

SUBJECT: Continuing plumbing regulation under TDLR; discontinuing TSBPE

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — T. King, Goldman, Geren, Harless, Kuempel, Paddie
1 nay — Herrero
4 absent — Guillen, Hernandez, K. King, S. Thompson

SENATE VOTE: On final passage, April 4 — 19-12 (Alvarado, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Rodríguez, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion bill, HB 1670:*
For — Ned Munoz, Texas Association of Builders; (*Registered, but did not testify:* Bradley Pepper, Greater Houston Builders Association)

Against — Leonard Aguilar, Southwest Pipe Trades Association; James Berendzen, UA Local 100, Southwest Pipe Trades Association; Stanley Briers, Texas Plumbing Air Conditioning, Mechanical Contractors Association; Kevin Cleveland, Paradigm Plumbing; Joe Cooper, United Association; Troy Downs, City of Beaumont; Chris Hester and Laura Hester, Chris' Plumbing, LLC; Robert Jalnos, Texas State Board of Plumbing Examiners; David Lopez, International Union of Elevator Constructors; Jeremy Pavlich and Dustin Trevino, Plumbers Local 68; and nine individuals; (*Registered, but did not testify:* Cheri Colet Siegelin, AFSCME Local 3807 Texas Correctional Employees-Huntsville; Alicia Dover, Associated Plumbing-Heating-Cooling Contractors of Texas; James Walls, Cast Iron Soil Pipe Institute; Debbie Vukovich, Dallas Local 100; Sherry Williams, Hardin County Democrat; Trino Baltazar and Guadalupe Castillo, Local 142; Matt Melsheimer, Matthews Plumbing; Richard Lord, Plumbers Union; Michael Tupica, Plumbers and Steamfitters Local 146; Christopher Bean, Johnny Benitez, Justin Cooper, Kelly Cunningham, Jeanne Estrada, James Fisher, Dalton Ford, Jimmy Garcia, Brett Gignac, Christopher Glaser, Mariano Granados Cruz, Lauro

Guzman, Fisher Hampshire, Neil Hegmann, Mario E Jimenez, Martin Juarez, Henry LaRocca, Jose Lopez, Renaud Luccioni, Daniel Ontiveros, George Ortega, Frank Ramon, Edward Steele, and Zack Stockton, Plumbers Local Union 68; Abel Ledezma and Chris Schramek, Southwest Pipe Trades; Montserrat Garibay, Rene Lara, and Rick Levy, Texas AFL-CIO; Ronnie Smitherman, Texas Building Trades Council; Vance Ginn, Texas Public Policy Foundation; Clyff Curry, UA Local 529 Plumbers and Pipefitters; Mark Potter, UAPP Local 142; Russell Shelton, United Association; Rhonda Little, USW 13-243; Ana Gonzalez, Workers Defense Action Fund; and 34 individuals)

On — Julie Davis, Sunset Advisory Commission; Brian Francis, Texas Department of Licensing and Regulation; (*Registered, but did not testify*: David Gonzales and Carla James, Texas Department of Licensing and Regulation; Julio Cerda, Richard Herman, Lisa Hill, and Robert Jalnos, Texas State Board of Plumbing Examiners)

BACKGROUND: The Texas State Board of Plumbing Examiners was created in 1947 to protect Texas citizens against the hazards that can result from improperly installed plumbing, gas, and medical gas systems.

Functions. The agency fulfills its mission through several key activities, including:

- examining and licensing plumbers and plumbing inspectors;
- overseeing continuing education and ensuring licensees' compliance with continuing education requirements; and
- investigating and resolving complaints, including taking disciplinary action when necessary.

Governing structure. The board consists of nine members, appointed by the governor with the advice and consent of the Senate, who serve staggered six-year terms. Seven members are professionals and two represent the public.

Funding. The agency received about \$5.2 million in revenue in fiscal

2017, primarily from licensing and registration fees. It spent about \$2.6 million and transferred about \$2.5 million to the general revenue fund in fiscal 2017.

Staffing. The agency was allocated 31 staff in fiscal 2017. Most staff work at the agency's headquarters in Austin, but the agency also employs one field investigator in each of nine regions across the state.

Unless continued in statute, the agency will be abolished on September 1, 2019.

DIGEST:

SB 621 would end the Texas State Board of Plumbing Examiners (TSBPE), transfer its functions to the Texas Department of Licensing and Regulation (TDLR), and create the Texas Plumbing Advisory Board to administer the department's plumbing-related activities. The bill also would institute the plumbing contractor license and its corresponding duties and would terminate designations for responsible master plumber and other categories.

Transfer of functions. Under the bill, TSBPE would be abolished and TDLR would assume its former functions. The department would be responsible for the issuance and renewal of licenses, endorsements, or certificates of registration related to the licensing of plumbers.

Board. SB 621 would create the Texas Plumbing Advisory Board as a nine-member board appointed by the governor. The board would provide advice and recommendations to TDLR on technical matters relevant to the licensing of plumbers, including examinations, licensing qualifications, plumbing code requirements, supervision, and continuing education requirements.

The membership of the Texas Plumbing Advisory Board would be similar to that of TSBPE, except that one member of the board would have to be a plumbing contractor, rather than a responsible master plumber, and one public member would be replaced by a member who was a licensed plumber. A board member could not receive any compensation for serving

on the board.

Plumbing contractor. SB 621 would eliminate the responsible master plumber designation and replace some of its functions with a plumbing contractor license.

A "plumbing contractor" would be defined as a person licensed as a plumbing contractor who was a master plumber or employed a master plumber for the purpose of performing or supervising plumbing work, was authorized to obtain permits for plumbing work, assumed responsibility for the plumbing work for which the contractor was paid, and had submitted a certificate of insurance to TDLR.

A person would not be allowed to perform or offer to perform plumbing for compensation unless that person:

- held a plumbing contractor license and the proper license, endorsement, or certificate of registration to perform or supervise the performance of plumbing;
- was employed by a plumbing contractor, performed or supervised the plumbing on behalf of the plumbing contractor, and held the proper license, endorsement, or certificate of registration; or
- offered to perform plumbing and contracted with a plumbing contractor for the performance of the plumbing.

A plumbing contractor who was supervising and controlling the work of a person engaged in the business of plumbing in certain dwellings would not be required to provide continuous or uninterrupted on-the-job oversight of the person's work.

Rules. The Texas Commission on Licensing and Regulation (TCLR) would have to establish rules that:

- required, for each task involved in plumbing, a master plumber to perform the task or to provide general or direct supervision of a less experienced plumber who performed the task;

- required each plumber's apprentice and tradesman plumber-limited license holder to perform plumbing under direct supervision;
- specified the plumbing tasks that would have to be performed under direct supervision;
- specified the amount of classroom training, experience, or combination of training and experience necessary to be exempted from supervision requirements or that would permit the plumber to perform the plumbing under general supervision;
- required the plumbing contractor and supervising plumber, if any, to assume responsibility for plumbing performed; and
- included other requirements as specified in the bill.

Licensing. The bill would eliminate certain registrations and impose several new requirements on plumbing licenses.

Elimination of certain registrations. The drain cleaner, drain cleaner-restricted registrant, and residential utilities installer registrations would be discontinued. Responsibility for their functions would be incorporated into the apprentice registration.

Reciprocity. SB 621 would allow TDLR to issue a license, endorsement, or certificate of registration to an applicant who held a similar license, endorsement or certificate issued by another jurisdiction. The bill also would prohibit TDLR from requiring an applicant for a license, endorsement, or certificate to undergo an examination as part of the application process if the applicant had held an equivalent license, endorsement, or certificate in another jurisdiction for at least two years.

Criminal history background check. TDLR would have to require applicants for plumbing licenses to submit a complete and legible set of fingerprints to the department or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS or the FBI. TDLR would be prohibited from issuing a license to a person who did not comply with this requirement.

TDLR would have to conduct a criminal history record information check

of each applicant. The department could enter into an agreement with DPS to administer the criminal history check, and could authorize DPS to collect a fee from each applicant to cover the costs incurred in conducting the check.

Expiration of licenses. A license or certificate of registration would be valid for one or two years, as determined by TDLR. The department would have to establish requirements for renewing a license, endorsement, or certificate of registration. An endorsement would expire on the date the master plumber or journeyman plumber license of the endorsement holder expired. Any continuing education requirement applicable to the endorsement would have to be completed before the endorsement could be renewed.

Temporary licenses. TDLR would be allowed to issue temporary licenses, endorsements, or certificates of registration, which would expire 30 days after being issued and could not be renewed.

Training. TDLR would be required to establish minimum requirements for classroom training, other than a continuing education program, that the department would credit toward various licensing and supervisory requirements.

Examinations. SB 621 would require TDLR to recognize, prepare, administer, or arrange for the administration of examinations related to the licensing of plumbers and required by the bill. TDLR would have to determine the minimum requirements and passing score for plumbing licensing exams.

If an examination contained a practical component, that component would have to be administered by a plumbing examiner. TDLR would have to employ or contract with one or more plumbing examiners to administer such examination components. Examiners would have to meet certain requirements, but the bill would remove the current requirement that examiners be qualified by experience or training in plumbing practice.

Continuing education. TCLR would be required to establish minimum curriculum standards for continuing education programs and courses for persons who held a license or endorsement issued under the bill, as well as minimum qualifications for instructors of such programs and courses.

TDLR would have to approve a program, course, or instructor that met the minimum curriculum standards. A person could receive credit for participating in a continuing education program only if the program or course was approved by the department.

Field representatives and inspections. Field representatives hired by TDLR would not be required to hold a plumbing license or to be qualified by experience and training in plumbing practice. The authority of field representatives to issue citations and to check the license, registration, or endorsement of a person regulated by the bill would be repealed.

For an inspection or investigation that involved the quality of plumbing work, TDLR would be required to employ or contract with a person who held a license as a plumber to conduct or assist in the inspection or investigation.

Enforcement. The commission could establish standards of conduct for a holder of a license, endorsement, or certificate of registration, and TDLR and TCLR could enforce laws, rules, and orders related to plumbers.

Violations of relevant laws would include:

- fraudulently obtaining or attempting to obtain a license, endorsement, or registration;
- performing plumbing without holding the proper license, endorsement, or certificate of registration;
- offering to perform or performing plumbing for compensation without holding a plumbing contractor license or contracting with a plumbing contractor;
- performing plumbing in violation of the plumbing code; and
- failing to supervise plumbing as required by statute.

Dissolution of TSBPE. TSBPE would be abolished on the effective date of the bill but would continue in existence until September 1, 2020, in order to transfer its obligations, property, rights, powers, and duties to TDLR. The department would assume all of TSBPE's obligations, property, rights, powers, and duties as they existed immediately before the effective date of the bill, and all unexpended funds appropriated to TSBPE would be transferred to the department.

All TSBPE rules would be continued in effect as rules of TDLR until superseded. Licenses, endorsements, and certificates of registration issued by TSBPE, as well as applications for licenses, endorsements, or registrations, would continue to be valid as provided by the law that was in effect immediately before the effective date of the bill. Any pending complaint, investigation, contested case, or other proceeding would be continued without change in status after the effective date of the bill.

The governor would have to appoint members to the Texas Plumbing Advisory Board by December 1, 2019. Members of TSBPE would be eligible for appointment.

Responsibilities of TDLR. Not later than September 1, 2021, TDLR would have to obtain criminal history record information using a person's name, date of birth, and other alphanumeric identifiers for each person who held a plumbing license on September 1, 2019, and had not undergone a criminal history record information check on submission of that person's initial license application.

Not later than September 1, 2023, TDLR would have to obtain criminal history record information using a person's fingerprints for each person who held a plumbing license on September 1, 2019, and had not undergone a criminal history record information check on submission of the person's initial license application. TDLR could suspend the license of a person who did not comply with the department's request to provide information or fingerprints.

The bill would take effect on September 1, 2019.

**SUPPORTERS
SAY:**

SB 621 would transfer the duties of the Texas State Board of Plumbing Examiners (TSBPE) to the Texas Department of Licensing and Regulation (TDLR) and reconstitute the independent plumbing board as an advisory board. This would provide a responsive approach to lingering issues at TSBPE and improve the organization and efficiency of plumbing industry oversight in the state.

Transfer of duties. The Sunset Advisory Commission has identified many concerns with TSBPE, including burdensome rulemaking and neglect of regulatory functions. SB 621 would address these concerns by reconstituting TSBPE as the Texas Plumbing Advisory Board and transferring the board's duties to TDLR. The department has proven itself to be effective at occupational regulation and licensing and is well-equipped to oversee the plumbing industry.

The advisory board created by SB 621 would closely resemble TSBPE, but would reserve one more seat for plumbers than on the current board. TSBPE members would be eligible for appointment to the advisory board, allowing the board to continue to benefit from its experience and specialty knowledge while also benefiting from the oversight and expertise of TDLR.

Plumbing contractor license. SB 621 would create the plumbing contractor license, which would replace the responsible master plumber (RMP) designation. Under current law, no one can contract for a plumbing job without holding a responsible master plumber designation, which can be burdensome to obtain. Requirements that responsible master plumbers supervise all plumbing projects also can result in work not being completed in a timely manner.

Under the bill, a plumbing contractor would take on the business responsibilities that are currently the purview of the RMP, but would not be required to have plumbing expertise. Instead, the contractor would have to retain a master plumber on staff in order to supervise the

plumbing work. This would help minimize disruptions to plumbing jobs and would allow contractors to quickly hire plumbers to work for a Texas-licensed master plumber during disaster recovery events.

Examinations. Texas currently faces a shortage of plumbers and a backlog for plumbing exams, which require applicants to travel to Austin to take practical exam components. SB 621 would allow TDLR to contract with third-party exam companies to develop and administer plumbing exams, improving the frequency and effectiveness of testing.

OPPONENTS
SAY:

SB 621 would reduce the role of plumbers in overseeing their own profession, inappropriately abolish a needed agency, and fail to address the backlog in plumbing exams.

Transfer of duties. Plumbing plays an essential role in public health and safety, and its regulation should be conducted by experts with experience in the field. While the bill would create a plumbing advisory board at TDLR, the board would not have the final say in setting policy, and transitioning registration and licensing authority from an independent plumbing board to TDLR could result in a loss or devaluation in plumbing expertise. In addition, the department already is responsible for the regulation of many occupations and licenses, and assigning the duties and responsibilities of TSBPE to TDLR could overburden the department. It would be more effective and appropriate to address existing issues at TSBPE with policy, personnel, or funding changes.

Examinations. SB 621 would insufficiently address the backlog in plumbing examinations, the most pressing item on the plumbing oversight agenda. Rather than reorganize licenses or outsource exams, the bill should allow plumbing exams to be offered in more than one location.

NOTES:

According to the Legislative Budget Board, the bill would have a positive impact of \$454,107 to general revenue related funds through fiscal 2020-21.