

- SUBJECT:** Continuing the Texas Department of Licensing and Regulation
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 7 ayes — Flores, Hamilton, Raymond, Driver, Eissler, Homer, D. Jones
0 nays
2 absent — Goolsby, Wise
- WITNESSES:** For — Joe Johnson, Association of Texas Career Counselors; David Mintz, Texas Apartment Association; Larry Niemann, Texas Building Owners and Managers Association and Texas Mini-Storage Association
Against — David Brannan and Gary Salas, Austin Lawn Sprinkler Association; John Schwartz, Texas Turf Irrigation Association
On — Carol Batterton, Texas Commission on Environmental Quality; Ron Cranston and David Wittie, ADAPT; Sabrina Hassumani, Texas Real Estate Commission; William Kuntz, Texas Department of Licensing and Regulation
- BACKGROUND:** Occupations Code, ch. 51 establishes the Texas Department of Licensing and Regulation (TDLR) as the primary agency overseeing businesses, industries, general trades, and occupations regulated by the state. TDLR regulates 20 types of occupations and commercial operations: air conditioning contractors, architectural barriers, auctioneers, boilers, career counseling services, combative sports, court interpreters, elevators and escalators, industrialized housing and buildings, personnel employment services, property tax consultants, service contract providers, staff leasing services, talent agencies, temporary common worker employers, transportation service providers, vehicle protection product warrantors, water well drillers, water well pump installers, and weather modification.

TDLR issues licenses, conducts inspections, investigates complaints, assesses penalties, sets rules and standards, and holds hearings. A commission of six members appointed by the governor with the advice and consent of the Senate

governs TDLR. The commission appoints the agency's executive director, who serves at the will of the commission. In fiscal 2002-03, the agency had a budget of \$16.6 million and employed 145 employees in seven locations across the state. TDLR will expire September 1, 2003, unless continued by the Legislature.

DIGEST:

CSHB 2062 would continue TDLR and most of its functions until September 1, 2015. It would repeal references to a TDLR "commissioner" and would substitute references to the executive director or the commission, depending on the function. The executive director would perform administrative duties, including setting salaries, while the Commission of Licensing and Regulation would establish policy. The commission could adopt rules to implement TDLR's various regulatory programs. The bill would repeal the governor's authority to appoint advisory board members and require the commission's presiding officer to appoint them with commission approval.

Administration. CSHB 2062 would reduce the size of the commission by one member, effective September 1, 2003. It would require the abolishment of one of the two seats scheduled to expire February 1, 2005, by unanimous agreement of the two commissioners or by lot.

The bill would stipulate that Occupations Code, ch. 51 applies to each regulatory program administered by the department, including any program under which TDLR issues a license. It would repeal grants of authority under individual chapters that duplicate those conferred to TDLR in ch. 51.

CSHB 2062 would require the commission to revoke, suspend, refuse to renew a license, or reprimand a license holder for a violation of ch. 51. The commission could waive conditions for obtaining a license after determining that the applicant held a license issued by another jurisdiction that had substantially the same licensing requirements as Texas. The commission could enter into reciprocity agreements with other states for this purpose.

The commission would have to recognize, prepare, or administer continuing education programs for license holders. To maintain their licenses, licensees would have to participate in the programs to the extent required by the commission. The commission could stagger the expiration of licenses throughout the year.

TDLR could establish and operate a toll-free telephone information system by September 1, 2004, to provide assistance and referrals for callers. TDLR would have to charge licensing fees sufficient to pay for the service. By March 1, 2004, TDLR would have to identify licensing entities that do not use TexasOnline licensing and would have to help those entities convert to TexasOnline.

Program transfers to TDLR. CSHB 2062 would transfer to TDLR licensing and enforcement responsibilities of the Texas Commission on Environmental Quality (TCEQ) in regard to backflow prevention assembly testers, customer service inspectors, irrigators, water treatment specialists, and underground storage tank operators. Licenses, rules, and documents adopted and issued by TCEQ regarding these licensing programs would remain valid until TDLR changed them. All TCEQ assets and liabilities associated with the programs would transfer to TDLR. The agencies could agree before November 1, 2003, to move property from TCEQ to TDLR to implement transfer of the licensing programs.

The commission would have to adopt any rules needed to establish licenses for these occupations and to establish classes and terms of the licenses. The commission could establish qualifications and procedures for each license issued. The bill would prohibit a person from engaging in those occupations without holding the appropriate license.

After notice and hearing, the commission could deny an application by an applicant who:

- had a record in the preceding five years of continuing violations of statutes or of rules adopted by statutes;
- had engaged in fraud or deceit in obtaining or applying for a license;
- had demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license;
- intentionally misstated or misrepresented information required to be submitted to the commission by the license holder;
- failed to keep and transmit records as required by a statute or a rule adopted under a statute; or
- at the time the application was submitted, owed the state money for a statutory fee, penalty, or tax.

Program transfer from TDLR. The bill would transfer to the Department of Public Safety (DPS) TDLR's current responsibilities in regard to licensing of transportation service providers. Licenses, rules, and documents adopted and issued by TDLR regarding transportation service providers would remain valid until DPS changed them. All TDLR assets and liabilities associated with licensing transportation service providers would transfer to DPS. The agencies could agree before November 1, 2003, to move property from TDLR to DPS to implement the transfer.

Air conditioning and refrigeration contractors. CSHB 2062 would repeal references to the Standard Mechanical Code and would enact the International Mechanical Code, together with the Uniform Mechanical Code, as the minimum standard for rules made by the commission for the practice of air conditioning and refrigeration contracting.

Architectural barriers. For a complaint about a building to become eligible for disposition, TDLR would have to determine whether the building had been brought into compliance, could not be brought into compliance, or was exempt from compliance by statute or rule. The commission would have to notify the complainant of its conclusion, unless the building was in compliance.

Combative sports. The bill would repeal TDLR's authority to waive a license requirement if the applicant held a license issued by another state that had a reciprocity agreement with Texas. It would repeal the \$1,000 cap on the annual fee for an elimination tournament boxing promoter's license.

Elevators and escalators. CSHB 2062 would require that a certificate of compliance for elevators, escalators, and related equipment state the date of the last inspection, the due date for the next inspection, and TDLR contact information to report a violation of the applicable regulations. The commission would have to adopt rules to:

- specify the information contained in a certificate of compliance;
- describe the procedure for issuing a certificate;
- require that a certificate related to an elevator be posted in a publicly visible area of the building; and
- determine what constitutes a publicly visible area of the building.

The commission would have to adopt these rules by March 1, 2004. The bill would repeal specific fee amounts in connection with filing inspection reports for elevators, escalators, and related equipment.

Industrial housing and buildings. CSHB 2062 would amend Occupations Code, sec. 1202.202 to require compliance with mandatory building codes. It would repeal the stipulation that industrial building inspectors perform their inspections at the housing and building manufacturing facility. TDLR would have to perform inspections at the permanent site or the commercial site, depending on the type of construction.

The commission would have to adopt a rule exempting an office building construction site from the requirement to place decals showing compliance with building codes.

Staff leasing services. The bill would repeal TDLR's authority to discipline a license holder for various crimes.

Water treatment specialists. The bill would repeal the requirement that TDLR receive advice and comment from TCEQ in adopting rules. A person who plugged an abandoned or deteriorated well in a groundwater conservation district would have to submit a plugging report to the district's board of directors and TDLR's executive director within 30 days after the date the well was plugged. The executive director would have to prescribe the content of the forms.

CSHB 2062 would require a groundwater conservation district to enforce the existing requirement that a landowner or possessor of the land must plug an abandoned or deteriorated well within 180 days after learning of the well's condition and must notify the district and TDLR's executive director. The district could enjoin behavior and could seek civil damages for violations. Proper venue for the action would be the county in which the offending activity occurred or the resident county of person engaged in the activity.

The bill would require TCEQ and TDLR by rule to adopt or revise a joint memorandum of understanding to coordinate the efforts of the department, groundwater conservation districts, and TCEQ field offices relating to investigations of complaints about abandoned and deteriorated wells. Each

groundwater conservation district in which an abandoned or deteriorated well was located would have to join the memorandum of understanding.

Weather modification. CSHB 2062 would create a process for voters to approve or disapprove issuance of a weather modification permit.

The bill would add standard sunset language governing appointment of the commission's presiding officer, conflicts of interest, training and removal of a commissioner, separation of staff and policy functions, equal employment policy, information maintenance, fees for licensing and license renewal, technology policy, negotiated rulemaking and alternative dispute resolution procedures, and rulemaking for penalties for specific violations.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2062 would reorganize TDLR as an agency governed by a public commission to ensure its responsiveness and independence. The five-member all-public board would gain key authority to make rules and appoint advisory committee members. CSHB 2062 would divide cleanly the commission's policy-making functions from the executive director's administrative responsibilities. In so doing, it would help TDLR improve its responsiveness and would insulate the department better from excessive influence from the industries it regulates.

The bill properly would transfer certain licensing programs from TCEQ to TDLR. TCEQ does not prioritize its licensing programs but focuses on reviewing permit applications, enforcing substantive law, and planning programs. As a result, TCEQ's licensing programs do not receive proper attention. When licensing of well water drillers previously were transferred from TCEQ to TDLR, state licensing and license enforcement actions increased. CSHB 2062 would enable TDLR, the state's expert agency in licensing, to assume more responsibility for these administrative duties, allowing TCEQ to attend more to its own specialities.

CSHB 2062 would help to ensure timely inspections of elevators by requiring the posting of certificates of compliance in publicly visible places. Elevators are moderately complex systems that result in accidents and injuries each year. The most common accidents occur when an elevator lurches to a stop or

drops several floors. Also, people sometimes are injured when they trip and fall stepping into an elevator that is not level with the shaft door. In light of the risks posed by elevators, the public should have ready access to current inspection certificates. The bill properly would give the commission discretion in determining the publicly visible area for the certificate. It would not require posting the certificate inside any elevator, so an elevator owner could post the certificate in a hallway or lobby, should the commission adopt a rule allowing that.

**OPPONENTS
SAY:**

CSHB 2062 inefficiently would divide regulations affecting water systems between TDLR and TCEQ. Irrigators, for example, no longer would be licensed by TCEQ, even though irrigators deal intimately with water-use issues and with the Water Code, which TCEQ enforces. Decisions by irrigators respecting storm water runoff, water redistribution, partially processed water, and irrigation installations near septic tanks all implicate aspects of the Water Code. Thus, experts in irrigation require a clear line of authority between themselves and a single regulatory agency — TCEQ — without the confusion of licensing by TDLR and substantive water-law enforcement by the other.

The bill would sever the potential for productive information exchange between water specialists and TCEQ. Irrigators design and install systems responsible for the consumption of nearly one-quarter of all potable water in Texas. Water conservation grows in importance each year. Irrigators and other water specialists should continue their direct relationship with TCEQ to ease the implementation of conservation measures the agency is likely to adopt in the future.

CSHB 2062 would result in an inefficient and unsightly inspection certificate for elevators. Elevators serve as the “front door” of many businesses and residences. Paper certificates subject to replacement when they expire often appear tattered and yellowed. On occasion, the date of the certificate does not correspond with inspections that have been performed. These imperfections in elevator certificates prevent businesses from presenting their best initial impressions and sometimes alarm the public unnecessarily.

As an alternative to requiring public postings of inspection certificates, the bill could require elevator owners to post inside elevators a toll-free

telephone number for TDLR. The commission should have the authority but not the obligation to require posting of the actual inspection certificates in public places. Computerized record-keeping by TDLR would allow the agency to create a reliable schedule of certificate expirations and renewals. The public could call TDLR with questions or to report problems.

NOTES:

The committee substitute changed the original bill's provisions in various ways, including by:

- not requiring transfer of the mobile amusement park ride inspection program from the Texas Department of Insurance to TDLR;
- not requiring the advice and consent of TCEQ for TDLR rulemaking;
- authorizing TDLR to enforce administratively actions against people who violate commission orders;
- requiring that architectural barrier complaints alleging noncompliance with accessibility standards remain open until the building complied or until TDLR made another determination; and
- amending various rulemaking deadlines and effective dates.

The companion bill, SB 279 by Jackson, passed the Senate by voice vote on May 6.

HB 2 and HB 3001, both by Swinford, would abolish the State Board of Barber Examiners, Texas Cosmetology Commission, and Texas Board of Professional Land Surveying and would transfer their powers, assets, duties, and obligations to TDLR. HB 2 was reported favorably, as substituted, by the House Government Reform Committee on May 1. The committee considered HB 3001 in a public hearing on April 7 and left it pending.