

**SUBJECT:** Continuing the Texas State Board of Plumbing Examiners

**COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment

**VOTE:** 10 ayes — S. Thompson, Kuempel, Darby, Ellzey, Fierro, Geren, Guillen, Hernandez, Huberty, Pacheco

0 nays

1 absent — Goldman

**WITNESSES:** For — Stephen Cox, Plumbing, Heating, Cooling Contractors of Texas; Joe Cooper, Southwest Pipe Trades Association; Jesse Howard; Christopher Smith; (*Registered, but did not testify:* Carrie Simmons, Associated Builders and Contractors of Texas; Guadalupe Cuellar, City of El Paso; TJ Patterson, City of Fort Worth; Amber Hausenfluck, International Association of Plumbing and Mechanical Officials; Jo Cassandra Cuevas, International Union of Elevator Constructors; Eric Woomer, Mechanical Contractors Association of Texas; Annie Spilman, NFIB; Richard Lord, Plumbers Local 68; Leonard Aguilar, Southwest Pipe Trades Association; Rene Lara, Texas AFL-CIO; Ned Muñoz, Texas Association of Builders; Mike Meroney, Texas Association of Manufacturers; Stanley Briers, Texas Plumbing, Air Conditioning, Mechanical Contractors Association; Chloe Goodman, Workers Defense Action Fund; Thomas Parkinson)

Against — None

On — Frank Denton and Lisa Hill, Texas State Board of Plumbing Examiners; (*Registered, but did not testify:* Richard Herman, Texas State Board of Plumbing Examiners)

**BACKGROUND:** The Texas State Board of Plumbing Examiners (TSBPE) was created in 1947 to protect Texas citizens against the hazards that can result from improperly installed plumbing, gas, and medical gas systems.

**Functions.** The board undertakes several key activities, including:

- examining and licensing plumbers and plumbing inspectors;
- overseeing continuing education and ensuring licensees' compliance with continuing education requirements; and
- investigating and resolving complaints, including taking disciplinary action when necessary.

**Governing structure.** The board consists of nine members, appointed by the governor with the advice and consent of the Senate, who serve staggered six-year terms. Seven members are professionals and two represent the public.

**Funding.** TSBPE received about \$3.4 million in revenue in fiscal 2020, including about \$180,000 from licensing and registration fees. It spent about \$3 million and transferred about \$190,000 to the general revenue fund in fiscal 2020.

**Staffing.** The board was allocated 38 full-time equivalents in fiscal 2020. Most staff work at the agency's headquarters in Austin, but the agency also employs one field investigator in each of nine regions across the state.

Per Occupations Code sec. 1301.003, the board was set to expire in statute on September 1, 2019. On June 13, 2019, Gov. Abbott issued an executive order suspending the expiration of TSBPE until May 31, 2021, citing the need for qualified licensed plumbers to help the state respond to damage caused by Hurricane Harvey.

**DIGEST:**

HB 636 would continue the Texas State Board of Plumbing Examiners (TSBPE) until September 1, 2027. The bill would require plumbing license applicants to submit fingerprints to the board and undergo a criminal history information record check, authorize the board to issue temporary licenses to certain individuals, require the creation of certain minimum standards for continuing education and training, and require the

board to make public certain information regarding disciplinary actions taken under the plumbing code, among other provisions.

**Fingerprints and criminal history record check.** The board would have to require an applicant for a plumbing license to submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI). TSBPE would have to conduct a criminal history record information check of each applicant using information provided by the individual and information made available by DPS, FBI, and any other relevant criminal justice agency. The board could not issue a license to person who did not comply with the requirement to submit fingerprints.

TSBPE could enter into an agreement with DPS to administer a criminal history record information check and authorize DPS to collect from each applicant the costs incurred in conducting the check.

By September 1, 2023, the board would have to obtain criminal history record information using a person's name, date of birth, and other alphanumeric identifiers on each person who held a license on September 1, 2021, and did not undergo a criminal history record information check on submission of the person's initial license application.

By September 1, 2025, the board would have to obtain criminal history record information using a person's fingerprints on each person who held a license on September 1, 2021, and did not undergo a criminal history record information check on submission of the person's initial license application.

TSBPE could suspend the license of a person who did not comply with the request to provide information or fingerprints, in a form and manner prescribed by the board, that would enable the board to obtain the required criminal history record information.

**Temporary licenses.** TSBPE by rule could provide for the issuance of a

temporary license to an applicant who met preliminary qualifications established by board rule and paid a fee set by the board.

A temporary license would expire on the 30th day after the date of issuance and could not be renewed. A temporary license holder would be subject to the plumbing code, any law applicable to the activity for which the license was required, including municipal rules, orders, or ordinances, and any rule of the board applicable to the license.

**Continuing education and training standards.** HB 636 would require TSBPE to establish by rule minimum curriculum standards for continuing education programs, courses, and the training program for holders of a license or endorsement issued under the plumbing code. The board also would have to establish by rule minimum qualifications for an instructor of a required continuing education program, course, or training program.

The executive director of TSBPE would have to approve a continuing education program, course, or training program that met the minimum curriculum standards and an instructor who met the minimum qualifications.

The bill would specify that a person could receive credit for participating in a continuing professional education program, course, or training program only if the course was approved by the executive director. A person could complete the continuing education requirement through a correspondence course as approved by the executive director.

The board would have to adopt rules to ensure that each holder of a license, registration, or endorsement had at least 12 months to complete any continuing education requirement for the renewal of the license, registration, or endorsement. The bill would specify that in order to renew a license or endorsement, a person would have to complete at least six hours of continuing professional education annually, rather than each year the person held the license or endorsement.

**Training program requirement.** HB 636 would remove the requirement

that before working as a responsible master plumber a master plumber present evidence satisfactory to the board of successful completion of a training program approved or administered by the board regarding the laws and rules applicable to plumbing in Texas.

**Disciplinary actions.** The bill would make an individual subject to disciplinary action for:

- attempting to obtain or obtaining a license, endorsement, or registration through fraud;
- performing plumbing without holding the proper license, endorsement, or registration; or
- performing plumbing in violation of a plumbing code.

An individual who attempted to obtain or obtained a license, endorsement, or registration through error would not be subject to disciplinary action by the board.

These conditions for disciplinary action would apply only to conduct that occurred on or after the bill's effective date.

*Public access to disciplinary action information.* The bill would require TSBPE to make available to the public through a toll-free telephone number, internet website, or other easily accessible medium determined by the board the following information related to a disciplinary action taken regarding a person regulated under the plumbing code:

- the identity of the person;
- the nature of the complaint; and
- the disciplinary action taken by the board.

The board could not include in the name of the person who filed the complaint in this information, and would have to present the information in an impartial manner using commonly understood language. TSBPE would have to update regularly the information made available regarding disciplinary actions taken by the board.

**Examinations.** The bill would specify that if an examination required for the issuance of a plumbing license, registration, or endorsement contained a practical component, TSBPE would have to employ or contract with one or more plumbing examiners to administer that component of the examination.

The board could adopt, recognize, develop, or contract for a required examination, including the administration of the examination. For each required examination, TSBPE would be required, to the extent feasible, to adopt, recognize, develop or contract for an examination that included components that could be administered in writing or online and by a person other than a plumbing examiner.

**Endorsements.** The bill would specify that an endorsement issued under the plumbing code would be valid for one year, and that an endorsement or registration could be renewed annually on payment of the required fee.

A medical gas piping installation endorsement, multipurpose residential fire protection sprinkler specialist endorsement, or water supply protection specialist endorsement would expire on the date the master plumber or journeyman plumber license of the endorsement holder expired. The board would have to adopt rules to provide for the license holder to renew the endorsement in the same transaction as the license if the license holder had completed any required continuing education established by rule and applicable to the endorsement and complied with other requirements prescribed by board rule.

**On-site license checks.** TSBPE by rule would have to assign priorities and prescribe procedures for field representatives conducting on-site checks of plumbing license holders based on:

- the degree of potential harm to public health, safety, or property;
- the history of previous violations; and
- any other indication of increased risk to public health, safety, or property, as determined by the board.

**Complaints.** TSBPE by rule would have to include in its assigned priorities and prescribed investigative procedures for investigation of complaints the history of previous violations by the person who was the subject of a complaint and any other indication of increased risk to public health, safety, or property, as determined by the board.

*Informal settlement conferences.* The bill would specify that the established procedures under which an informal settlement conference to resolve a complaint against a license-holder was conducted would have to identify the types of complaints for which such a conference could be used and require appropriate documentation of each conference that was conducted, including the outcome of the conference.

**Attorney general.** The bill would repeal the statute requiring the attorney general to represent the board in an action to enforce the plumbing code.

**Rules.** The board would have to adopt rules necessary to implement the provisions of the bill as soon as practicable after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS  
SAY:

HB 636 would retain an agency vital to the health and safety of Texans by continuing the Texas State Board of Plumbing Examiners (TSBPE) in statute for six years. The bill also would give the board tools to improve and become more efficient, in line with the 2018 recommendations of the Sunset Advisory Commission.

TSBPE should not be abolished as a standalone agency and have its functions transferred to the Texas Department of Licensing and Regulation (TDLR) because the board has made great strides in the past two years to comply with the Sunset Advisory Commission's recommendations to increase its efficiency. HB 636 would continue this trend by codifying some of the commission's recommended changes to

the board, including requiring fingerprints and background checks for licensees, requiring the board to make information regarding certain disciplinary actions public, streamlining examinations and continuing education requirements, and creating a risk-based approach to on-site compliance checks.

The board should remain as an independent agency and continue to make its operations more efficient. Further burdening TDLR by transferring more licenses under its purview could jeopardize the department's ability to effectively perform its functions and could lead to diminished oversight of the essential plumbing industry.

CRITICS  
SAY:

HB 636 inappropriately would continue the Texas State Board of Plumbing Examiners (TSBPE) as an independent agency, as the board is failing to meet the needs of the public and licensees. In its 2018 review of TSBPE, the Sunset Advisory Commission found that the board created barriers to becoming a plumber or advancing in a plumbing career by requiring outdated exams that were difficult to administer, thereby creating a significant backlog. The commission also found that the board increased costs for licensees by overregulating continuing education. Instead of continuing the board until 2027, the bill should transfer the responsibilities of TSBPE to the Texas Department of Licensing and Regulation to ensure the efficient oversight of plumbing in Texas.

NOTES:

The author plans to introduce two floor amendments. The first floor amendment would remove the ability of a field representative of the Texas State Board of Plumbing Examiners (TSBPE) to issue criminal citations to certain individuals and would replace references to the statutory enforcement committee with reference to the board.

The second floor amendment would allow TSBPE to waive any prerequisite to obtaining a plumbing license, registration, or endorsement to an applicant who held a similar credential issued by another jurisdiction that had licensing requirements substantially similar to those of Texas. An applicant who held the equivalent credential for at least two years could not be required to undergo an examination to obtain a Texas credential.



The board also could make an agreement with another state, subject to the approval of the governor, to allow for licensing reciprocity if the other state had licensing requirements substantially similar to those of Texas. TSBPE could adopt rules for determining if a plumbing credential offered by another jurisdiction was equivalent with a Texas plumbing credential.