

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1718
By: Bernsen
Natural Resources
4/22/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the Texas Natural Resource Conservation Commission (TNRCC) operates 12 different programs to regulate certain occupations. These programs originated in different agencies that were combined to form the TNRCC and lack consistent administrative or procedural requirements, resulting in an often inefficient operation of the programs and regulation of affected workers in a variety of occupations. C.S.S.B. 1718 creates Chapter 37 in the Water Code to consolidate administrative requirements and establish uniform procedures for the occupational licensing and registration programs administered by the TNRCC.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the TNRCC in SECTION 1 (Sections 37.001 and 37.005, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2E, Water Code, by adding Chapter 37, as follows:

CHAPTER 37. OCCUPATIONAL LICENSING AND REGISTRATION

Sec. 37.001. PURPOSE AND AUTHORITY (a) Sets forth legislative purpose.

(b) Requires the Texas Natural Resource Conservation Commission (commission) to adopt any rules necessary to establish certain provisions.

Sec. 37.002. DEFINITIONS. Defines "commission," "individual," "license," "person," and "registration."

Sec. 37.003. QUALIFICATIONS. Authorizes the commission to establish qualifications for each license and registration issued under this chapter.

Sec. 37.004 APPLICATION AND PROCESSING APPLICATIONS; ISSUING LICENSES AND REGISTRATIONS. (a) Requires the commission to establish requirements and uniform procedures for issuing licenses and registrations under this chapter.

(b) Authorizes the commission to waive any prerequisite to obtaining a license or registration for an applicant after receiving the applicant's credentials and determining that the applicant holds a license or registration issued by another state that has requirements substantially equivalent to those of this state.

(c) Authorizes the commission, after notice and hearing, to deny an application for a license or registration on any of certain grounds.

Sec. 37.005. RENEWALS. (a) Requires the commission to establish requirements and uniform

procedures for renewing licenses and registrations issued under this chapter.

- (b) Authorizes a person whose application to renew a license or registration is timely and sufficient to renew an unexpired license or registration by paying the required renewal fee to the commission before the expiration date.
- (c) Prohibits a person whose license or registration has expired from engaging in activities that require a license or registration until the license or registration has been renewed.
- (d) Requires the commission, not later than a certain date, to send written notice of the impending expiration to the person at the person's last known address according to records of the commission.
- (e) Authorizes the commission by rule to adopt a system under which licenses and registrations expire on various dates during the year. Requires the commission, for the year in which a license or registration expiration date is changed, to prorate fees on a monthly basis so that each license or registration holder pays only the portion of the fee that is allocable to the number of months during which the license or registration is valid. Provides that on renewal of the license or registration on the new expiration date, the total renewal fee is payable.
- (f) Authorizes a person whose license or registration has been expired for 30 days or less to apply for renewal of the license or registration by paying to the commission a renewal fee that is up to 1-1/2 times the normally required renewal fee.
- (g) Prohibits a person whose license or registration has been expired for more than 30 days from renewing the license or registration. Authorizes the person to obtain a new license or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license or registration.

Sec. 37.006. LICENSING EXAMINATIONS. (a) Requires the commission to prescribe the content of licensing examinations. Requires examinations to be based on certain criteria.

- (b) Requires the commission to determine the location and frequency of examinations.
- (c) Requires the commission, not later than a certain date after a person takes a licensing examination, to notify the person of the results of the examination.
- (d) Requires the commission, under certain conditions, to, within a reasonable time, furnish the person with an analysis of the person's performance on the examination. Requires the commission to ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.
- (e) Requires the commission to ensure that an otherwise qualified individual who has certain disabilities be provided with reasonable opportunity to take a licensing examination.

Sec. 37.007. TRAINING. (a) Requires training programs necessary to qualify for or renew a license to be provided by the commission.

- (b) Requires the commission to establish and make available to the public uniform procedures for approving training to qualify for or renew a license.
- (c) Authorizes the commission to perform certain procedures for license holders.

Sec. 37.008. FEES. (a) Requires the commission to establish and collect fees to cover the cost of administering and enforcing this chapter.

(b) Requires fees paid to the commission to be deposited to the credit of the occupational licensing account in the general revenue fund.

Sec. 37.009. ADVERTISING. (a) Prohibits the commission from adopting rules restricting advertising or competitive bidding by a license or registration holder except to prohibit certain practices.

(b) Prohibits the commission from including certain rules.

Sec. 37.010. COMPLAINTS. Requires the commission to prepare and make available to the public information describing the procedures by which a person is authorized to submit licensing and registration complaints to the commission.

Sec. 37.011. COMPLIANCE INFORMATION. Authorizes the commission to require a person to provide information about other occupational licenses and registrations held, including certain specified information.

Sec. 37.012. ENFORCEMENT. (a) Prohibits a person from engaging in the business, occupation, or profession for which a license or registration is prescribed by Section 26.0301, 26.3573, 26.452, 26.456, or 34.002 of this code or Section 341.033 (Protection of Public Water Supplies), 341.034 (Water Supply System Operator: Certificate of Competency), 361.027 (Training of Solid Waste Technicians), 366.014 (Designated Representative), or 366.071 (Registration), Health and Safety Code, unless the person holds the appropriate license or registration issued by the commission.

(b) Requires a license or registration holder to perform certain procedures governed by a license or registration according to applicable laws and rules and orders of the commission.

(c) Prohibits a person from certain procedures in violation of this chapter or any commission rule or order.

(d) Requires a violation of this chapter, except under certain sections, to be enforced under the provisions of Chapter 7. Requires a violation of Section 341.033 or 341.034, Health and Safety Code, to be enforced according to Chapter 341 (Minimum Standards of Sanitation and Health Protection Measures), Health and Safety Code.

Sec. 37.013. ROSTER OF LICENSEES AND REGISTRANTS. Requires the commission to maintain and make available to the public an official roster of persons who hold licenses or registrations.

Sec. 37.014. POWER TO CONTRACT. Authorizes the commission to contract with persons to provide services required by this chapter. Authorizes the commission to authorize contractors to collect reasonable fees for the services provided.

SECTION 2. Amends Section 7.052(a), Water Code, to prohibit the amount of the penalty for a violation of Chapter 18, 34, or 37, rather than Chapters 32 and 33, of this code or Chapter 366 (On-Site Sewage Disposal Systems), 371 (Used Oil Collection, Management, and Recycling), or 372 (Environmental Performance Standards for Plumbing Fixtures), Health and Safety Code, from exceeding \$2,500 a day for each violation.

SECTION 3. Amends Section 7.102, Water Code, to make a conforming change.

SECTION 4. Amends Section 7.156, Water Code, to make nonsubstantive and conforming changes.

SECTION 5. Amends Section 7.303, Water Code, as follows:

(a) Makes a conforming change.

(b) Authorizes the commission to perform certain procedures on certain grounds. Deletes text regarding a licensed, certified, or registered site. Deletes text regarding a license issued under Chapter 18. Deletes text regarding certificate of competency. Deletes text regarding failing to advise a person.

SECTION 6. Amends Section 26.0301, Water Code, as follows:

Sec. 26.0301. New heading: WASTEWATER OPERATIONS COMPANY REGISTRATION AND OPERATOR LICENSING. (a) Requires the holders of permits to discharge wastewater from a sewage treatment facility to employ a treatment plant operator holding a valid license, rather than certificate of competency, issued by the commission for the type of facility being operated. Makes a nonsubstantive change.

(b) Requires every person, rather than company, corporation, firm, or partnership, that is in the business of providing sewage treatment or collection facility services under contract, rather than operations, to hold a valid registration, rather than certification of competency, issued by the commission under Chapter 37. Deletes text regarding sewage plant operators and text regarding certain persons who operate a sewage treatment facility.

(c) Requires a person who performs process control activities at a sewage treatment facility or supervises the maintenance of a sewage collection system to hold a valid license issued under the direction of the commission under Chapter 37. Deletes text requiring the commission by rule to set a certain fee.

SECTION 7. Amends Section 26.0405(b), Water Code, to make a conforming change.

SECTION 8. Amends Sections 26.3573(j) through (q), Water Code, as follows:

Sec. 26.3573. PETROLEUM STORAGE TANK REMEDIATION ACCOUNT.

(j)(1) Authorizes the commission to implement a program under Chapter 37 to register persons who contract with certain persons to perform corrective action under this subchapter. Deletes text regarding the commission by rule. Makes conforming changes.

(j)(2) Requires the commission, on the request of a professional engineer licensed or registered by the Texas Board of Professional Engineers, to register in the program. Makes conforming changes.

(j)(3) Authorizes an engineer registered in the program to contract to perform corrective action unless the Texas Board of Professional Engineers, rather than State Board of Registration for Professional Engineers, determines the engineer is not qualified to perform a corrective action.

(j)(4) Provides that an engineer registered under this section, rather than in the program, is subject only to certain criteria adopted by the Texas Board of Professional Engineers.

(j)(5) Prohibits the commission from adopting minimum qualifications for a professional engineer licensed or registered by the Texas Board of Professional Engineers, rather than professional engineer, with whom an eligible owner or operator is authorized to contract to participate in a

corrective action or who performs or supervises the corrective action. Deletes text regarding a person licensed and registered as professional engineer.

(j)(6) Authorizes any qualified contractor registered under Chapter 37 to perform certain procedures on a site.

(k)(1) Authorizes the commission to implement a program under Chapter 37 of this code to license persons who supervise a corrective action under this subchapter.

(k)(2) Requires the commission, on the request of a professional engineer licensed or registered by the Texas Board of Professional Engineers, to license the engineer in the program.

(k)(3) Authorizes an engineer licensed in the program to supervise a corrective action under this subchapter unless the Texas Board of Professional Engineers makes certain determinations.

(k)(4) Provides that an engineer licensed in the program is subject only to certain criteria adopted by the Texas Board of Professional Engineers.

(k)(5) Prohibits the commission from adopting minimum qualifications for a professional engineer licensed or registered by the Texas Board of Professional Engineers with whom an eligible owner or operator is authorized to contract to participate in a corrective action or who performs or supervises the corrective action.

(l) Authorizes the commission to require the use of registered contractors and licensed, rather than registered corrective action, supervisors by an eligible owner or operator as a prerequisite to the payment of money from the petroleum storage tank remediation account for corrective action under this subchapter. Deletes text regarding any qualified registered contractor.

(m) Makes conforming changes.

Redesignates Subsections (k) through (q) as Subsections (n) through (t).

SECTION 9. Amends the heading to Chapter 26K, Water Code, to read as follows:

SUBCHAPTER K. OCCUPATIONAL LICENSING AND REGISTRATION

SECTION 10. Amends Sections 26.451 through 26.456, Water Code, as follows:

Sec. 26.451. DEFINITIONS. Deletes definitions for “certificate of registration,” “committee,” “installer,” “license,” “on site supervisor,” “operator,” “owner,” “person,” “underground storage tank,” and “underground storage tank contractor.”

Sec. 26.452. New heading: UNDERGROUND STORAGE TANK CONTRACTOR REGISTRATION. (a) Requires a person who offers to perform certain procedures regarding an underground storage tank to hold a registration issued by the commission under Chapter 37. Deletes text regarding an underground storage tank contractor.

(b) Requires an underground storage tank contractor to have an on-site supervisor who is licensed by the commission under Chapter 37 at the site at all times during the critical junctures of the installation, repair, or removal. Deletes text regarding certificate of registration.

(c) Provides that this subchapter does not apply to the installation of a storage tank or facility exempt from regulation under Section 26.344. Deletes text regarding certificate of registration.

Deletes Sections 26.453 (LICENSE REQUIRED), 26.454 (POWERS AND DUTIES OF COMMISSION), and 26.455 (EXAMINATION).

Sec. 26.453. (Redesignated from existing Section 26.456). New heading: UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING. (a) Requires a person supervising the installation, repair, or removal of an underground storage tank to hold a license issued by the commission under Chapter 37. Deletes text regarding the commission issuing an installer or on-site supervisor license.

(b) Requires an on-site supervisor to be present at the site at all times during the critical junctures of the installation, repair, or removal. Deletes text regarding the validity of a license.

SECTION 11. Amends Sections 34.001, 34.002, and 34.003, Water Code, to redefine “council.” Provides that the term “irrigation system” does not include a system used on or by an agricultural operation as defined in Section 251.002 (Definitions), Agriculture Code. Deletes definitions regarding “irrigation,” “licensed irrigator,” “installer,” and “licensed installer.”

Sec. 34.002. LANDSCAPE IRRIGATOR AND INSTALLER LICENSING AND EXEMPTIONS. (a) Requires a person who meets certain criteria to hold a license issued by the commission under Chapter 37. Prohibits the commission from requiring a person who held a license as a landscape irrigator under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, V.T.C.S.), on August 27, 1979, to pass an examination in order to be licensed.

(b) Provides that the licensure requirements of this chapter do not apply to certain persons.

(c) Deletes text regarding irrigation system.

Sec. 34.003. New heading: IRRIGATOR ADVISORY COUNCIL. (a) Requires the commission to appoint an advisory council for the purpose of providing advice to the commission and staff concerning matters relating to landscape irrigation. Provides that the irrigator advisory council, rather than Texas irrigators advisory council, is composed of certain members.

(d) Deletes text regarding a council member or employee of the commission.

(e) Requires the council to hold meetings at the call of the commission or the chairman. Deletes text regarding meetings are required to be conducted in compliance with Chapter 551, Government Code.

SECTION 12. Amends Section 34.006(a), Water Code, to require the commission to adopt standards governing the connection of irrigation systems, rather than connections, to any water supply. Deletes text regarding rules consistent with this chapter. Deletes text regarding public or private water supplies. Deletes text regarding a licensed irrigator.

SECTION 13. Amends Section 341.033(a), Health and Safety Code, to prohibit a person from furnishing drinking water to the public for a charge unless certain aspects of the operation are under the supervision of a water supply system operator holding a license issued by the commission under Chapter 37, Water Code. Deletes text regarding a valid certificate.

SECTION 14. Amends Section 341.034, Health and Safety Code, as follows:

Sec. 341.034. New heading: PUBLIC WATER SUPPLY OPERATIONS COMPANY

REGISTRATION AND OPERATOR LICENSING. (a) Requires a person who operates a public water supply on a contract basis to hold a registration issued by the commission under Chapter 37, Water Code. Deletes text regarding the commission adopting rules.

(b) Requires a person who performs process control duties in production or distribution of drinking water for a public water system to hold a license issued by the commission under Chapter 37, Water Code, unless certain conditions exist. Deletes text regarding a certificate of competency.

(c) Requires a person who repairs or tests the installation or operation of backflow prevention assemblies to hold a license issued by the commission under Chapter 37, Water Code. Deletes text regarding fees collected.

(d) Requires a person who inspects homes and businesses to identify potential or actual cross-connections or other contaminant hazards in public water systems to hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas State Board of Plumbing Examiners as a plumbing inspector or water supply protection specialist.

(e) Requires a person, unless the person is licensed by the Texas Board of Plumbing Examiners, to hold a license issued by the commission under Chapter 37, Water Code, if the person under contract meets certain criteria.

SECTION 15. Amends Section 361.027, Health and Safety Code, by amending the section heading and Subsection (a), as follows:

Sec. 361.027. SOLID WASTE SUPERVISOR LICENSING. (a) Authorizes the commission to implement a program under Chapter 37, Water Code, to license persons who supervise the operation or maintenance of solid waste facilities. Deletes text regarding developing and issuing certain criteria by the commission.

SECTION 16. Amends Section 366.001, Health and Safety Code, to set forth public policy and purpose. Deletes text requiring a certain system to register with the commission.

SECTION 17. Amends Section 366.002, Health and Safety Code, to delete the definitions of “designated representative” and “installer.”

SECTION 18. Amends Section 366.012(a), Health and Safety Code, to delete text regarding registration of installers.

SECTION 19. Amends Section 366.014, Health and Safety Code, as follows:

Sec. 366.014. New heading: DESIGNATED PERSON. Authorizes the commission or an authorized agent, subject to the requirements of Section 366.071(b), to designate a person to perform certain acts. Deletes text regarding procedures for qualification as a designated representative.

SECTION 20. Amends Section 366.071, Health and Safety Code, as follows:

Sec. 366.071. New heading: OCCUPATIONAL LICENSING AND REGISTRATION. (a) Requires a person who meets certain criteria to hold a license or registration issued by the commission under Chapter 37, Water Code.

(b) Requires a person designated by an authorized agent under Section 366.014 to hold a license issued by the commission under Chapter 37, Water Code.

(c) Requires a person who meets certain criteria, effective September 1, 2002, to hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas Board of Professional Engineers as a professional engineer.

(d) Authorizes the commission to implement a program under Chapter 37, Water Code, to register persons who service or maintain on-site sewage disposal systems for compensation. Deletes text prohibiting certain persons from operating an installer.

SECTION 21. Repealer: Section 3A (Acts Permitted Without a License), The Plumbing License Law (Article 6243-101, V.T.C.S.).

SECTION 22. Repealer: Sections 26.457 (License Renewal), 26.458 (Fees), 26.459 (Reinstatement of License or Certificate of Registration), 34.004 (Employees), 34.005 (Commission Finances), 34.006(c) through (j) (regarding certain commission responsibilities), 34.007 (Registration Requirement), 34.008 (Reciprocity), 34.009 (Renewal), and 34.015 (Certification of Certain Persons), Water Code.

SECTION 23. Repealer: Section 361.027(b) (relating to the owner or operator of a solid waste facility) and (c) (relating to the commission's authorization to perform certain duties), 366.013 (Training Program), 366.072 (Registration Application), 366.073 (Registration Issuance), 366.074 (Registration Fee), 366.075 (Proof of Registration), 366.076 (Registration Renewal), and 366.078 (Official Roster of Registered Installers), Health and Safety Code.

SECTION 24. Effective date: September 1, 2001.

Makes application of this Act to renewal of a license or registration prospective to January 1, 2002.

Requires the TNRCC to adopt rules after the effective date of this Act.

SUMMARY OF COMMITTEE CHANGES

SECTION 6. Amends As Filed S.B. 1718, Title 2E, Water Code, by amending proposed Section 26.0301.

SECTION 8. Adds current heading of Section 26.3573.

SECTION 11. Redefines "council." Makes a nonsubstantive change. Amends proposed Section 34.003 by restoring existing Subsections (c) and (d), which the original proposed to delete.

SECTION 14. Makes a nonsubstantive change.