

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 279
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Government Organization
4/23/2003
Committee Report (Substituted)

This analysis utilizes the Texas Sunset Advisory Commission analysis of S. B. 279 relating to the continuation and functions of the Texas Department of Licensing and Regulation.

DIGEST AND PURPOSE

The Texas Department of Licensing and Regulation (TDLR) was created in 1989 when the legislature renamed the Bureau of Labor Statistics and established TDLR as an umbrella licensing agency for non-health related professions. TDLR regulates 20 different professions through examination, licensing, inspection, and enforcement. TDLR is subject to the Sunset Act and will be abolished on September 1, 2003, unless continued by the 78th Legislature. As a result of its review of TDLR, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications. C.S.S.B. 279 continues TDLR until September 1, 2015. C.S.S.B. 279 amends the Occupations Code, Health and Safety Code, Water Code, Labor Code, Government Code, Revised Statutes, and Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, relating to the transfer of certain functions from the Texas Commission on Environmental Quality to TDLR, and the transfer of certain functions from TDLR to the Department of Public Safety. The bill incorporates several standard across-the-board recommendations of the Sunset Advisory Commission and clarifies that all 11 advisory committees of TDLR exist to advise the Texas Commission on Licensing and Regulation (commission).

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Licensing and Regulation in SECTION 1.017 (Section 51.302(c), Occupations Code), SECTION 1.019 (Section 51.403, Occupations Code), SECTION 11.007 (Section 754.016, Health and Safety Code), SECTION 12.012 (Section 1202.204, Occupations Code), SECTION 15.007 (Subchapter C, Chapter 1304, Section 1304.105, Occupations Code), and SECTION 26.004 (Subtitle F, Title 2, Section 38.052, Water Code). In addition, under the general rulemaking authority already granted to the Commission, rules may be developed to implement other new provisions found in this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 23.015 (Subchapter F, Chapter 1901, Section 1901.257, Occupations Code) Modifies rulemaking authority to transfer from the executive director of the Texas Department of Licensing and Regulation to the Texas Commission on Licensing and Regulation in SECTION 1.014 (Sections 51.203 and 51.204, Occupations Code), and SECTION 1.020 (Section 51.406, Occupations Code).

Modifies rulemaking authority by transferring it from the commissioner of the Texas Department of Licensing and Regulation to the Texas Commission on Licensing and Regulation in SECTION 2.001 (Section 1302.002(5), Occupations Code), SECTION 2.003 (Section 1302.101, Occupations Code), SECTION 2.004 (Section 1302.103, Occupations Code), SECTION 2.006 (Section 1302.204(a), Occupations Code), SECTION 2.009 (Section 1302.261, Occupations Code), SECTION 2.010 (Section 1302.354(b), Occupations Code), SECTION 2.011 (Section 1302.355(c), Occupations Code), SECTION 3.003 (Section 5A(d), Section 5A(h), and Section 5A(j), Article 9102, Revised Statutes), SECTION 4.002 (Section 1802.059(d), Occupations Code), SECTION 4.013 (Section 1802.207, Occupations Code), SECTION 4.018 (Section

1802.303(a), Occupations Code), SECTION 6.006 (Section 755.017, Health and Safety Code), SECTION 6.007 (Section 755.030(a), Health and Safety Code), SECTION 6.008 (Section 755.032, Health and Safety Code), SECTION 6.009 (Section 755.033, Health and Safety Code), SECTION 7.002 (Section 2502.056, Occupations Code), SECTION 8.004 (Section 2052.052, Occupations Code), SECTION 8.007 (Section 2052.251, Occupations Code), SECTION 9.002 (Section 57.042(g), Government Code), SECTION 9.003 (Section 57.043(b), Government Code), SECTION 11.006 (Section 754.015, Health and Safety Code), SECTION 11.009 (Section 754.019(a), Health and Safety Code), SECTION 12.003 (Section 1202.101, Occupations Code), SECTION 12.004 (Section 1202.102, Occupations Code), SECTION 12.010 (Section 1202.202(a), Occupations Code), SECTION 12.012 (Section 1202.204, Occupations Code), SECTION 12.013 (Section 1202.205, Occupations Code), SECTION 12.014 (Section 1202.252(a), Occupations Code), SECTION 12.015 (Section 1202.301(b), Occupations Code), SECTION 12.016 (Section 1202.302, Occupations Code), SECTION 12.017 (Section 1202.351(b), Occupations Code), SECTION 14.003 (Section 1152.051, Occupations Code), SECTION 14.009 (Section 1152.160, Occupations Code), SECTION 14.013 (Section 1152.251, Occupations Code), SECTION 14.012 (Section 1152.204, Occupations Code), SECTION 15.003 (Section 1304.052(a), Occupations Code), SECTION 15.008 (Section 1304.151(a), Occupations Code), SECTION 16.002 (Section 91.002(a) and (b), Labor Code), SECTION 16.007 (Section 91.019(a), Labor Code), SECTION 16.009 (Section 91.041(c), Labor Code), SECTION 21.003 (Section 4, Article 9035, Revised Statutes), SECTION 21.004 (Section 5(a), Article 9035, Revised Statutes), SECTION 21.005 (Section 6(d), Article 9035, Revised Statutes), SECTION 21.006 (Section 10(e), Article 9035, Revised Statutes), SECTION 23.003 (Section 1901.052, Occupations Code), SECTION 23.006 (Section 1901.109(a), Occupations Code), SECTION 23.008 (Section 1901.162, Occupations Code), SECTION 23.009 (Section 1901.251(a), Occupations Code), SECTION 23.010 (Section 1901.252(b), Occupations Code), SECTION 24.003 (Section 1902.052, Occupations Code), SECTION 24.005 (Section 1902.162, Occupations Code).

Modifies rulemaking authority by transferring it from the Texas Department of Licensing and Regulation to the Texas Commission on Licensing and Regulation in SECTION 17.002 (Section 2105.002, Occupations Code), SECTION 17.005 (Section 2105.104, Occupations Code), SECTION 17.006 (Section 2105.105(b), Occupations Code), SECTION 25.003 (Section 1.11, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, V.T.C.S)), SECTION 25.008 (Section 1.32, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, V.T.C.S)), SECTION 25.009 (Section 1.41(v), Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, V.T.C.S)), SECTION 25.010 (Section 1.64, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, V.T.C.S)), and SECTION 25.011 (Section 1.65, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, V.T.C.S)).

SECTION BY SECTION ANALYSIS

ARTICLE 1. TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.001. Amends Section 51.002, Occupations Code, to continue the Texas Department of Licensing and Regulation (TDLR) and the Texas Commission of Licensing and Regulation (commission) until September 1, 2015.

SECTION 1.002. Provides that this chapter applies to each regulatory program administered by TDLR, including any program under which a license is issued by TDLR.

SECTION 1.003. Amends Section 51.052(a), Occupations Code to change the size of the Commission on Licensing and Regulation from six to seven members.

SECTION 1.004 - SECTION 1.025. Adds and updates standard Sunset language regarding the continuation of TDLR and transfers rulemaking authority for all programs from the executive director of TDLR to the commission. Requires TDLR by rule or procedure to develop a written enforcement plan that provides notice of the specific ranges of administrative penalties that apply to specific violations of the programs TDLR administers, and the criteria by which TDLR

determines the amount of an administrative penalty. Sets forth policies and procedures surrounding licensing requirements. Clarifies that the toll-free licensing information hotline is strictly a connection tool for consumers so that a consumer with a question or complaint about a state-issued license can call the number, and TDLR will connect the consumer with the appropriate licensing agency. Makes conforming changes.

SECTION 1.026. Repealer: Section 51.053(c), Occupations Code.

ARTICLE 2. AIR CONDITIONING AND REFRIGERATION CONTRACTORS

SECTION 2.001- SECTION 2.013. Authorizes the presiding officer of the commission to appoint all members of the air conditioning and refrigeration advisory board and to appoint a presiding officer for the board to serve for two years. Clarifies that the advisory board exists to advise the commission. Makes conforming changes.

ARTICLE 3. ARCHITECTURAL BARRIERS

SECTION 3.001 - SECTION 3.007. Authorizes the presiding officer of the commission to appoint all members of the architectural barriers advisory committee and to appoint a presiding officer for the committee to serve for two years. Adds language to require an architectural barrier complaint that alleges non-compliance with Texas Accessibility Standards to remain open until the building comes into compliance with the law, unless the building is exempted from compliance or otherwise unable to come into compliance. In the latter case, the provision requires TDLR to notify the complainant that the building is unable to come into compliance or is exempt. Makes conforming changes.

ARTICLE 4. AUCTIONEERS

SECTION 4.001 - SECTION 4.020. Authorizes the presiding officer of the commission to appoint all members of the auctioneer education advisory committee and to appoint a presiding officer for the committee to serve for two years. Clarifies that all TDLR advisory committees exist to advise the commission. Makes conforming changes.

ARTICLE 5. BACKFLOW PREVENTION ASSEMBLY TESTERS

SECTION 5.001 and SECTION 5.002. Transfers the administration of the Backflow Prevention Assembly Testers programs from the Texas Commission on Environmental Quality (TCEQ) to TDLR. Authorizes TDLR to adopt rules, and to establish license and examination requirements.

ARTICLE 6. BOILERS

SECTION 6.001 - SECTION 6.015. Authorizes the presiding officer of the commission to appoint all members of the board of boiler rules and to appoint a presiding officer for the committee to serve for two years. Clarifies that all TDLR advisory committees exist to advise the commission. Makes conforming changes.

ARTICLE 7. CAREER COUNSELING SERVICES

SECTION 7.001 - SECTION 7.010. Expands provisions regarding enforcement time lines for the career counseling services program. Removes the requirement that a service provide its client with a copy of a contract at the first interview and the requirement that there be two interviews before entering into a contract. Makes conforming changes.

ARTICLE 8. COMBATIVE SPORTS

SECTION 8.001 - SECTION 8.008. Makes conforming changes.

ARTICLE 9. COURT INTERPRETERS

SECTION 9.001 - SECTION 9.006. Authorizes the presiding officer of the commission to appoint all members of the licensed court interpreter advisory committee and to appoint a presiding officer for the committee to serve for two years. Clarifies that all TDLR advisory committees exist to advise the commission. Makes conforming changes.

ARTICLE 10. CUSTOMER SERVICE INSPECTORS

SECTION 10.001 and SECTION 10.002. Transfers the administration of the Customer Service Inspectors program from TCEQ to TDLR. Authorizes TDLR to adopt rules, and to establish license and examination requirements.

ARTICLE 11. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

SECTION 11.001 - SECTION 11.015. Requires that elevator certificates of compliance issued by TDLR be posted in a publicly visible area within a building. Gives the commission rulemaking authority to specify what information is required on a certificate of compliance, and to determine what a publicly visible place within a building is. Repeals the provision that prohibits certificates of compliance from being publicly posted. Makes conforming changes.

ARTICLE 12. INDUSTRIALIZED HOUSING AND BUILDINGS

SECTION 12.001 - SECTION 12.018. Adds a provision to allow industrialized housing to be movable, and provides a mechanism for reinspection. Grandfathers industrialized buildings that have been approved by TDLR and have not been modified from complying with new building codes and also removes the requirement that all modular components be inspected at the manufacturing plant or facility. Makes conforming changes.

ARTICLE 13. PERSONNEL EMPLOYMENT SERVICES

SECTION 13.001 - SECTION 13.005. Makes conforming changes.

ARTICLE 14. PROPERTY TAX CONSULTANTS

SECTION 14.001 - SECTION 14.016. Authorizes the presiding officer of the commission to appoint all members of the property tax consultants advisory committee and to appoint a presiding officer for the committee to serve for two years. Clarifies that all TDLR advisory committees exist to advise the commission. Makes conforming changes.

ARTICLE 15. SERVICE CONTRACT PROVIDERS

SECTION 15.001 - SECTION 15.011. Authorizes the presiding officer of the commission to appoint all members of the service contract providers advisory committee and to appoint a presiding officer for the committee to serve for two years. Clarifies that all TDLR advisory committees exist to advise the commission. Repeals non-standard administrative penalty amounts in the service contract providers programs. Makes conforming changes.

ARTICLE 16. STAFF LEASING SERVICES

SECTION 16.001 - SECTION 16.011. Repeals non-standard administrative penalty amounts. Makes conforming changes.

ARTICLE 17. TALENT AGENCIES

SECTION 17.001 - SECTION 17.007. Makes conforming changes.

ARTICLE 18. TEMPORARY COMMON WORKER EMPLOYERS

SECTION 18.001 - SECTION 18.004. Makes conforming changes.

ARTICLE 19. TRANSPORTATION SERVICE PROVIDERS

SECTION 19.001 - 19.007. Abolishes the registration of transportation service providers at TDLR and transfers the authority to audit transaction records of transportation service providers to the Department of Public Safety. Makes conforming changes.

ARTICLE 20. UNDERGROUND STORAGE TANK OPERATORS

SECTION 20.001- 20.004. Transfers the administration of the Underground Storage Tank Operators program from TCEQ to TDLR. Authorizes TDLR to adopt rules, and to establish license and examination requirements.

ARTICLE 21. VEHICLE PROTECTION PRODUCT WARRANTORS

SECTION 21.001 - SECTION 21.009. Authorizes the presiding officer of the commission, with the commissioner's approval, to appoint all members of the vehicle protection warrantor advisory committee and to appoint a presiding officer to serve for two years. Clarifies that all TDLR advisory committees exist to advise the commission. Repeals non-standard administrative penalty amounts. Makes conforming changes.

ARTICLE 22. WATER TREATMENT SPECIALISTS

SECTION 22.001- SECTION 22.007. Transfers the administration of the Water Treatment Specialists programs from TCEQ to TDLR. Authorizes TDLR to adopt rules, and to establish license and examination requirements. Makes conforming changes.

ARTICLE 23. WATER WELL DRILLERS

SECTION 23.001 - SECTION 23.019. Authorizes the presiding officer of the commission to appoint all members of the water well drillers advisory committee and to appoint a presiding officer for the committee to serve for two years. Clarifies that all TDLR advisory committees of TDLR exist to advise the commission. Transfers the enforcement of plugging abandoned water wells to local groundwater conservation districts, where such districts exists. Maintains TDLR's authority to enforce against landowners with unplugged water wells in areas of the state where groundwater conservation districts do not exist, and TDLR's authority to establish plugging standards. Requires water well drillers, pump installers, and well owners to file plugging reports with groundwater conservation districts, if such districts exist, and with TDLR. Requires TCEQ, TDLR, and groundwater conservation districts to enter into memorandums of understanding to coordinate well plugging enforcement activities. Repeals non-standard administrative penalty amounts and makes conforming changes. Eliminates the involvement of the Water Well Drillers Advisory Council in making recommendations to the commission on evaluative licensure and enforcement actions in the water well drillers program.

ARTICLE 24. WATER WELL PUMP INSTALLERS

SECTION 24.001- SECTION 24.008. Eliminates the involvement of the Water Well Drillers Advisory Council in making recommendations to the commission on evaluative licensure and enforcement actions in the water well pump installers program. Repeals non-standard administrative penalty amounts and makes conforming changes.

ARTICLE 25. WEATHER MODIFICATION

SECTION 25.001 - SECTION 25.013. Authorizes the presiding officer of the commission to appoint all members of the advisory committee and to appoint a presiding officer for the committee to serve for two years. Clarifies that all TDLR advisory committees exist to advise the commission. Makes conforming changes.

ARTICLE 26. CONFORMING AMENDMENTS RELATED TO CERTAIN PROGRAMS TRANSFERRED FROM THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SECTION 26.001- SECTION 26.004. Gives TDLR authority to issue and pass rules regarding the administration of the Backflow Prevention Assembly Testers, Customer Service Inspectors, Underground Storage Tank Operators, Landscape Irrigators, and Water Treatment Specialists programs transferred from TCEQ to TDLR.

ARTICLE 27. FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

SECTION 27.001-SECTION 27.004. Creates a new regulatory program at TDLR relating to prepaid legal service contract companies.

ARTICLE 28. GENERAL CONFORMING AMENDMENTS

SECTION 28.001 - SECTION 28.092. Makes conforming changes replacing the term “commissioner” with “executive director.”

ARTICLE 29. GENERAL TRANSITION; EFFECTIVE DATE

SECTION 29.001 - SECTION 29.002. Effective date: September 1, 2003. Provides that the changes in law made by this Act regarding the powers and duties of the executive director of TDLR that are transferred to the commission do not affect the status of any complaint, investigation, or other proceeding. Provides that a rule or form adopted by the executive director before the effective date of this Act remains in effect as a rule or form of TDLR until amended or changed.