

BILL ANALYSIS

Senate Research Center
83R15670 SLB-F

C.S.S.B. 617
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Business & Commerce
3/27/2013
Committee Report (Substituted)

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.

C.S.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 their work in the state. To obtain this registration, an energy auditor would have to hold an appropriate certification from an energy efficiency evaluation program, meet experience and insurance requirements, submit an application and registration fee to TDLR, and pass a criminal history background check. Once an energy auditor obtains TDLR registration, he or she would be exempt from certain air conditioning and refrigeration licensing requirements.

C.S.S.B. 617 amends current law relating to the regulation of energy efficiency professionals and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 (Sections 1307.051, 1307.052, 1307.152, and 1307.252, 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. SHORT TITLE. Authorizes this chapter to be cited as the Energy Efficiency Professionals Act.

Sec. 1307.002. DEFINITIONS. Defines "ACCA," "ANSI," "commission," "covered premises," "department," "direct, on-site supervision," "energy efficiency evaluation," "energy efficiency evaluation training or certification program," "energy efficiency

professional," "energy efficiency report," "environmental air conditioning," "executive director," "existing home," "HVAC system," "HVAC system design training program," "light commercial building," "new home," "performance testing," and "process cooling or heating" for this chapter.

Sec. 1307.003. APPLICABILITY. (a) Provides that this chapter applies to:

- (1) an energy efficiency evaluation performed on a covered premise;
- (2) an energy efficiency report based on an energy efficiency evaluation described by Subdivision (1); and
- (3) a recommendation made as a result of an energy efficiency evaluation.

(b) Provides that a registered energy efficiency professional who performs an energy efficiency evaluation and produces an energy efficiency report or provides a building's heating, ventilation, and air conditioning system (HVAC) system design recommendations is not engaged in air conditioning and refrigeration contracting as defined by Section 1302.002.

Sec. 1307.004. EXEMPTIONS. (a) Provides that this chapter does not apply to an individual who performs an energy efficiency evaluation, provides an energy efficiency report, or makes an HVAC system design recommendation and who:

- (1) is licensed as or employed by an engineer licensed under Chapter 1001 (Engineers); an architect licensed under Chapter 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects); or an air conditioning and refrigeration contractor licensed under Chapter 1302 (Air Conditioning and Refrigeration Contractors); or
- (2) is employed by an electric utility, power generation company, retail electric provider, electric cooperative, or municipally owned utility or a utility program management firm for the purposes of performing quality assurance.

(b) Provides that an individual is not required to be registered under this chapter if the individual is working under the direct, on-site supervision of an energy efficiency professional.

(c) Provides that an exemption under this section does not exempt an individual from complying with the requirements of Chapter 1302.

(d) Provides that an individual who is otherwise exempt under this section is required to obtain a registration under this chapter if the individual performs or offers to perform an energy efficiency evaluation, provides an energy efficiency report, or makes HVAC system design recommendations for the public not in the scope of the individual's employment.

(e) Provides that this chapter does not apply to a building code compliance inspector who reviews or inspects a building for building code compliance in the scope of the individual's employment or contract while employed by or under contract with a local governmental entity or building contractor.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 1307.051. RULES. Requires the Texas Commission of Licensing and Regulation (TCLR) to adopt rules providing for:

- (1) the requirements for registration, registration renewal, and reinstatement of a registration issued under this chapter;
- (2) the requirements for obtaining and renewing endorsements on a registration issued under this chapter;
- (3) the standards of conduct for an energy efficiency professional;
- (4) the criteria for recognizing an energy efficiency evaluation training and certification program;
- (5) the criteria for recognizing HVAC system design training programs;
- (6) the applicable standards for conducting energy efficiency evaluations; providing energy efficiency reports; and providing HVAC design recommendations;
- (7) fees reasonable and necessary to administer this chapter; and
- (8) other rules necessary for the implementation and administration of this chapter.

Sec. 1307.052. **INSURANCE REQUIREMENTS.** (a) Requires TCLR to establish minimum general liability insurance requirements for an energy efficiency professional.

(b) Requires an energy efficiency professional to maintain insurance as prescribed by TCLR rule during the entire term of the person's registration.

Sec. 1307.053. **LIST OF RECOGNIZED PROGRAMS.** Requires the Texas Department of Licensing and Regulation (TDLR) to maintain and make available to the public a list of:

- (1) energy efficiency evaluation training or certification programs recognized by TDLR; and
- (2) HVAC system design training programs recognized by TDLR.

Sec. 1307.054. **LIST OF ENERGY EFFICIENCY PROFESSIONALS.** Requires TDLR to maintain and make available to the public a directory of all individuals registered under this chapter.

Sec. 1307.055. **CRIMINAL BACKGROUND CHECKS.** Authorizes TDLR to, as permitted by law:

- (1) examine any criminal conviction, guilty plea, or deferred adjudication of an applicant for the issuance or renewal of a registration issued under this chapter; and
- (2) obtain any criminal history record information of the applicant.

SUBCHAPTER C. REGISTRATION

Sec. 1307.101. **REGISTRATION REQUIRED.** Prohibits an individual from performing an energy efficiency evaluation, providing an energy efficiency report, or providing a recommendation regarding HVAC system design on covered premises unless the individual is registered by TDLR as an energy efficiency professional.

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

- (1) holds an appropriate certification from an energy efficiency evaluation training or certification program recognized by TDLR;
- (2) performs at least five energy efficiency evaluations under the direct, on-site supervision of an energy efficiency professional;
- (3) demonstrates proof of completion of an HVAC system design training program, if applicable, and insurance as required by TCLR rule;
- (4) submits the application and fees required by TCLR; and
- (5) passes a criminal history record information check.

(b) Authorizes TDLR to credit towards the requirement of Subsection (a)(2) an applicant's verified experience in performing energy efficiency evaluations earned while working in another jurisdiction, during military training or service, or through other experience as determined by the executive director.

(c) Provides that a registration issued under this chapter expires on the first anniversary of the date the registration was issued.

(d) Requires an energy efficiency professional to maintain the certification described by Subsection (a)(1) in good standing in order to retain a registration issued under this chapter.

Sec. 1307.103. **ENDORSEMENT REQUIRED.** Prohibits an energy efficiency professional from performing an energy efficiency evaluation, providing an energy efficiency report, or providing recommendations for a type of covered premises for which the registration holder does not hold an endorsement.

Sec. 1307.104. **PREMISES ENDORSEMENTS.** (a) Authorizes TDLR to issue a premises endorsement to a registration issued under this chapter based on a certification that satisfies the requirement of Section 1307.102(a)(1).

(b) Requires a registration to be endorsed with one or more of the following premises endorsements: new home; existing home; or light commercial building.

(c) Provides that the premises endorsement allows the holder to perform an energy efficiency evaluation or provide an energy efficiency report for the type of covered premises listed on the endorsement.

Sec. 1307.105. **HVAC SYSTEM DESIGN ENDORSEMENT.** Provides that the HVAC system design endorsement allows the holder to provide recommendations regarding the HVAC system design of covered premises. Authorizes TDLR to issue an HVAC system design endorsement to a registration holder if the holder:

- (1) satisfies the requirement of Section 1307.102(a)(1);
- (2) provides proof that the applicant has successfully completed at least 80 hours of training from an HVAC design training program recognized by TDLR; and
- (3) has been issued a premises endorsement under Section 1307.104(b).

Sec. 1307.106. **RENEWAL OF REGISTRATION AND ENDORSEMENTS.** Authorizes an energy efficiency professional to renew a registration or endorsement issued under this chapter by completing the registration and endorsement renewal requirements, including the payment of a required fee, established by TCLR rule.

SUBCHAPTER D. PRACTICE OF ENERGY EFFICIENCY PROFESSIONALS

Sec. 1307.151. SCOPE OF PRACTICE. (a) Requires an energy efficiency professional to conduct an energy efficiency evaluation for a covered premise consistent with the scope of the energy efficiency professional's registration and endorsements.

(b) Requires an energy efficiency professional to provide an energy efficiency report to a consumer based on the information discovered in an energy efficiency evaluation and consistent with the energy efficiency professional's registration and endorsements.

(c) Requires an energy efficiency professional to provide recommendations regarding HVAC system design consistent with the energy efficiency professional's registration and endorsements and based on the Air Conditioning Contractors of America (ACCA) manuals, as applicable.

Sec. 1307.152. CONDUCTING ENERGY EFFICIENCY EVALUATIONS. (a) Authorizes an energy efficiency evaluation to include the inspection, testing, investigation, or surveying of a building to evaluate, measure, or quantify the building's energy consumption and efficiency, including:

(1) verification of the building's HVAC system;

(2) inspection of the integrity of the building envelope, including air leakage, durability, and insulation;

(3) inspection and evaluation of the efficiency of the building's lighting, electronics, and appliances; and

(4) performance testing.

(b) Provides that the following are the minimum standards applicable to an energy efficiency evaluation:

(1) the International Energy Conservation Code, as adopted by the International Code Council and the State Energy Conservation Office under Section 388.003 (Adoption of Building Energy Efficiency Performance Standards), Health and Safety Code;

(2) the International Residential Code, Chapter 11, for One- and Two-Family Dwellings, as adopted by the International Code Council and the State Energy Conservation Office under Section 388.003, Health and Safety Code;

(3) the Residential Energy Services Network Mortgage Industry National Home Energy Rating Systems Standards, Chapters 3, 6, 7, 8, and 9, as those chapters existed on September 1, 2013;

(4) American National Standards Institute/ACCA Standards 5, 9, and 12, as those standards existed on September 1, 2013;

(5) the residential environmental air conditioning system design standards under ACCA manuals D, J, N, S, and T, as those standards existed on September 1, 2013;

(6) the Texas Home Energy Rating Organization's Texas Home Energy Audit Technical Standard, as that standard existed on September 1, 2013;

(7) the Building Performance Institute, Inc., Home Energy Auditing Standard, as that standard existed on September 1, 2013; and

(8) the American Society of Heating, Refrigerating, and Air Conditioning Engineers Procedures for Commercial Building Energy Audits, as those procedures existed on September 1, 2013.

(c) Authorizes TCLR, by rule, to review and adopt any subsequent revisions or replacements to the standards under Subsection (b) if TCLR determines that adoption of the revision or replacement is in the best interest of the public health, safety, or welfare.

(d) Authorizes TCLR, by rule, to review and adopt any other standards for performing energy efficiency evaluations for covered premises if TCLR determines that adoption of the standard is in the best interest of the public health, safety, or welfare.

(e) Requires TCLR, by rule, to identify whether the standards under this section are applicable to new homes, existing homes, or light commercial buildings.

Sec. 1307.153. ACCESS TO ELECTRICAL PANELS. (a) Authorizes an energy efficiency professional to open electrical panels and connect temporary measurement or monitoring devices as needed in order to test efficiency and capacity.

(b) Requires an energy efficiency professional to make an electrical connection described by Subsection (a) in accordance with standards at least as stringent as the National Electrical Code as adopted under Chapter 1305 (Electricians).

Sec. 1307.154. FLUE GAS PIPE TESTING. Authorizes an energy efficiency professional to test flue gas piping for environmental air conditioning, commercial refrigeration, or process cooling or heating systems for flue gas concentration, spillage, and draft in accordance with standards adopted under this chapter.

Sec. 1307.155. REQUIRED DISCLOSURES. (a) Requires that an energy efficiency report that contains a recommendation regarding an HVAC system to contain a recommendation regarding an HVAC system to contain a disclosure in certain language.

(b) Requires an energy efficiency report that includes recommendations for repairs, modifications, or other improvements in which the energy efficiency professional or an individual associated with the energy efficiency professional or an individual associated with the energy efficiency professional has a financial interest to include a disclosure in certain language.

SUBCHAPTER E. ENFORCEMENT

Sec. 1307.201. PROHIBITED PRACTICES. Prohibits an individual registered under this chapter from performing, offering to perform, or attempting to perform an act that is:

(1) defined as the practice of engineering under Chapter 1001, unless the individual holds a license under that chapter; or

(2) defined as the practice of architecture under Chapter 1051, unless the individual holds a license under that chapter.

Sec. 1307.202. 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 (Texas Department of Licensing and Regulation), if the person violates this chapter or a rule adopted under this chapter or obtains a registration by fraud or false representation.

Sec. 1307.203. ADMINISTRATIVE SANCTIONS. Authorizes TCLR or the executive director of TDLR (executive director) to impose a sanction under Subchapter G, Chapter

51, on a registration holder if the individual violates this chapter, a rule adopted under this chapter, or an order of TCLR or the executive director.

Sec. 1307.204. ADMINISTRATIVE PENALTY. Authorizes TCLR or the executive director 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 an order of TCLR or the executive director.

Sec. 1307.205. CEASE AND DESIST; CIVIL PENALTY; INJUNCTION. (a) Authorizes the executive director to issue a cease and desist order if the executive director determines that an order is necessary to prevent a violation of this chapter or a rule adopted under this chapter or protect the public health and safety.

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

SUBCHAPTER F. INITIAL REGISTRATION

Sec. 1307.251. INITIAL REGISTRATION. Requires TDLR to issue a registration as an energy efficiency professional to a qualified applicant who:

- (1) submits an application to TDLR not later than September 1, 2014;
- (2) submits evidence satisfactory to TDLR that the applicant has been actively engaged in performing energy efficiency evaluations for at least 36 months; and
- (3) complies with the registration requirements under Section 1307.102, other than Section 1307.102(a)(2).

Sec. 1307.252. ENDORSEMENT OF INITIAL REGISTRATION. (a) Requires TDLR to issue an appropriate endorsement for a specific covered premises to an individual holding a registration issued under this subchapter.

(b) Requires TCLR to adopt rules to determine which endorsement an individual holding a registration issued under this subchapter is required to be issued based on the certification and training of the registration holder.

Sec. 1307.253. TERM. Provides that a registration issued under this subchapter expires on the first anniversary of the date the registration was issued.

Sec. 1307.254. REQUIREMENT TO MAINTAIN CERTIFICATION. Requires an energy efficiency professional to maintain the certification required by Section 1307.102(a)(1) in good standing in order to retain a registration issued under this subchapter.

Sec. 1307.255. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires October 1, 2015.

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

SECTION 2. Requires TCLR, not later than March 1, 2014, to adopt rules required by Chapter 1307, Occupations Code, as added by this Act.

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

(b) Effective date, Section 1307.101 and Subchapter D, Chapter 1307, Occupations Code, as added by this Act, September 1, 2014.