

SUBJECT: Registering plastering contractors

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: (*After recommitted*):
5 ayes — Wilson, Goolsby, Haggerty, Pickett, Yarbrough

0 nays

4 absent — Kubiak, Hamric, D. Jones, Torres

WITNESSES: For — Michael Boyd; Steve Bent; J. Patrick Boyd; Robert Burleson

Against — Steve Conway

DIGEST: CSHB 37 would require plastering contractors to register each year with the Texas Department of Licensing and Regulation (TDLR) in order to engage in metal lathing, plastering, spray fireproofing, or application of an exterior insulation finish system for compensation. Maintenance workers undertaking plastering work as a part of their job would not fall under the registration requirements. Persons who knowingly or intentionally acted as a plastering contractor without a certificate of registration would commit a Class C misdemeanor, punishable by a maximum \$500 penalty.

In order to register, contractors would have to show evidence of financial responsibility and coverage for workers' compensation and liability insurance. To renew their registrations, contractors would have to fulfill continuing education requirements that they successfully complete at least 10 hours of classroom study in the preceding 12 months. The licensing commissioner could suspend or revoke a certificate of registration for failure to comply with the requirements. The commissioner also could assess administrative penalties for violations.

CSHB 37 would establish a six-member Plastering Contractors Advisory Board to TDLR. Three of the members would be plastering contractors eligible for registration and with at least 10 years of experience in the industry. The other three members would represent the general public, but

would have to be familiar with the industry, such as architects, general contractors, or insurers. Members would serve two-year terms; half the terms would expire on February 1 of each year, with the initial terms expiring in 1999 and 2000.

The commissioner would designate one member as presiding officer, and could remove members for inefficiency or neglect of duty. The board would meet at least twice each year at the call of and in a location designated by the presiding officer. Members would not be entitled to compensation but could be reimbursed for expenses in accordance with current statutes.

The board would advise the commissioner on rules and fees for registration and renewals. The commission would establish rules for setting application and registration fees. The commissioner also would be charged with enforcing registration requirements investigating allegations of violations. TDLR could enter any place of business or other establishment at which alleged illegal activity was occurring during reasonable working hours and without advance notice.

The bill would take effect September 1, 1997, except for provisions defining prohibited acts, criminal offense, and administrative penalties, which would take effect March 1, 1998.

**SUPPORTERS
SAY:**

CSHB 37 would provide much needed protection to Texas consumers who have been victimized by unscrupulous, uninsured or undercapitalized plastering contractors. Texas has enjoyed strong growth in its construction industry over the last few years, yet with that growth has come many troubling incidents involving failure to comply with building code standards or fire and safety requirements or just plain substandard or faulty workmanship. The state cannot adequately address these problems as there are no laws or regulations specifically governing the activities of plastering contractors. Shady contractors often fail to pay for insurance or workers' compensation coverage for their workers or make timely contributions to the state unemployment fund.

CSHB 37 would create a system of registration to ensure consumers a plastering contractor was legitimate. The registration system also would help the state collect taxes and other levies due from operators, and would

protect workers by guaranteeing workers' compensation or liability coverage and unemployment benefits.

The continuing education requirements would ensure that plastering contractors know of and are familiar with code requirements for both exterior and interior wall surfaces. They would be no more onerous than the requirements for other regulated professions.

The bill would not mandate the more burdensome status of licensing of the contractors. Registration would impose a bare minimum of regulation to protect consumers, workers, and, ultimately, the industry itself.

OPPONENTS
SAY:

CSHB 37 would create another unnecessary bureaucratic process that would not offer any real protection to the consumer but siphon off resources at TDLR. The registration law would have limited value as an enforcement device, since the weak sanctions for noncompliance would not cause any renegade contractor to conduct its business in a substantially different manner.

Furthermore, existing statutes on consumer fraud already provide sufficient tools to address any problems that might be occurring because of a few bad apples in the plastering business. There has been no widespread outcry for plastering regulation because there has been no widespread need for it.

CSHB 37 would have a detrimental impact on small plastering contractors. Contractors unaware of the need for registering with the state in order to practice their craft could be charged with a criminal offense. Additionally, it would be difficult to fulfill the requirement for 10 hours of continuing education each year. Plastering is not a high-tech field necessitating continuous skills improvements or requiring annual updates on new techniques. CSHB 37 would open the door to registering all sorts of tradesmen and craftsmen who practice time-honored skills such as stone masonry or metal working.

NOTES: Rep. Goolsby plans to offer several floor amendments to CSHB 37 that would:

- remove provisions requiring evidence of financial responsibility, bonding, and continuing education;
- extend the duration of registration from one year to two; and
- authorize exemptions from registration under certain circumstances.

The committee substitute changed the criminal offense for knowingly and willingly violating registration requirements from a Class A misdemeanor, punishable by up to one year in jail and a \$2,000 fine, to a Class C misdemeanor, punishable by a maximum fine of \$500.

HB 37 was recommitted on a point of order on April 21. The committee substitute reported after recommittal is identical to the version reported earlier.

The companion bill, SB 1580 by Carona, was reported favorably as substituted from the Senate State Affairs Committee. On April 17, a motion to suspend the regular order of business to take up SB 1580 on the Senate floor failed to receive the necessary two-thirds vote by 16 ayes, 14 nays.