

SUBJECT: Continuing the Texas State Board of Plumbing Examiners

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Flores, Hamilton, Driver, Eissler, Goolsby, Homer, D. Jones, Wise
0 nays
1 absent — Raymond

SENATE VOTE: On final passage, April 10 — 31-0

WITNESSES: For — Stanley J. Briers, Texas Plumbing, Air Conditioning and Mechanical Contractors Association; Glenn F. Fuller and Curtis Winn, Responsible Plumbers and Associates; Richard Lord, Texas Pipe Trades; Kathryn “Toy” Wood, Greater Houston Builders Association

Against — None

On — Robert L. Maxwell, Texas State Board of Plumbing Examiners

BACKGROUND: V.T.C.A., Title 109A is the Plumbing License Law. Under this statute, the nine-member Texas State Board of Plumbing Examiners licenses people engaged in the business of plumbing, or requires their work to be supervised and controlled by a licensed plumber.

A plumber’s apprentice is defined as any person registered by the board, but not licensed under the Plumbing License Law, whose principal occupation is learning and assisting in the installation of plumbing under the supervision of a licensed master plumber and the direct supervision of a licensed plumber. By board rule, “direct supervision” constitutes on-the-job oversight and direction of an apprentice by a licensed plumber to ensure that plumbing materials are properly prepared and installed to protect health and safety by meeting plumbing code requirements, as well as local and state ordinances, regulations, and laws.

Currently, a person who performs plumbing is not required to be licensed outside of the municipal limits of a city or town, or within a municipality of fewer than 5,000 inhabitants, unless a municipal ordinance requires otherwise.

Effective June 1, 2003, the Plumber's License Law will transfer to Occupations Code, ch. 1301. Also, the State Board of Plumbing Examiners will expire September 1, 2003, unless continued by the 78th Legislature.

DIGEST: CSSB 282 would continue the State Board of Plumbing Examiners and its functions until September 1, 2015, amend the supervision of non-licensed plumbers, authorize sanctions, require interagency cooperation, and make other amendments to the Plumbing License Law.

Supervision. A licensed plumber who supervised and controlled a worker engaged in plumbing a new one- or two-family dwelling in an unincorporated area would have training and management responsibility for the worker and would be required to review and inspect the plumbing performed. The licensed plumber, however, would not need to provide continuous or uninterrupted on-the-job oversight of the work. The bill also would authorize the board to adopt registration requirements for plumber's apprentices, including training and education requirements.

Penalties. CSSB 282 would establish penalties for violations of the chapter or rules adopted by the board, including an administrative penalty of not more than \$5,000 for each violation, depending on the seriousness of the violation and other factors. Each day a violation continued or occurred would constitute a separate violation. The board would develop a standardized penalty schedule based on these and other criteria and comply with requirements governing notice for the penalized person.

The board could place on probation a person whose license, endorsement, or registration was suspended. It also could require the person to report regularly to the agency on matters that formed the basis of the probation, limit practice to the areas prescribed by the board, and continue or review professional education until the person attained a degree of skill satisfactory to the board. The board would adopt guidelines to ensure consistent administration of probation and develop a system to track compliance with it. Also, the board

would adopt rules in compliance with statutory guidelines concerning the licensing consequences of criminal convictions.

Agency cooperation. The bill would require the board to adopt a memorandum of understanding with the Texas Department of Licensing and Regulation (TDLR) under which the agencies would share information technology and information on regulatory practices for licensed occupations. It would authorize enforcement officers from each agency to check licenses, registrations, or endorsements held by persons regulated by the other agency and allow the board and TDLR to conduct joint investigations when appropriate.

If plumbing were designated an occupation in demand by a local workforce development board, the bill would require the board and the Texas Workforce Commission (TWC) to coordinate efforts to educate the public about the plumbing profession and the resources available to employers for recruiting and training plumbers. This would require providing statistics and licensing requirement information about plumbing to local workforce development boards that plan and oversee the delivery of workforce training and services.

Examinations. The board would be required to develop a review course offered in English and Spanish to assist license applicants in preparing for board examinations. If the board provided the course, it also could charge a fee to course applicants. For a fee determined by the board, it could provide review course training materials to private course providers. The board would be required to refund the examination fee paid by applicants who provided advance notice of their inability to take the exam.

Miscellaneous provisions. The bill would add standard sunset language governing equal employment law and policy, conflicts of interest, removal of board members, designation of the board's presiding officer, board training, the state employee incentive program, information for the board and its employees, separation of policy and staff functions, technology policy, negotiated rulemaking and dispute resolution policies, public testimony, information maintenance, complaint notification, licenses for license holders from other jurisdictions, and fees for license renewals.

The bill would take effect September 1, 2003. By January 1, 2004, the board would be required to adopt rules relating to the licensing consequences of criminal convictions. Also, by September 1, 2004, the board, by rule, would be required to adopt written guidelines to assure the consistent administration of probation and the standardized pay schedule for administrative penalties.

**SUPPORTERS
SAY:**

CSSB 282 properly would update and balance the Plumbing License Law by introducing changes to remedy a shortage of plumbers existing in some markets while continuing to require supervision of plumber's apprentices. It also would continue to assure the high quality of plumbing services in Texas by requiring training and education of apprentices and imposing penalties for violations of the chapter.

CSSB 282 would relax a difficult standard, proposed in HB 3507 by Marchant, which has passed both houses, that would affect builders and plumbers in unincorporated areas. HB 3507 would change current law to require, with limited exceptions, that builders use licensed plumbers to perform work on all properties, even in unincorporated areas or small municipalities. Also, under a board rule that HB 3507 would codify, an apprentice would have to be supervised by a master plumber and supervised directly by a licensed plumber.

HB 3507 would exacerbate an existing plumber shortage because master plumbers are relatively rare, and direct supervision requires continuous on-the-job oversight and direction by a licensed plumber. It would mean that a licensed plumber could not leave a home construction site where an apprentice was working to visit another site, even in the same subdivision. The ultimate effect of these restrictions would be to increase prices for home buyers.

Because HB 3507 would trigger more demand for licensed plumbers during a market shortage of these professionals, CSSB 282 properly would allow apprentices to perform plumbing in new one- or two-family dwellings in unincorporated areas without the need for a licensed plumber to be present continuously. CSSB 282 would safeguard the quality of plumbing in these areas by requiring a licensed plumber to train and manage the apprentice and inspect the apprentice's work.

CSSB 282 also would balance more flexible supervision in certain plumbing

projects with provisions to encourage better plumbing practices. It would require apprentices to complete training and education, formalize penalty provisions, enlist TDLR to monitor people governed by the Plumbing License Law, and involve TWC to help alleviate a market shortage of plumbers.

The board should remain an independent agency to preserve its expertise and rulemaking authority. A transfer of its functions to TDLR would give the board's policymakers only advisory committee status, thus removing the board's ability to respond quickly to changing plumbing practices and technologies.

OPPONENTS
SAY:

By loosening the standards proposed by HB 3507, CSSB 282 would diminish the uniform quality of plumbing and could cost consumers, especially first-time homeowners who buy most new one- and two-family dwellings in unincorporated areas. It wrongly would remove the requirement that licensed plumbers closely supervise apprentices and instead would require, at certain home construction sites, only the intermittent presence of a licensed plumber.

In addition, provisions in CSSB 282 are based on the false premise that the state is experiencing a shortage of plumbers. Neither the Board of Plumbing Examiners, nor the Texas Workforce Commission or the United States Department of Labor, has provided statistics supporting this assertion. By contrast, anecdotal reports indicate that many plumbers are looking for work.

OTHER
OPPONENTS
SAY:

While the functions and duties of the State Board of Plumbing Examiners should be continued, Texas does not need a separate agency to perform them. The state could realize administrative savings by consolidating this and other regulatory agencies under a single agency, as proposed in SB 279 by West, as amended by the House.

NOTES:

SB 282, as engrossed by the Senate, would have required a license holder who was supervising a worker to provide continuous and uninterrupted on-the-job oversight of the work. The committee substitute instead would require a licensed plumber who supervised and controlled a worker engaged in plumbing while building a new one- or two-family dwelling in an unincorporated area to have training and management responsibility for the worker and to review and inspect the plumbing performed.

Under HB 3507 by Marchant, which passed the House on April 30 and the Senate on May 20, the holder of a plumber's license would be required to perform plumbing on all properties, unless the property was located in a subdivision or on a tract of land for which platting was not required or the property was not connected to a public water system and was located outside of a municipality.

SB 279 by West, as amended and passed by the House on May 16, would transfer all functions and activities performed by the State Board of Plumbing examiners to TDLR, effective September 1, 2003.

According to the Legislative Budget Board, administrative penalties authorized by CSSB 282 would result in a positive impact to general revenue of \$174,000 over the fiscal 2004-05 biennium.