivalent number of credit hours) Possible areas of study include cosmetology training curricula; introduction to teaching; course outlining and development; lesson planning; teaching techniques; aids and developing, administering and scoring of examinations; cosmetology law, board rules and regulations; and practice teaching in both theory and practical	Is over the age of sixteen (16) Hold a current cosmetologist license at time of application	59 O.S. §§ 199	Application/Initial fee - $50 Renewal fee - $50

Facialist	Eighth-grade education or equivalent Complete 600 hours of study or equivalent number of credit hours. Possible knowledge areas include structure of skin and diseases; theory and practical training in skin care, makeup, and massage; hygiene, personality, salesmanship, and poise; sanitation and safety; electrical; chemistry and light therapy (pertaining	Is over the age of sixteen (16)	59 O.S. §§ 199	Application/Initial fee - $25 Renewal fee - $25
Manicurist	Has completed the eighth grade 600 hours at an approved beauty school or equivalent number of credit hours Possible areas of study include nail structure, composition and diseases, hygiene, personality, salesmanship, poise, and sanitation and safety procedures specific to manicuring and pedicuring. Theory and clinic practice includes artificial nail application and	Is over the age of sixteen (16)	59 O.S. §§ 199	Application/Initial fee - $25 Renewal fee - $25

State Comparison

Facialist - all states license but 1

Manicurist - all states license but 1; training hours vary from 12 to 750 with an average of 363 training hours required

Cosmotologist - all states license, no major training differences

Cosmotology Instructor - requirments vary by state; some states require years of experience as a cosmotologist while others require additional training

Occupational Licensing Blueprint

Roadmap for Occupational Licensing

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    - Public safety
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Occupational Regulation Blueprint

License Details

What is the license? Cosmetology, Barber, Manicurist, Esthetician

What does the license cover? All cosmetology and barber related services

What Board regulates the license? Oklahoma State Board of Cosmetology and Barbering

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? Health and Safety

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)? Yes

Least Restrictive Means

What means is used to protect the public interest? Examination, licensure, Public inspection

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? Yes

If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? Eleven (11)

How many of them are active market participants (see Annex, item 5)? 10

Is the board controlled by these active market participants (see Annex, item 6)? Yes

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? Yes

If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

Sherry G. Lewelling
Executive Director

J. Kevin Stitt
Governor

Oklahoma State Board of Cosmetology and Barbering
Advisory Board on Massage Therapy

OCCUPATIONAL LICENSING BLUEPRINT

Additional questions:

1. Fees collected: All agency revenue is generated from licensing fees. The agency operates solely on this revenue. We also contract with other agencies for services such as the AG's office for legal assistance, fleet for vehicles for inspectors, ABS and OMES for various financial services, etc. (approximately 16% of our revenue go toward these services). We are a non-appropriated agency and receive no funding from the state or federal governments. We give 10% of our revenue back to the state's general fund (approximately $665,000.00 over the past 5 years). The fiscal impact on the agency: Our revenue is our survival. We are good stewards of our revenue and we are able to keep our license fee at a minimum of $25.00 for a basic license (we have the lowest license fee in the nation).

2. This agency has had rules in place for years for felony convictions and military members. Military member/spouse: all reciprocity fees are waived for reciprocity to Oklahoma, also if someone has been stationed elsewhere and OK. license has expired for years, the back fees and penalties are waived as well as any review hour requirements or testing requirements. For felony convictions we use two rules (is the individual a threat to the public, or is the felony directly related to the industry). We are one of the few agencies that have issued license to felons for many years. We have also approved a Cosmetology School that was established at Mable Bassett Correctional Center for Women two years ago and are in the process of getting one established at Eddie Warrior Correctional Center. We have been approached by a private company to put in a barber program at a men's correctional facility in Lawton, OK. Myself and one of my examiners go to the facility to conduct exams when the offenders have completed their training so they have their license in hand upon release so they can get into the workforce immediately and most have a job waiting when they are released. (several of our chain salon companies have committed to hire as many as they can).

3. Low income individuals: Rule: 175:10-11-2 (d) stipulates the requirements to comply with HB2933. **(d) Waiver of fee for low-income individuals.** Pursuant to the provisions of 59 O.S. 4003A, upon presentation of satisfactory evidence that an applicant for initial licensure or certification, or that a licensee or certificate-holder seeking renewal, is a low-income individual, the Board shall grant a one-time one-year waiver of the fee for the licensure, certification or renewal. A low-income individual is a person who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line. An applicant for licensure must provide documentation showing participation in one of the afore-mentioned

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Oklahoma State Board of Cosmetology and Barbering
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programs or submit income tax returns showing income below the established threshold. The documentation must be current and must be issued by the federal or state entity administering the program. Copies of income tax returns must be from the most recent tax year prior to the date of licensure application.

2401 NW 23rd Street, Suite 84, Oklahoma City, OK 73107
(405) 521-2441 Fax (405) 521-2440
www.cosmo.ok.gov

Funeral Board Occupational Licenses

Application License Name	Required Education Level	Required Experience/Qualifications	Statutory Citation	Fees
Embalmer	20 years of age Legal resident of Oklahoma Citizen of the United States Good moral character	59 O.S. § 396.3	License fee - $75 Renewal fee - $75 State Law Exam - $100	$550.00 In state or $750.00 out of state
Funeral Director	20 years of age Legal resident of Oklahoma Citizen of the United States Good moral character	59 O.S. § 396.3	License fee - $75 Renewal fee - $75 State Law Exam - $100	Application/Initial fee - $25 Renewal fee - $25

Occupational Regulation Blueprint

License Details

What is the license? Funeral Director

What does the license cover? Personal license were an individual licensed to engage in the practice of funeral directing as outlined in the Board Rules

What Board regulates the license? Oklahoma Funeal Board

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? Public Health & Public Safety

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)? Significant & Probable harm

Least Restrictive Means

What means is used to protect the public interest? Licensee is to follow statutes & rules set by the legislature. Licensee is also required to get continuing education.

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? No

If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? Seven

How many of them are active market participants (see Annex, item 5)? Five

Is the board controlled by these active market participants (see Annex, item 6)? Yes

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? Yes

If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

Occupational Regulation Blueprint

License Details

What is the license? Embalmer

What does the license cover? Personal license were an individual licensed to engage in the practice of embalming

What Board regulates the license? Oklahoma Funeral Board

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? Public Health & Public Safety

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)? Significant & Probable Harm

Least Restrictive Means

What means is used to protect the public interest? Licensee is to follow statutes and rules set by the legislature. Licensee is also required to get continuing education

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? No

If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? seven

How many of them are active market participants (see Annex, item 5)? five

Is the board controlled by these active market participants (see Annex, item 6)? Yes

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? Yes

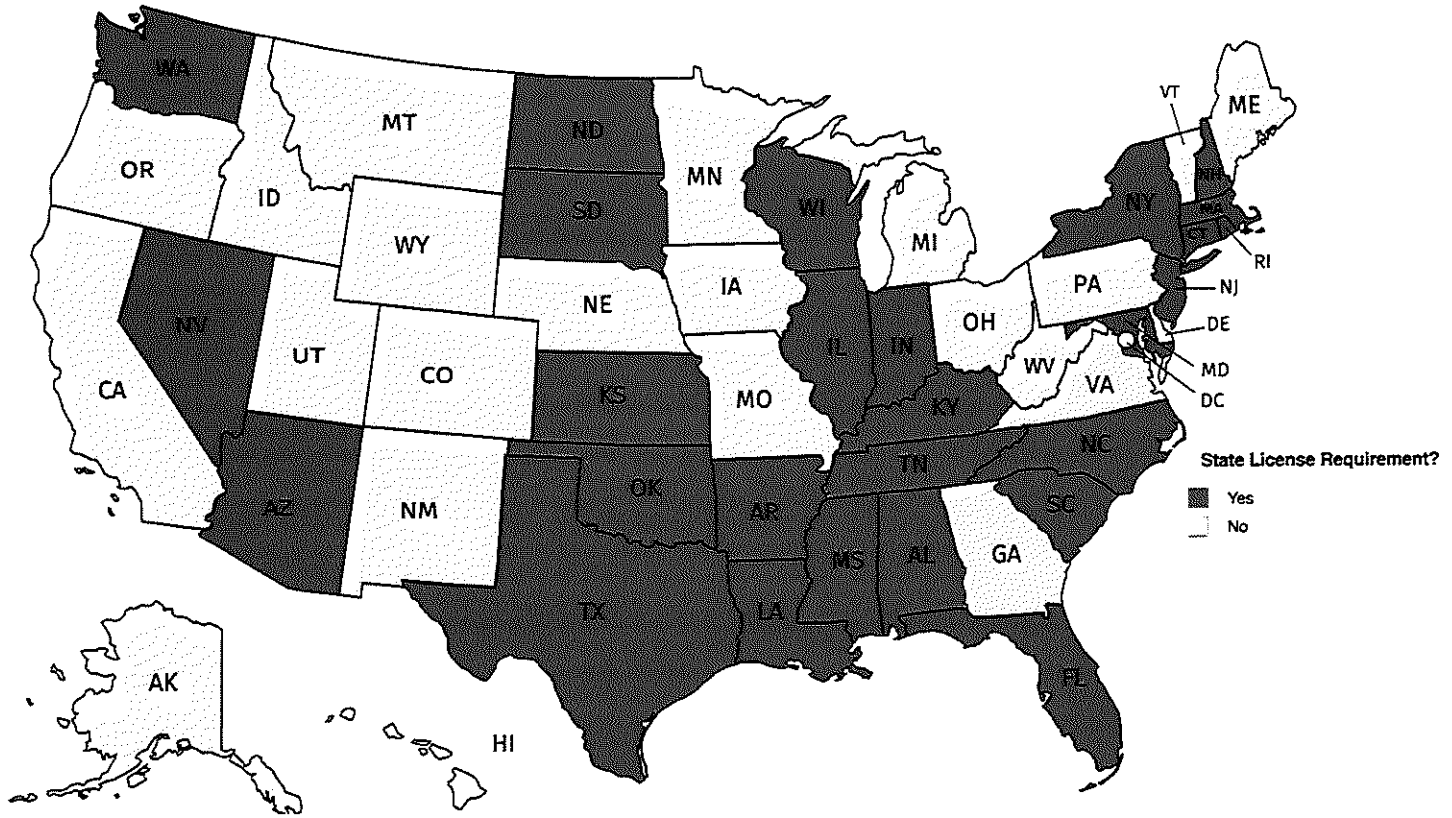
If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

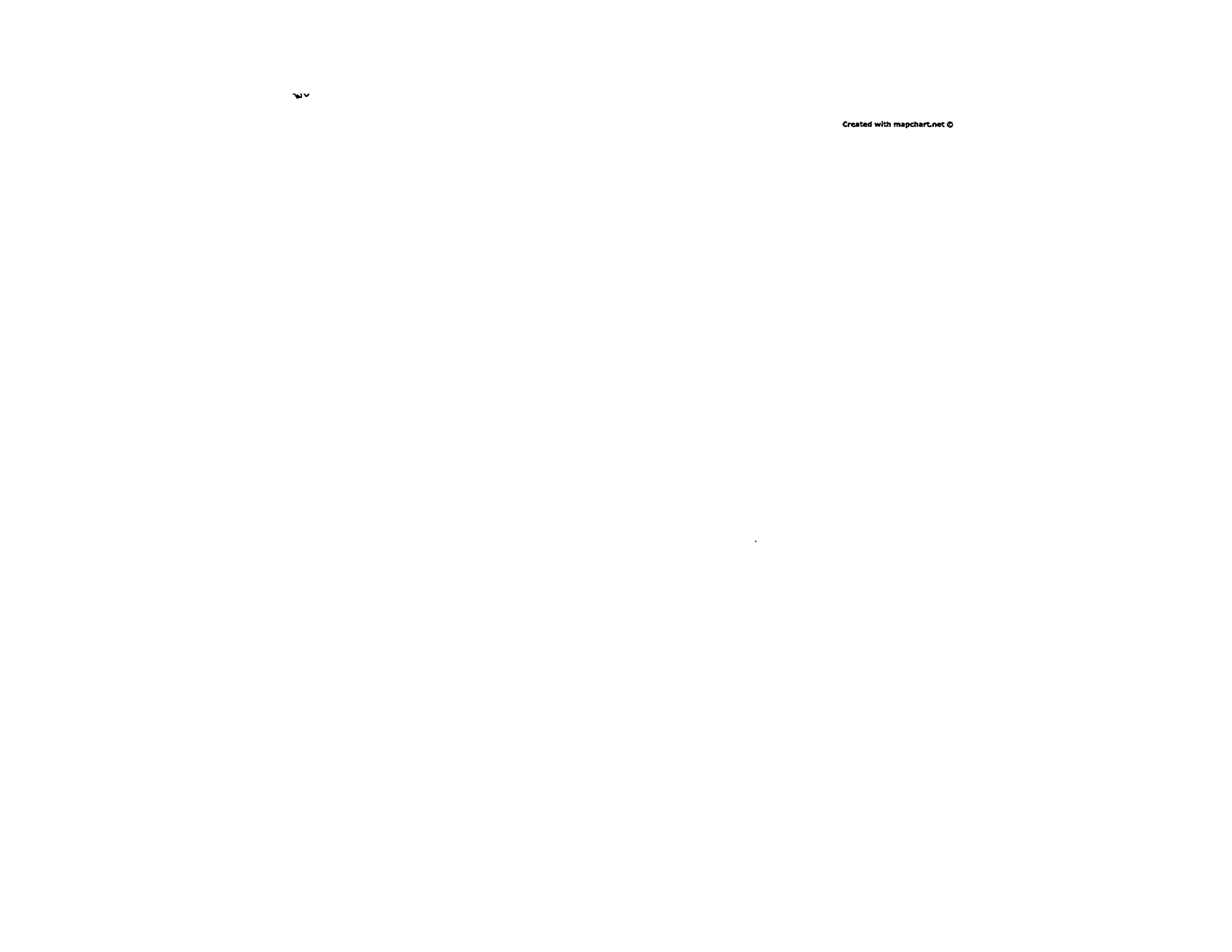
- Expand on the fees collected by your Agency/Board; what those fees fund at your Agency/Board; and the annual, fiscal impact of said fees to your Agency/Board; Fees fund all aspects of the agency. Payroll, Attorney General Service, OMES service, rent. Etc.. We get no appropriated fees. We get no Federal fees or dollars.
- How your Agency/Board plans to implement new laws relating to felony convictions and military member/spouse reciprocity found in HB 1373 (if signed by Governor Stitt) and SB 670; and, Amend the appropriate form and web site
- How your Agency/Board has, or will, implement provisions in last session's HB 2933, codified at 59 O.S. § 4003, which requires a one-time, one-year, fee waiver for low-income individuals. Amend the appropriate form and web site

CIB - Home Inspector REVISIT

Application License Name	Required Education Level	Required Experience/Qualifications	Statutory Citation	Fees
Home Inspector	Completion of 90 clock hours of approved home inspection training.	18 years of age Comprehensive general liability insurance of no less than $50,000 combined single limit for bodily injury and property damage. Exam required.	59 O.S. § 858-621, et seq., under the authority of the CIB - 59 O.S. § 1000.1, et seq.	$30 Application Fee; $250 Initial License Fee; $150.00 Renewal Fee; $50 License Reactivation Fee

State Comparison




Created with mapchart.net ©

Janis Hubbard
Administrator

J. Kevin Stitt
Governor

State of Oklahoma
Construction Industries Board

June 10, 2019

Via email: Christina.Foss@omes.ok.gov

Ms. Christina Foss
Project Director
Occupational Licensing Advisory Commission

RE: CIB Response to Home Inspection Licensing Act Inquiries from the Occupational Licensing Advisory Commission

Dear Occupational Licensing Advisory Commission Members:

Thank you for this opportunity to respond to requests for information concerning the Home Inspection Licensing Act administered by the Construction Industries Board (CIB).

The CIB is a self-funded, non-appropriated state agency whose mission is critical to the protection of the health, safety and welfare of the public. The CIB receives no federal funds and is funded by occupational fees, pursuant to the related statutory trade regulatory acts and administrative rules as adopted through the legislative rulemaking process of the Administrative Procedure Act. It is important to know that the last license fee increase for any trade regulated by the CIB was in 2009 when not all fees were raised and some fees were reduced. Fees for Home Inspectors have not been increased since 2002.

I. Blueprint Information

The Blueprint form is posted on the ODOL website page for the Occupational Licensing Advisory Commission and listed below.

License Details
What is the license?
Home Inspector

What does the license cover?
The scope of the Home Inspector license is generally work involving the inspection of already constructed residential homes for functionality of systems using standards established by administrative rule as approved by the legislature and issuance of a written

inspection report to the entity requesting the inspection report. For clarification, it is important to note that these inspections are of existing, already constructed homes and do not include inspections on newly constructed homes that may be required by local jurisdictions during the construction process. New home construction inspections, if any, are performed by the local jurisdiction's Building and Construction Inspectors or Authorized Agents of the local jurisdiction when a local permit is pulled. After-built home inspections by Home Inspectors do not allow Home Inspectors to see construction behind walls or under the floor, therefore Home Inspectors inspect only what they can see during the inspection. For a complete description of the Oklahoma scope of work and exemptions and exclusions, see 59 O.S. §858-621, *et seq.* and administrative rules established through the legislative rulemaking process, per the Administrative Procedures Act, at OAC 158:70.

What Board regulates the license? The Construction Industries Board.

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? Public health and public safety per Annex, item 1. The CIB's mission is to protect life and property by licensing and inspection of the related reads for the health, safety, and welfare of the public.

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)? Yes. Harm to property and physical injuries can occur as a result of work below minimum standard. Also, harm to property, physical injuries and even possible deaths have been prevented by licensed Home Inspectors finding life safety issues during the inspection.

Least Restrictive Means

What means is used to protect the public interest? Occupational licensing to demonstrate to the public and employers a worker has met a minimum standard of competency through course work and examination as well as protecting the public by having general liability insurance no less than $50,000, lawful presence, etc.

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? Yes – enforcement of these minimum requirements is necessary to protect the public from non-compliant, possibly transient and unscrupulous individuals posing as trained, licensed professionals; as well as, protecting the current and future homeowners and others who enter the property. These inspections can identify correctable potential hazards to firefighters and other emergency responders who make life and death calls in extreme situations based on certain assumptions that electrical, HVAC and gas systems are functioning correctly and can be properly isolated to aid in rescue, fire suppression and other dangerous situations.

The necessary enforcement is quasi-judicial authority and cannot be delegated. Further, using solely private sector associations or certification programs removes government involvement at the expense of due process, administrative procedures, and power of the authority of the state that cannot be delegated to the private sector.
If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? Seven (7) members, appointed by the Governor to four (4) year terms, with advice and consent of the Senate.

How many of them are active market participants (see Annex, item 5)? None; the CIB board does not have a Home Inspector member.

Is the board controlled by these active market participants (see Annex, item 6)? No; the CIB board does not have a majority of market participants in any trade. To confirm this, the Office of the Attorney General does not require any non-rulemaking decisions made by the Construction Industries Board to be reviewed by the Office of the Attorney General as per the Governor's Executive Order 2019-17 (nor the former Executive Order 2015-33).

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7) N/A – the CIB board is not controlled by active market participants.

If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

II. Home Inspection Licensing Act Factors to Consider

The main purpose of a home inspection is to give the client information needed to make an informed decision about the property. They provide a more accurate picture of the property's current condition and can help to identify potential hazards. Many changes in a property's condition could have taken place since the local jurisdiction performed a permitted inspection of some aspect of the property, if it was required at the time of construction. In the case of a home inspection for purposes of sale/purchase in a real estate transaction, home inspections provide independent information for the potential buyer to make an informed decision of the purchase. Home inspections can be a critical part of the home buying and selling process. Most residential Realtors recommend a home inspection to a potential buyer prior to purchasing a home. Failure to obtain a home inspection could potentially cost the buyer a great deal of money and resources in the long run.

The Home Inspector license administered by the CIB sets common-sense standards, provides consistency and helps the industry at a minimal cost to maintain credibility with home and property owners and real estate professionals handling the transaction. The minimum safety standards help ensure the health and well-being of the worker themselves and anyone else on the job site with them, as well as current and future property owners.

Factors to consider in Home Inspection licensing include:

- Pre-licensing course – Oklahoma requires a 90-hour course; many states require more, internet research shows up to 180 hours, with Texas requiring 130 hours and Arkansas 80 hours.
- *Examination - Oklahoma requires a 70% passing score on the National Home Inspectors Examination (NHIE) that is closed book, allowing time up to 4 hours.
- Cost of exam - Oklahoma applicants pay $200 directly to the third party provider.
- Proof of lawful presence to work - Oklahoma requires it.
- Amount of bond - not required in Oklahoma.
- Amount of general liability insurance - Oklahoma requires $50,000 general liability.
- Certified Financial Statements of certain asset value - not required in Oklahoma.
- Whether an additional firm business license or additional board/agency approval is required other than the trade license category - not required in Oklahoma.
- Mandatory apprenticeship training - not required in Oklahoma.
- Continuing education to renew license - Oklahoma requires 8 hours annually which appears from internet research to be the least with other states requiring **much** more.
- Whether criminal history check is required - not required in Oklahoma.
- Whether the scope of work is similar or would require additional licensing.
- If no state license, do local jurisdiction license by examination or experience requirement?

*Note: This national examination facilitates portability of the Home Inspector license among the states that accept this exam. A Home Inspector may meet the examination requirement for licensing in multiple states after having taken this exam one time. This expedites the exam portion of the licensing requirements while maintaining state oversight and responsibility of setting and enforcing the other licensing requirements of that state.

Advantages of Home Inspector Licensing

The purpose of regulation of the Home Inspection trade, as in any trade, is to ensure there is compliance with the minimum standard of statutory requirements to perform the skilled-trade work in order to protect life and property of the public. There is a consumer protection and public safety need for a minimum standard of requirements and competency established through licensing.

Regulation of the Home Inspector license provides inherent fairness through a regulatory process for the benefit of consumers, applicants, licensees and complaints by requiring and following administrative procedures and due process requirements for fairness. This regulation provides a mechanism for protection of the public as a whole, a benefit not realized by a "buyer beware" approach to consumer protection.

A deregulation of the Home Inspection trade would eliminate the ability of government to act on behalf of the public and would place enforcement and protection burdens on the consumers who may not have the resources to pursue compliance and relief through the

court system. Oklahoma requirements would be unenforceable, such as OAC 158:70-1-3(a)(4) that requires all Home Inspectors to maintain a log or record of all home inspections performed (five years) and the inspection reports (three years) from the date of inspection, and OAC 158:70-5-2(f) requiring at least $50,000 in general liability insurance.

Deferring to private sector certification programs would remove the government's involvement and the quasi-judicial power and authority of the state that cannot be delegated to the private sector. Using solely private sector associations or certification programs would remove government involvement at the expense of due process and administrative procedures not mandated upon the private sector resulting in impacts upon Home Inspector businesses without transparency or oversight of the processes. There would be no Open Records or Open Meeting requirements and no process for recourse of potential unchecked abuses, etc. This could result in potential harm to businesses by adverse actions taken against them by private associations or by unchecked high cost of fees to the Home Inspector to be able to continue in their business.

Home Inspection licensing through the CIB is an important resource for consumers to verify Home Inspector information, insurance and license status. The CIB allows for a more efficient and cost-effective process by investigating and assisting in resolving many disputes that might otherwise go on to the lengthy and costly court system. The "buyer beware" approach does not adequately deter misconduct on behalf of subpar Home Inspectors. The licensing under the CIB helps to protect the most vulnerable citizens such as elderly homeowners and the economically disadvantaged.

By applying these minimal, consistent standards, licensing helps create a level playing field for Home Inspectors and their businesses that supports market stability and fuels the economy by keeping it out of the underground, unscrupulous and transient market. The CIB is a valuable resource for the industry and the public, maintaining a licensee database of experience, examination, continuing education, disciplinary actions, and information on pathways to licensing and the requirements.

The Home Inspector licensing regulations not only help to protect the health, safety and welfare of the public, but help contribute to the education and development of the skilled workforce. This reasonable licensing ensures the continued quality of the trade through ongoing requirement such as testing and continuing education.

The state benefits by having a better educated and skilled workforce and Oklahoma businesses that are employing skilled workers, providing jobs, paying wages, and paying taxes to the state of Oklahoma. Without a minimum standard of knowledge of functional system requirements met through licensing, a larger number of inspections could fail to protect the public, adversely affect more real estate transactions, and possibly result in higher costs for Oklahoma property owners the Oklahoma citizenry.

Two General Criticisms of Home Inspections with Ideas for Resolutions

Although home inspection plays an important part in the real estate transaction, it is recognized that insufficient reporting can adversely affect the buyer after the sale and that over-reporting can unnecessarily adversely affect the sale of a home. Insufficient reporting is inherently an education issue. Many states require more pre-licensing course study and continuing education requirements. Some states appear to require apprenticeships for on-the-job training by shadowing a licensed home inspector for some period of time. Any of these options, or a combination of them, could assist in increasing education and decreasing missed items or under-reporting an inspection and help to resolve this criticism.

It is also recognized that over-reporting in a Home Inspection report can unnecessarily adversely affect the sale of a home - such as citing to building codes or other issues in order to attempt to prevent potential threat of lawsuits. The Oklahoma Home Inspection standards are listed by administrative rule found at OAC 158:70. Currently, these rules set forth the minimum standards for home inspections in Oklahoma and do not describe any maximum standard or place a cap or a stopping point of items to report. Finding workable wording for such a "cap," is a difficult and arduous task in a litigious society especially when considering the needs of the Real Estate Industry as well as the Home Inspection Industry. My understanding is that there is a stakeholder group that is working to meet on possible resolutions that could include categorizing types of items such as life/safety, functionality, aesthetics, etc. that would attempt to assist the customer in understanding how significant or serious a reported finding may be. Honest, reputable Realtors want Home Inspectors to do their job the way they were trained to do it and as it is intended to work, providing factual information to help the home buyer make a better informed decision by gaining a clear picture of the state of a home with the facts delivered with a common sense perspective.

These two criticisms appear to be simple in idea to resolve –additional education and adding appropriate language through the administrative rule process to discourage or eliminate any tendency to over-report. It also appears that neither of these two criticisms could be resolved by deregulating the Home Inspector Industry and license. Deregulation could actually increase the occasions of insufficient reporting and over-reporting items and contribute to a higher number of unnecessarily adversely affected home sales.

III. Response to Additional Questions

For brevity, the costs of the Home Inspector license fees are already shown in the ODOL Occupational Licensing Directory Database. The use of the license fees received are explained below.

About the CIB:
In order to have a good understanding the fiscal relation of the fees and expenditures, a brief description of the CIB is provided. The CIB consists of seven (7) board members each appointed by the Governor, with the advice and consent of the Senate, for a term of four (4) years. The contractor board members are Oklahoma business owners and all of the board

members are business-minded people applying business principles to the operations of the CIB. The CIB board members and the trade committee members serve without compensation, except they may receive mileage reimbursement pursuant to the State Travel Reimbursement Act.

The CIB is the statutorily created state agency charged with regulating, through licensing, registration, inspection and enforcement, the Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, the Mechanical Licensing Act, the Home Inspection Licensing Act, the Roofing Contractor Registration Act, and the Construction Industries Board Act. These regulatory acts help to ensure Oklahoma's citizenry that professionals performing the complex tasks required for installation, repair or maintenance work have met the statewide minimum competency required by statute to perform skilled trade, or craft trade work providing a safer edifice for life and property, including protecting areas such as our public water supply.

Agency Oversight and Costs:
To ensure that the agency is held accountable in its receipts, spending and budgeting, the CIB is audited annually as required by 59 O.S. § 1000.4(C). The annual audit is performed, issued, and published by the Oklahoma State Auditor and Inspector. Copies of audits are published on the State Auditor and Inspector's website. The CIB is an agency subject to Sunset and is reviewed by the legislature for Sunset every four (4) years. In addition, the CIB responds to inquiries on fees, revenue, budget and operations at least annually from the Chairs of the Senate and House Appropriations Subcommittee on Select Agencies, and also reports to the Chairs of the Senate Business and Commerce Committee and House Banking and Business when requested. Each year, the CIB Budget Request (by October 1) and Budget Work Program (by June 30) are sent to the agency's Cabinet Secretary, the Governor, OMES, the President Pro Tempore of the Senate, and the Speaker of the House and must be approved prior to any expenditure under that budget. The CIB budget can be found annually in the Governors' proposed Executive Budget and sometimes in the legislative budget bill, by restricted revolving fund such as in SB1616 (2016).

In addition to the 10% of license fees paid to the state General Revenue fund, the CIB contracts with OMES Shared Services and pays OMES for the services, including those listed in this section. The CIB contracts with Shared Services OMES/ABS (Agency Business Services) for Financial Shared Services. OMES/ABS is the CIB's CPO and acts as CIB's CFO approving purchases for conformance with state purchasing laws and Executive Orders, budget/fund availability, and proper coding. OMES/ABS also prepares the monthly reconciliation between the CIB's licensing software, PeopleSoft, and the Office of the State Treasurer, and presents other financial reports monthly to the CIB Board for their review. Expenditures in excess of $25,000 must be approved in advance by the CIB's Cabinet Secretary, per Executive Order 2019-13.

The CIB contracts with Shared Services OMES/DCAR for HCM Shared Services to process employee payroll and payments from the employee time/leave information input into PeopleSoft by the CIB staff. Payroll expenses are included in the monthly reports prepared by OMES/ABS and presented to the CIB Board.

The CIB also contracts with Shared Services for OMES Mailing Services through the Interagency Mail Department and with OMES/IT for IT services since the CIB IT has been consolidated into OMES/IT who must approve all IT expenditures. Also, legal counsel to the CIB board and all six (6) trade committees is provided through contract with the Office of the Attorney General.

All revenue and expenditures are entered into the PeopleSoft system. All funds are reconciled monthly by the Office of the State Treasurer (OST) (banking information), Shared Services OMES/ABS (PeopleSoft information), and the CIB (licensing software information) as demonstrated on the state required Form 11 every month which then triggers the transfer of CIB funds by the OST from the clearing account to the appropriate revolving fund and the transfer of ten percent (10%) of the fees to the state General Fund.

There are six (6) statutory licensing/registration acts, each having their own restricted revolving fund and authority for use of the restricted revolving fund. These six (6) revolving fund accounts are all controlled by the OST making checks/payments by warrants issued through the audited purchasing process. There is no "general" CIB fund. There are no transfers to other agencies or flow-through of funds. The CIB cannot write checks on any bank account. These monthly reconciliations are a part of the documentation that is reviewed during the annual audit performed by the Oklahoma State Auditor and Inspector.

Fees Go Toward:
The fees are used to fund the operations necessary to administer the Home Inspection Licensing Act. The fees are set by statute 59 O.S. § 858-625 and have not changed since 2002. The annual fiscal impact of these fees along with the current revolving fund balance currently cover the costs associated with administering the act. The CIB staff incorporate Home Inspection licensing and regulations duties along with the duties of other trades. Anticipated revenue for FY2019 based upon a four-year rolling average is $108,981.78. If licensing levels or funding levels decrease for Home Inspection licensing, it could cause staff layoffs due to lack of funding and, as a result, affect the ability to continue providing services to the other trades at the current level of service and quick turnaround time in processing license applications.

The CIB has always paid into the state General Fund 10% of licensing fees. That has resulted in approximately $400,000 per year for the last several years. The remainder of the fees received is used for expenses to support the operations in performing duties required under the various trade licensing and registration acts, including those described above. When fully staffed, the revenue and expenditures are generally at a breakeven level.

When fully staffed, the CIB operates with 13 office staff, using temporary staff when necessary so that licenses and registrations can be issued without delay allowing applicants to get to work as soon as possible, and 21 field staff licensed in the different trades covering construction sites across Oklahoma. Due to the type of enforcement required at property and construction sites throughout the four corners of the state, field staff office from their homes all over the state to reduce travel reimbursement costs.

IV. Implementation of Legislation

The Home Inspector "good moral character" provision at 59 O.S. §858-629(A) has been eliminated by HB1373, effective November 1, 2019. The Home Inspection Licensing Act and CIB regulations provides licensing credit for Military work and expedites processing of application for Military and spouses in accordance with 59 O.S. §§4100.4 - 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act, 72 O.S. §48.2 Extension and Renewal of Professional Licenses, as well as CIB administrative rules at OAC 158:1-3-10 – 1-3-12 and 158:70-9-1.1 – 70-9-1.3. SB670 made additional changes at 59 O.S. §4000.1.
The CIB employs the Office of Attorney General as its legal advisor. Both HB1373 and SB670 laws are effective November 1, 2019. Any administrative rules necessary to implement the processes for these new laws will be reviewed by the CIB's legal advisor for advice and drafting of any needed administrative rules or changes to existing administrative rule through the legislative rule-making process pursuant to the Administrative Procedures Act, after review by the board. These proposed rules are anticipated to reach the Legislature probably in February and certainly no later than April 1 for consideration during the 2020 Legislative Session.

Regarding HB2933 (2018) codified at 59 OS §4003(A) which requires a one-time, one-year, fee waiver for low-income individuals, it states, in part:

> . . . upon presentation of satisfactory evidence that an applicant for licensure or certification is a low-income individual, shall grant a one-time one-year waiver of any fees associated with such licensure or certification. For purposes of the section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

There is ongoing work in attempting to draft administrative rules that could be fairly administered across the state and that are supported by the authority of the statutory language. Work on proposed administrative rules continues in order to be able to administer the statutory language without leaving the state unprotected from legal challenges of due process violations due to vagueness, abuse of discretion, and equal protection. The language attempting to define "low-income individual" can appear overly broad. Work is still being done to try to explain the standard of public assistance and what, if any, evidentiary documentation would be required to make a determination of qualification so that any administrative rules proposed could clearly describe for the public the process that is to be followed. Resolutions are still being researched as to any necessary possibly sensitive documents, such as income tax returns and other documents, submitted should be somehow exempted from the Open Records Act and any documentation needed from out-of-state applicants who receive assistance from their home state. We had the

impression that additional information would be forthcoming to agencies to provide a uniform framework for language on the financial threshold and the inclusion/exclusion of the limits of public assistance so that all agencies would be using similar framework to lower the risks previously explained. To my knowledge, the CIB has not received a request concerning this low-income fee waiver.

Not only for the public's benefit, clear administrative rules are necessary to make the licensing software changes necessary to account for licenses issued without funds attached in order to fulfill audit reporting requirements. The CIB's licensing system has recently experienced a two-year comprehensive software upgrade when system changes had to be prioritized behind the upgrade. The licensing system software is ready and able to handle updates that already have been requested and any forthcoming needed to track and account for these no fee license transactions.

The Commission also should know the CIB's agreement with the Department of Career and Technology Education in partnering to increase workforce development and education pursuant to HB1280 (2018) (Wallace/Leewright) should be finalized late Summer. HB1280 provides administrative fines collected that have previously been used for agency operations will now go towards workforce development and education of and in the skilled trades. With the critical national shortage of workers in the skilled trades regulated by the CIB, this partnership is expected overtime to help increase the pipeline of potential skilled craft workers in Oklahoma, hopefully off-setting the decline in available funds for operations.

V. Conclusion

No one wants excessive regulation, including the CIB; however, there are some good reasons for continuing reasonable Home Inspection regulation through licensing. Not all, but a large portion of home inspections are performed in the real estate transaction of purchasing a home and can be a crucial part of the process. Failure to obtain a home inspection could potentially cost the buyer a great deal of money and resources in the long run. Neither home inspections nor Home Inspectors are perfect. However, deregulation of Home Inspector licensing could actually increase the occasions of insufficient reporting and over-reporting items and contribute to a higher number of unnecessarily adversely affected home sales and would encourage less knowledgeable, less skilled and less educated workers with arguably no knowledge, education or experience to inspect homes and put Oklahoma citizens' health, safety and welfare at risk.

Again, thank you for the opportunity to respond to these inquiries.

Respectfully Submitted,

Janis Hubbard

Janis Hubbard
Administrator