

BILL ANALYSIS

Senate Research Center

H.B. 636
By: Thompson, Senfronia et al. (Whitmire)
Natural Resources & Economic Development
4/30/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Plumbing Examiners (TSBPE), which oversees the roughly 60,000 licensed plumbers in Texas, underwent review by the Sunset Advisory Commission before the 86th Texas Legislature. Faced with the impending abolishment of TSBPE, the legislature debated legislation acting on certain Sunset recommendations to modernize and continue the state licensing of plumbing but ultimately did not pass a bill. As a result, Governor Greg Abbott temporarily extended TSBPE for two years. H.B. 636 seeks to continue TSBPE in existence as a stand-alone agency while enacting certain statutory changes in an effort to streamline plumbing regulation and increase the number of licensed plumbers in Texas.

H.B. 636 amends current law relating to the continuation and functions of the Texas State Board of Plumbing Examiners and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Plumbing Examiners in SECTION 7 (Section 1301.203, Occupations Code), SECTION 14 (Section 1301.3542, Occupations Code), SECTION 16 (Section 1301.3581, Occupations Code), SECTION 17 (Section 1301.360, Occupations Code), SECTION 18 (Section 1301.401, Occupations Code), SECTION 20 (Section 1301.405, Occupations Code), SECTION 21 (Section 1301.4055, Occupations Code), and SECTION 22 (Section 1301.407, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas State Board of Plumbing Examiners is modified in SECTION 10 (Section 1301.303, Occupations Code) and SECTION 19 (Section 1301.404, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1301.002(9-a), Occupations Code, to redefine "responsible master plumber" for Chapter 1301 (Plumbers).

SECTION 2. Amends Section 1301.002(10), Occupations Code, to redefine "tradesman plumber-limited license holder" for Chapter 1301.

SECTION 3. Amends Section 1301.003, Occupations Code, as follows:

Sec. 1301.003. APPLICATION OF SUNSET ACT. Provides that unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the Texas State Board of Plumbing Examiners (TSBPE) is abolished and Chapter 1301 expires September 1, 2027, rather than 2019.

SECTION 4. Amends the heading to Section 1301.202, Occupations Code, to read as follows:

Sec. 1301.202. CERTAIN PLUMBING EXAMINERS.

SECTION 5. Amends Section 1301.202(a), Occupations Code, as follows:

(a) Requires TSBPE, if an examination required for the issuance of a license, registration, or endorsement under this chapter contains a practical component, to employ or contract with one or more plumbing examiners to administer that portion of the examination. Deletes existing text providing that a plumbing examiner serves at the will of TSBPE. Makes a nonsubstantive change.

SECTION 6. Amends Section 1301.203(b), Occupations Code, to delete existing text authorizing a field representative to issue citations as provided by Section 1301.502 (Citation). Makes nonsubstantive changes.

SECTION 7. Amends Section 1301.203, Occupations Code, by adding Subsection (c), as follows:

(c) Requires TSBPE by rule to assign priorities and prescribe procedures for conducting checks described by Subsection (b)(1) (relating to authorizing a field representative to conduct on-site license checks to determine compliance with this chapter) based on the degree of potential harm to public health, safety, or property, on the history of previous violations of this chapter or a rule adopted under this chapter by a person regulated under this chapter, and on any other indication of increased risk to public health, safety, or property, as determined by TSBPE.

SECTION 8. Amends Section 1301.258(b), Occupations Code, as added by Chapter 819 (S.B. 282), Acts of the 78th Legislature, Regular Session, 2003, as follows:

(b) Deletes existing text requiring each advisory committee member to be a member of TSBPE, except as provided by Subsection (c) (relating to authorizing the presiding officer of TSBPE to appoint only certain members to an enforcement committee that reviews complaints and license registration and reviews endorsement applications submitted by applicants who have certain criminal conviction histories).

SECTION 9. Amends Subchapter E, Chapter 1301, Occupations Code, by adding Section 1301.263, as follows:

Sec. 1301.263. EXAMINATION ADMINISTRATION AND CONTENT. (a) Authorizes TSBPE to adopt, recognize, develop, or contract for an examination required by this chapter, including the administration of the examination.

(b) Requires TSBPE, for each examination required by this chapter, to the extent feasible, to adopt, recognize, develop, or contract for an examination that includes components that are authorized to be administered in writing or online and by a person other than a plumbing examiner described by Section 1301.202.

(c) Requires TSBPE to determine the passing score for an examination required by this chapter.

SECTION 10. Amends Section 1301.303(e), Occupations Code, as follows:

(e) Requires TSBPE by rule to assign priorities and prescribe investigative procedures for investigations of complaints based on:

(1) and (2) makes nonsubstantive changes to these subdivisions;

(3) the history of previous violations of this chapter by the person who is the subject of the complaint; and

(4) any other indication of increased risk to public health, safety, or property, as determined by TSBPE.

SECTION 11. Amends Section 1301.304(a), Occupations Code, as follows:

(a) Authorizes TSBPE or an employee designated by TSBPE to investigate an alleged violation of this chapter or a TSBPE rule. Deletes existing text authorizing the enforcement committee or an employee designated by the enforcement committee to investigate an alleged violation of this chapter or a TSBPE rule that is reported to TSBPE.

SECTION 12. Amends Subchapter F, Chapter 1301, Occupations Code, by adding Section 1301.305, as follows:

Sec. 1301.305. PUBLIC ACCESS TO INFORMATION RELATING TO DISCIPLINARY ACTIONS. (a) Requires TSBPE to make available to the public through a toll-free telephone number, Internet website, or other easily accessible medium determined by TSBPE certain information relating to a disciplinary action taken regarding a person regulated under this chapter.

(b) Prohibits TSBPE from including the name of the person who filed the complaint in the information made available under Subsection (a).

(c) Requires TSBPE to present the information made available under Subsection (a) in an impartial manner using commonly understood language.

(d) Requires TSBPE to regularly update the information made available under this section.

SECTION 13. Amends Subchapter G, Chapter 1301, Occupations Code, by adding Section 1301.3515, as follows:

Sec. 1301.3515. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) Requires TSBPE to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to TSBPE or to the Department of Public Safety of the State of Texas (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI).

(b) Prohibits TSBPE from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TSBPE to conduct a criminal history record information check of each applicant for a license using information provided by the individual under this section, and information made available to DPS by DPS, the FBI, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(d) Authorizes TSBPE to enter into an agreement with DPS to administer a criminal history record information check required under this section, and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

SECTION 14. Amends Subchapter G, Chapter 1301, Occupations Code, by adding Section 1301.3542, as follows:

Sec. 1301.3542. CAREER AND TECHNOLOGY EDUCATION PROGRAM FOR TRADESMAN PLUMBER-LIMITED LICENSE; INSTRUCTORS. (a) Authorizes a person who successfully completes a coherent sequence of courses in the plumbing trade that are offered through a career and technology education program, notwithstanding Section 1301.354 (Plumber's Apprentice), to apply for and take an examination for a license as a tradesman plumber-limited license holder. Prohibits TSBPE from requiring the person to register as a plumber's apprentice, pay any fee, or comply with Section 1301.354 or any other requirement of this chapter that applies to a person's eligibility to apply for and take the examination.

(b) Provides that a student of any age enrolled in a high school or institution of higher education is eligible to take the sequence of courses described by Subsection (a) without registering as a plumber's apprentice, paying any registration fee to TSBPE, or complying with Section 1301.354 or any other requirement of this chapter that applies to enrolling or participating in those courses.

(c) Requires TSBPE, if an applicant described by Subsection (a) successfully passes the examination for a license as a tradesman plumber-limited license holder, to issue the applicant the license.

(d) Requires TSBPE to develop the courses described by Subsection (a). Requires that the courses be approved by the State Board of Education (SBOE) if the courses are to be offered at a high school.

(e) Requires that the courses include an appropriate number of hours of classroom instruction and a practical component. Authorizes TSBPE to credit on-the-job training toward meeting the requirements under the practical component.

(f) Prohibits a person from providing instruction in a career and technology education program described by this section unless the person is licensed under this chapter as a master plumber, journeyman plumber, or plumbing inspector.

(g) Authorizes a person described by Subsection (f) to provide the instruction in a full-time or part-time capacity as an employee, contractor, or volunteer of a high school or institution of higher education.

(h) Authorizes TSBPE to adopt rules necessary to implement this section, including procedures to verify a student's successful completion of the sequence of courses described by Subsection (a).

(i) Defines "career and technology education program" and "institution of higher education."

SECTION 15. Amends Section 1301.3576, Occupations Code, as follows:

Sec. 1301.3576. New heading: CERTIFICATE OF INSURANCE FOR RESPONSIBLE MASTER PLUMBER. Deletes existing text requiring a master plumber, before the master plumber works as a responsible master plumber, to present evidence satisfactory to TSBPE of successful completion of a training program approved or administered by TSBPE regarding the laws and rules applicable to the operation of a plumbing business in this state. Makes nonsubstantive changes.

SECTION 16. Amends Subchapter G, Chapter 1301, Occupations Code, by adding Section 1301.3581, as follows:

Sec. 1301.3581. RECIPROCITY. (a) Authorizes TSBPE to waive any prerequisite to obtaining a license, registration, or endorsement issued under this chapter for an applicant who holds a similar license, registration, or endorsement issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) Authorizes TSBPE to make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity if the other state has requirements for a license, registration, or endorsement substantially equivalent to those of this state.

(c) Requires an applicant under this section to apply in the same manner and form as any other applicant under this chapter, and to provide TSBPE with documents and other evidence that substantiate the applicant's qualifications.

(d) Prohibits an applicant for a license, registration, or endorsement issued under this section from being required to undergo an examination to obtain the license, registration, or endorsement if the applicant has held an equivalent license, registration, or endorsement in another jurisdiction for at least two years. Authorizes TSBPE to adopt rules for determining whether a license, registration, or endorsement issued by another jurisdiction is equivalent to a license, registration, or endorsement issued under this chapter.

SECTION 17. Amends Subchapter G, Chapter 1301, Occupations Code, by adding Section 1301.360, as follows

Sec. 1301.360. TEMPORARY LICENSE. (a) Authorizes TSBPE by rule to provide for the issuance of a temporary license to an applicant who submits to TSBPE an application on a form prescribed by TSBPE, meets preliminary qualifications established by TSBPE rule, and pays a fee set by TSBPE.

(b) Provides that a temporary license issued under this section expires on the 30th day after the date of issuance and is prohibited from being renewed.

(c) Provides that a temporary license holder is subject to this chapter, to any law applicable to the activity for which the license is required, including municipal rules, orders, or ordinances, and to any rule of TSBPE applicable to the license.

SECTION 18. Amends Section 1301.401, Occupations Code, as follows:

Sec. 1301.401. New heading: ANNUAL RENEWAL REQUIRED; EXCEPTION. (a) Provides that a license, registration, or endorsement, rather than a license or registration, under this chapter is valid for one year. Authorizes a license, registration, or endorsement, rather than a license, on payment of the required fee, to be renewed annually, except as provided by Subsection (d). Makes nonsubstantive changes.

(b) Makes no changes to this subsection.

(c) Provides that an endorsement issued under Section 1301.356 (Endorsement: Medical Gas Piping Installation), 1301.3565 (Endorsement: Multipurpose Residential Fire Protection Sprinkler Specialist), or 1301.357 (Endorsement: Water Supply Protection Specialist) expires on the date the master plumber or journeyman plumber license of the endorsement holder expires. Requires TSBPE to adopt rules to provide for the license holder to renew the endorsement in the same transaction as the license if the license holder has completed any continuing education requirement established by rule and applicable to the endorsement and complies with other requirements prescribed by TSBPE rule.

(d) Provides that a person who is employed by, under contract with, or engaged as a volunteer by a school or institution of higher education to provide instruction in a career and technology education program described by Section 1301.3542 and provides meaningful course instruction in the program, as determined under rules adopted under Section 1301.407, is not required to pay a fee to renew the person's license.

SECTION 19. Amends Section 1301.404, Occupations Code, by amending Subsections (a), (b), (c), (d), and (e) and adding Subsection (g), as follows:

(a) Requires TSBPE by rule to establish:

(1) minimum curriculum standards for continuing education programs and courses for persons who hold a license or endorsement issued under Chapter 1301; and

(2) minimum qualifications for an instructor of the continuing education programs and courses described by Subdivision (1).

Makes conforming changes.

(b) Requires a person who holds a license or endorsement under this chapter to complete at least six hours of continuing professional education annually, rather than each year the person holds the license or endorsement, to renew the person's license or endorsement.

(c) Requires the executive director of TSBPE (executive director) to approve a program or course that meets the minimum curriculum standards established by TSBPE under Subsection (a) and to approve an instructor who meets the minimum qualifications established by TSBPE under Subsection (a). Deletes existing text requiring TSBPE by rule to adopt the criteria for the continuing professional education.

(d) Authorizes a person to receive credit for participating in a continuing professional education program or course only if the program or course is approved by the executive director, rather than if the program or course is provided by an individual, business, or association approved by TSBPE and is according to criteria adopted by TSBPE.

(e) Authorizes a person to complete the continuing professional education requirement of Section 1301.404 (Mandatory Continuing Professional Education) through a correspondence course as approved by the executive director, rather than by TSBPE.

(g) Authorizes a person who is employed by, under contract with, or engaged as a volunteer by a school or institution of higher education to provide instruction in a career and technology education program described by Section 1301.3542 and provides meaningful course instruction in the program, as determined under rules adopted under Section 1301.407, to renew the person's license and any endorsement without complying with Subsection (b) if the person completes the hours of continuing professional education required by that subsection every three years.

SECTION 20. Amends Section 1301.405, Occupations Code, by adding Subsections (a-1) and (a-2) and amending Subsection (b), as follows:

(a-1) Requires TSBPE by rule to establish minimum curriculum standards for a training program described by Subsection (a) (relating to requiring a certified drain cleaner, drain cleaner-restricted registrant, or residential utilities installer to annually complete certain training to renew the certificate of registration) for persons who hold a registration under this chapter and establish minimum qualifications for an instructor of the training program.

(a-2) Requires the executive director to approve a training program that meets the minimum curriculum standards established by TSBPE under Subsection (a-1) and approve an instructor who meets the minimum qualifications established by TSBPE under Subsection (a-1).

(b) Authorizes a person to receive credit for participating in a training program only if the program is approved by the executive director. Deletes existing text authorizing a person to receive credit for participating in a training program only if the program is provided by a person approved by TSBPE and provided according to criteria adopted by TSBPE. Makes nonsubstantive changes.

SECTION 21. Amends Subchapter H, Chapter 1301, Occupations Code, by adding Section 1301.4055, as follows:

Sec. 1301.4055. PERIOD FOR COMPLETING CONTINUING EDUCATION. Requires TSBPE to adopt rules to ensure that each holder of a license, registration, or endorsement has at least 12 months to complete any continuing education required for the renewal of the license, registration, or endorsement.

SECTION 22. Amends Subchapter H, Chapter 1301, Occupations Code, by adding Section 1301.407, as follows:

Sec. 1301.407. PROCEDURES FOR VERIFYING CERTAIN EXEMPTIONS. Authorizes TSBPE, in consultation with SBOE and the Texas Higher Education Coordinating Board, as appropriate, to adopt rules as necessary to verify whether a person qualifies for an exemption from the required renewal fee, as described by Section 1301.401(c), or an exemption from required continuing professional education, as described by Section 1301.404(g), including rules providing for obtaining and evaluating written verification from the applicable school or institution of higher education of the person's provision of meaningful course instruction in a career and technology education program described by Section 1301.3542.

SECTION 23. Amends Section 1301.452(a), Occupations Code, as follows:

(a) Provides that a violation of this chapter includes:

(1) attempting to obtain or obtaining a license, endorsement, or registration through fraud, rather than obtaining a license, endorsement, or registration through error or fraud;

(2) and (3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes to these subdivisions;

(6) performing plumbing without holding the proper license, endorsement, or registration required by this chapter; or

(7) performing plumbing in violation of a plumbing code adopted under Section 1301.255 (Adoption of Plumbing Codes).

SECTION 24. Amends Section 1301.502(a), Occupations Code, to delete existing text authorizing a field representative to issue a citation to a person who engages in conduct described by Section 1301.508 (Criminal Penalty).

SECTION 25. Amends Section 1301.5071, Occupations Code, by adding Subsection (a-1), as follows:

(a-1) Requires that the procedures established under Subsection (a) (related to requiring TSBPE by rule to establish procedures to resolve against a complaint against a licensed plumber) identify the types of complaints for which an informal settlement conference is authorized to be used and require appropriate documentation of each informal settlement conference that is conducted, including the outcome of the conference.

SECTION 26. Amends the heading to Section 1301.703, Occupations Code, to read as follows:

Sec. 1301.703. NOTICE OF VIOLATION AND PENALTY.

SECTION 27. Amends Sections 1301.703(a) and (b), Occupations Code, as follows:

(a) Requires TSBPE, if TSBPE determines that a violation occurred, to give written notice of the violation to the person alleged to have committed the violation.

Deletes existing text authorizing the enforcement committee, if the enforcement committee determines that a violation occurred, to issue to TSBPE a report stating the facts on which the determination is based, and the committee's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty. Deletes existing text of Subsection (b) requiring the enforcement committee to give

written notice of the report to the person not later than the 14th day after the date the report is issued.

SECTION 28. Amends Sections 1301.704(a) and (b), Occupations Code, to make conforming changes.

SECTION 29. Amends Section 1301.705(a), Occupations Code, to make a conforming change.

SECTION 30. Amends Sections 1301.708(a) and (b), Occupations Code, to make conforming changes.

SECTION 31. Amends Section 372.0035(h), Health and Safety Code, as follows:

(h) Deletes existing text authorizing a field representative of TSBPE to issue a citation to a person who violates Section 372.0035 (Lead in Plumbing Fixtures, Pipe, and Pipe Fitting).

SECTION 32. (1) Repealer: Section 1301.258(c) (relating to authorizing the presiding officer of TSBPE to appoint only members of the agency staff to a certain enforcement committee), Occupations Code, as added by Chapter 819 (S.B. 282), Acts of the 78th Legislature, Regular Session, 2003.

(2) Repealer: Section 1301.304(b) (relating to requiring the enforcement committee to determine whether a person has committed a violation of Chapter 1301 or a TSBPE rule, and to determine appropriate sanctions or to dismiss the complaint), Occupations Code.

(3) Repealer: Section 1301.356(c) (relating to the renewal of a medical gas piping installation endorsement according to TSBPE rule), Occupations Code.

(4) Repealer: Section 1301.3565(c) (relating to the renewal of a multipurpose residential fire protection sprinkler specialist endorsement according to TSBPE rule), Occupations Code.

(5) Repealer: Section 1301.357(c) (relating to the renewal of a water supply protection specialist endorsement according to TSBPE rule), Occupations Code.

(6) Repealer: Section 1301.358 (Out-of-State Applicants; Provisional License), Occupations Code.

(7) Repealer: Section 1301.403(f) (relating to the requirement that a person receive a notice containing certain information regarding the scheduled expiration of a license, endorsement, or registration), Occupations Code.

(8) Repealer: Section 1301.4522 (Review of Application), Occupations Code.

(9) Repealer: Section 1301.502(b) (relating to requiring TSBPE to adopt certain guidelines relating to the circumstances when a field representative is authorized to issue a citation), Occupations Code.

(10) Repealer: Section 1301.505 (Representation by Attorney General), Occupations Code.

SECTION 33. (a) Provides that not later than:

(1) September 1, 2023, TSBPE is required to obtain criminal history record information using a person's name, date of birth, and other alphanumeric identifiers on each person who on September 1, 2021, holds a license issued under Chapter 1301, Occupations Code, and who did not undergo a criminal history record information check based on the person's name or fingerprints on submission of the person's initial license application; and

(2) September 1, 2025, TSBPE is required to obtain criminal history record information using a person's fingerprints on each person who on September 1, 2021, holds a license issued under Chapter 1301, Occupations Code, and who did not undergo a criminal history record information check based on the person's fingerprints on submission of the person's initial license application.

(b) Authorizes TSBPE to suspend the license of a person who holds a license under Chapter 1301, Occupations Code, who does not comply with a request by TSBPE to provide information or fingerprints, in a form and manner prescribed by TSBPE, that would enable TSBPE to obtain criminal history record information as required by this section.

SECTION 34. Provides that notwithstanding Section 1301.003, Occupations Code, it is the intent of the legislature in enacting this Act to amend Chapter 1301, Occupations Code, as that chapter was continued in existence by Executive Order No. GA-06.

SECTION 35. Requires TSBPE, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act to Chapter 1301, Occupations Code.

SECTION 36. Makes application of Section 1301.452 (Grounds for Disciplinary Action), Occupations Code, as amended by this Act, prospective.

SECTION 37. Effective date: upon passage or September 1, 2021.