

BILL ANALYSIS

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S.B. 617
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As a result of the public's growing attention to energy efficiency and consumption, homeowners have turned to professionals known as energy auditors to conduct independent analyses of their energy use and provide recommendations as to how they can become more energy efficient. Various state and national organizations have developed certification programs to train and certify energy auditors for this work.

Although energy auditors can provide homeowners with valuable analyses, two problems currently exist with the way in which they operate in the state. First, because of the state's air conditioning and refrigeration contractor licensing requirements, energy auditors who are not licensed air conditioning and refrigeration contractors operate in violation of the law when they perform certain tasks relating to an air conditioning unit. Second, in the absence of a statewide regulatory program applicable to energy auditors, some individuals have offered to perform energy audits without proper training or supervision, or with the biased objective to justify the sale of particular products or services.

S.B. 617 creates a new chapter in the Occupations Code, establishing a regulatory program applicable to energy auditors. This program requires energy auditors to register with the Texas Department of Licensing and Regulation (TDLR) in order to "perform an energy efficiency analysis, assessment, or audit or produce an energy efficiency report on a residential structure." In order to obtain this registration, an energy auditor would have to obtain a certification through an accredited regulating body, meet experience and insurance requirements, and submit an application and registration fee to TDLR. Once an energy auditor obtains TDLR registration, he or she would be exempt from certain air conditioning and refrigeration licensing requirements.

As proposed, S.B. 617 amends current law relating to the regulation of energy efficiency professionals, provides penalties, and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 (Sections 1307.051 and 1307.103, Occupations Code) and SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 8, Occupations Code, by adding Chapter 1307, as follows:

CHAPTER 1307. ENERGY EFFICIENCY PROFESSIONALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1307.001. DEFINITIONS. Defines "commission," "department," "energy efficiency analysis, assessment, or audit," "energy efficiency report," "HVAC system," and "registered energy efficiency professional" for this chapter.

Sec. 1307.002. APPLICABILITY. (a) Provides that this chapter applies to an energy efficiency audit performed on a residential structure.

(b) Provides that a registered energy efficiency professional who performs an energy efficiency analysis, assessment, or audit and produces an energy efficiency report is not engaged in air conditioning and refrigeration contracting as defined by Section 1302.002 (Definitions) if a component of the energy efficiency analysis, assessment, or audit relating to an air conditioning and refrigeration system is performed in accordance with the latest version of the applicable federal and state standards.

Sec. 1307.003. EXEMPTIONS. (a) Provides that this chapter does not apply to a person who is licensed as an engineer under Chapter 1001 (Engineers), performs air conditioning and refrigeration contracting work in the scope of the person's employment, and does not engage in air conditioning and refrigeration contracting work for the public.

(b) Provides that a person is not required to be registered under this chapter if the person is working under the direct supervision of a registered energy efficiency professional who is physically present on the premises where the work is performed.

SUBCHAPTER B. REGULATION OF ENERGY EFFICIENCY ANALYSES, ASSESSMENTS, AND AUDITS

Sec. 1307.051. RULES. (a) Requires the Texas Commission of Licensing and Regulation (TCLR) by rule to establish the form and content of the required application for registration under this chapter; an application fee for registration under this chapter; insurance requirements for a registered energy efficiency professional, which must be similar to the requirements for the holder of an air conditioning and refrigeration contractor license described by Section 1302.253(c) (relating to a Class B license entitling a license holder to engage in air conditioning and refrigeration contracting); standards of conduct for a registered energy efficiency professional; and other rules necessary for the administration of this chapter.

(b) Prohibits TCLR from requiring an applicant or person registered under this chapter to post a bond or establish minimum education requirements for an applicant for registration under this chapter, except as otherwise provided in this chapter.

Sec. 1307.052. CONDUCTING ENERGY EFFICIENCY ANALYSES, ASSESSMENTS, AND AUDITS. Authorizes an energy efficiency analysis, assessment, or audit to include:

(1) the inspection, testing, investigation, or surveying of a structure to evaluate, measure, or quantify the structure's energy consumption and efficiency, including verification of the structure's HVAC system; inspection of the integrity of the building envelope, including air leakage, durability, and insulation; and inspection and evaluation of the efficiency of the structure's lighting, electronics, and appliances; and

(2) recommendations to improve the efficiency of an item or system inspected or evaluated under Subdivision (1).

Sec. 1307.053. REQUIRED DISCLOSURES. Requires an energy efficiency report that contains a recommendation regarding an HVAC system to contain certain language in a certain form.

Sec. 1307.054. LIST OF REGISTERED ENERGY EFFICIENCY PROFESSIONALS. Requires the Texas Department of Licensing and Regulation (TDLR) to maintain a list of all persons registered under this chapter.

SUBCHAPTER C. REGISTRATION

Sec. 1307.101. REGISTRATION REQUIRED. Prohibits a person from performing an energy efficiency analysis, assessment, or audit or produce an energy efficiency report on a residential structure unless the person is registered by TDLR as a registered energy efficiency professional.

Sec. 1307.102. QUALIFICATIONS; TERM OF REGISTRATION. (a) Requires TDLR to register an applicant who:

(1) obtains a certification through an applicable training and certification program accredited by a state or national regulating body;

(2) completes at least five residential energy efficiency analyses, assessments, or audits under the supervision of a registered energy efficiency professional;

(3) demonstrates proof of good standing with an organization that has certified the applicant under Subdivision (1) and insurance as required by TCLR; and

(4) submits the application and fees required by TCLR.

(b) Provides that, unless renewed, a registration issued under this chapter expires on the first anniversary of the date of issuance.

Sec. 1307.103. RENEWAL AND CONTINUING EDUCATION. Requires TCLR to adopt rules for continuing education required for registered energy efficiency professionals and the renewal of a registration issued under this chapter.

SUBCHAPTER D. ENFORCEMENT

Sec. 1307.151. DISCIPLINARY ACTION. Provides that a person is subject to any disciplinary action that is authorized to be imposed on a license holder under Subchapter G (Other Penalties and Enforcement Provisions), Chapter 51, if the person violates this chapter or a rule adopted under this chapter or obtains a registration by fraud or false representation.

Sec. 1307.152. ADMINISTRATIVE PENALTY. Authorizes TDLR to impose an administrative penalty in the manner provided by Subchapter F (Administrative Penalty), Chapter 51, on a person if the person violates this chapter or a rule adopted under this chapter or obtains a registration by fraud or false representation.

Sec. 1307.153. CEASE AND DESIST; CIVIL PENALTY; INJUNCTION. (a) Authorizes TDLR to issue a cease and desist order if TDLR determines that an order is necessary to prevent a violation of this chapter or protect the public health and safety.

(b) Authorizes the attorney general or TDLR under this subchapter to institute an action for an injunction or a civil penalty as provided by Section 51.352 (Injunctive Relief; Civil Penalty).

SECTION 2. (a) Requires TCLR, not later than November 1, 2013, to adopt rules required by Chapter 1307, Occupations Code, as added by this Act.

(b) Provides that, notwithstanding Chapter 1307, Occupations Code, as added by this Act, an energy efficiency professional is not required to hold a certificate of registration under that chapter to perform an energy efficiency analysis, assessment, or audit or to produce an energy efficiency report until January 1, 2014.

SECTION 3. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2013.

(b) Effective date, Section 1307.101, Occupations Code, as added by this Act, January 1, 2014.