

SUBJECT: Powers and duties of the Texas Department of Licensing and Regulation

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 5 ayes — Flores, Geren, Hamilton, Jones, Quintanilla

1 present not voting — Thompson

0 nays

3 absent — Isett, Goolsby, Miles

SENATE VOTE: On final passage, April 26 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

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 23 types of occupations and commercial operations, including air conditioning contractors, architectural barriers, auctioneers, boilers, career counseling services, cosmetologists, court interpreters, elevators and escalators, industrialized housing and buildings, property tax consultants, transportation service providers, vehicle protection product warrantors, water well drillers, among others.

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.

DIGEST: SB 1475 would revise certain powers and duties of TDLR.

The bill would establish processes for the appointment and removal of the agency's advisory board. The presiding officer of the Texas Commission of Licensing and Regulation would appoint the advisory board members.

A member would serve without compensation but be eligible for reimbursement for any actual and necessary expenses incurred. The presiding officer could remove a member without the commission's approval if the member:

- lacked the necessary qualifications prescribed by law at the time of taking office;
- did not maintain the prescribed qualifications during service on the board;
- could not, because of illness or disability, fulfill the member's duties for a substantial part of the term; or
- was absent from more than half of all regularly scheduled advisory board meetings.

TDLR could assist other state agencies in developing consistent procedures to obtain and use criminal history record information for licensing, regulatory, and similar purposes and provide funds for the implementation of such procedures.

TDLR could request, and if necessary, compel by subpoena the production of records, documents, and other relevant information for the investigation of any alleged violation under Occupations Code, ch. 51 or the attendance of a witness for examination under oath. Any action challenging an alleged violation would be brought to a district court in Travis County or any county in which TDLR could hold a hearing. A court would enforce a subpoena where good cause was shown.

The bill would expand the authority of the executive director to allow the issuance of: certain administrative sanctions, cease and desist and emergency orders, and temporary and emergency licenses.

The commission could revoke, suspend, deny an application for, or refuse to renew a license and could impose necessary administrative sanctions if a deferred adjudication made the license holder or seeker unfit for licensure.

A cease and desist order could be issued to prevent a violation under ch. 51, and an emergency order could be issued where TDLR had to take immediate action to protect the health and safety of the public, including halting an operation of an unsafe facility or unsafe equipment. If an emergency order was to be issued without a hearing, the executive director

would be required to schedule a proper hearing with the State Office of Administrative Hearings to affirm, modify, or set aside the order.

The bill also would permit the issuance of temporary licenses where an applicant met the preliminary qualifications established by the commission, submitted a licensing application, and paid the required fees. Emergency licenses would be permissible where the applicant met the requisite eligibility requirements. A temporary license would expire after 21 days, and an emergency license would expire after 90 days.

The bill would take effect September 1, 2007.