

BILL ANALYSIS

C.S.H.B. 2062
By: Solomons
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Department of Licensing and Regulation was created in 1989 when the Legislature renamed the Bureau of Labor Statistics and established the Department as an umbrella licensing agency for non-health related professions. The Department regulates 20 different professions through examination, licensing, inspection, and enforcement. The Department is subject to the Sunset Act and will be abolished on September 1, 2003, unless continued by the Legislature. As a result of its review of the Texas Department of Licensing and Regulation, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in CSHB 2062.

RULEMAKING AUTHORITY

Rulemaking authority is expressly delegated to the Commission of Licensing and Regulation in SECTION 1.017 (Section 51.302(c), Occupations Code), SECTION 1.019 (Section 51.403, Occupations Code), SECTION 1.020 (Section 51.406, Occupations Code), SECTION 11.007 (Section 754.016, Health and Safety Code), SECTION 12.012 (Section 1202.204(b), Occupations Code), SECTION 16.007 (Subchapter C, Chapter 1304, Section 1304.105, Occupations Code), SECTION 24.015 (Subchapter F, Chapter 1901, Section 1901.257, Occupations Code), and SECTION 27.004 (Subtitle F, Title 2, Section 38.052, Water Code). Rulemaking authority is expressly delegated to the Commission on Environmental Quality in SECTION 24.015 (Subchapter F, Chapter 1901, Section 1901.257, Occupations Code). In addition, under the general rulemaking authority already granted to the Commission of Licensing and Rulemaking, rules may be developed to implement other new provisions found in this bill.

Rulemaking authority is modified by transferring the authority from the executive director of the Department of Licensing and Regulation to the Commission of Licensing and Regulation in SECTION 1.014 (Section 51.203 and 51.204, Occupations Code).

Rulemaking authority is modified by transferring the authority from the commissioner of the Department of Licensing and Regulation to the Commission of 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 11.008 (Section 754.017(b), 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(a), Occupations Code), SECTION 12.013 (Section 1202.252(a), Occupations Code), SECTION 12.014 (Section 1202.301(b), Occupations Code), SECTION 12.015 (Section 1202.302, Occupations Code), SECTION 12.016 (Section 1202.351(b), Occupations Code), SECTION 15.003 (Section 1152.051, Occupations Code), SECTION 15.009 (Section 1152.160, Occupations Code), SECTION 15.012 (Section 1152.204, Occupations Code), SECTION 15.013 (Section 1152.251, Occupations Code), SECTION 16.003 (Section 1304.052(a), Occupations Code), SECTION 16.008 (Section 1304.151(a), Occupations Code), SECTION 17.002 (Section 91.002(a) and (b), Labor Code), SECTION 17.007 (Section 91.019(a), Labor Code), SECTION 17.009 (Section 91.041(c), Labor Code), SECTION 22.003 (Section 4, Article 9035, Revised Statutes), SECTION 22.004 (Section 5(a), Article 9035, Revised Statutes), SECTION 22.005 (Section 6(d), Article 9035, Revised Statutes), SECTION 22.006 (Section 10(e), Article 9035, Revised Statutes), SECTION 24.003 (Section 1901.052, Occupations Code), SECTION 24.006 (Section 1901.109(a), Occupations Code), SECTION 24.008 (Section 1901.162, Occupations Code), SECTION 24.009 (Section 1901.251(a), Occupations Code), SECTION 24.010 (Section 1901.252(b), Occupations Code), SECTION 25.003 (Section 1902.052, Occupations Code), and SECTION 25.005 (Section 1902.162, Occupations Code).

Rulemaking authority is modified by transferring the authority from the Department of Licensing and Regulation to the Commission of Licensing and Regulation in SECTION 18.002 (Section 2105.002, Occupations Code), SECTION 18.005 (Section 2105.104, Occupations Code), SECTION 18.006 (Section 2105.105(b), Occupations Code), SECTION 26.003 (Section 1.11, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes)), SECTION 26.008 (Section 1.32, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes)), SECTION 26.009 (Section 1.41(v), Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes)), SECTION 26.010 (Section 1.64, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes)), and SECTION 26.011 (Section 1.65, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes)).

Rules of the Texas Commission on Environmental Quality are given effect as rules of the Texas Department of Licensing and Regulation until amended or replaced by the Department of Licensing and Regulation in SECTION 5.002(2), SECTION 10.002(2), SECTION 13.005(2), SECTION 21.004(2), and SECTION 23.007(2).

ANALYSIS

CSHB 2062 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 continuation and functions of the Texas Department of Licensing and Regulation (TDLR) and 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 also incorporates several standard across-the-board recommendations of the Sunset Commission.

Continuation of the Department

The bill continues TDLR until September 1, 2015 (Sec. 51.002, Occupations Code).

Commission Powers

The bill transfers rulemaking authority for all programs from the executive director of TDLR to the Texas Commission of Licensing and Regulation (Sec. 51.203, Occupations Code, and conforming changes throughout the bill). The bill also clarifies that all eleven advisory committees of TDLR exist to advise the Commission. The bill authorizes the Presiding Officer of the Commission, with approval of the Commission, to appoint all members of advisory committees and to appoint a Presiding Officer of each committee to serve for two years.

Occupational Licensing Program Transfers

The bill transfers the administration of the Backflow Prevention Assembly Testers (Sec. 341.034(c), Health and Safety Code), Customer Service Inspectors (Sec. 341.034(d), Health and Safety Code), Underground Storage Tank Operators (Sec. 26.451, 26.452, and 26.456(a), Water Code), Landscape Irrigators (Sec. 1903.001, 1903.151, and 1903.155, Occupations Code), and Water Treatment Specialists (Sec. 341.034(e), 341.101, 341.103, 341.104, and 341.105(a), Health and Safety Code) programs from the Texas Commission on Environmental Quality to TDLR. The bill gives the Commission of Licensing and Regulation authority to adopt rules, and TDLR the authority to establish license and examination requirements necessary to administer these programs (Subtitle F, Title 2, Water Code).

Consumer Information Licensing Hotline

The bill requires TDLR to create a toll-free licensing hotline (Subchapter I, Sec. 51.452, Occupations Code) for consumers to access information about any license issued by a state licensing entity. The bill requires the department to charge state licensing entities fees to sufficiently cover the cost of the creation of the database and toll-free hotline (Subchapter I, Sec. 51.454, Occupations Code).

Unplugged Water Well Enforcement

The bill transfers the enforcement of plugging abandoned water wells to local Groundwater Conservation Districts, where they exist (Subchapter F, Sec. 1901.256). The bill maintains TDLR's authority to enforce against landowners with unplugged water wells in areas of the state where Conservation Districts do not exist, and maintains TDLR's authority to establish plugging standards. The bill requires water well drillers, pump installers, and well owners to file plugging reports with Groundwater Conservation Districts, if they exist, and with TDLR (Sec. 1901.255, Occupations Code). The bill requires the Texas Commission on Environmental Quality, TDLR and Groundwater Conservation Districts to enter into Memoranda of Understanding to coordinate well plugging enforcement activities (Subchapter F, Section 1901.257, Occupations Code).

Transportation Service Providers

The bill abolishes the registration of transportation service providers at TDLR (Sec. 2401.052, 2401.001(1), 2401.051, 2401.053, 2401.054, Subchapter C, Chapter 2401, 2401.151, and Subchapter E, Chapter 2401, Occupations Code) and transfers the authority to audit transaction records of transportation service providers to the Department of Public Safety (Sec. 2401.253 Occupations Code).

Elevator Certificates of Compliance

The bill requires that elevator certificates of compliance issued by TDLR be posted in a publicly visible area within a building (Sec. 754.016 and Sec. 754.019(a), Health and Safety Code). The bill gives the Commission of Licensing and Regulation rulemaking authority to specify what information is required on a certificate of compliance, and to determine what is a publicly visible place within a building (Sec. 754.016, Health and Safety Code). The bill repeals the provision that prohibits certificates of compliance from being publicly posted (Sec. 754.019(f) and 754.015(b)(3), Health and Safety Code).

Advisory Committee Involvement

The bill eliminates the involvement of the Water Well Drillers Advisory Council in making recommendations to the Commission of Licensing and Regulation on licensure and enforcement actions in the water well drillers (Sec. 1901.109(e), Occupations Code) and water well pump installers (Sec. 1902.051 and 1902.101, Occupations Code) programs.

Standard Administrative Penalty Procedures

The bill repeals non-standard administrative penalty amounts in the service contract providers (Sec. 1304.201(b), Occupations Code), staff leasing services (Sec. 91.021, Labor Code), vehicle protection product warrantors (Sec. 15, Article 9035, Revised Statutes), water well drillers (Subchapter H, Sec. 1901.351, Occupations Code), and water well pump installers (Subchapter H, Sec. 1902.351, Occupations Code) programs. The bill also requires the Commission of Licensing and Regulation 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 (Sec. 51.302(c), Occupations Code).

Commission Size

The bill changes the size of the Commission of Licensing and Regulation from six to five members (Sec. 51.052(a), Occupations Code).

Architectural Barriers

The bill adds language to the Architectural Barriers program statute (Sec. 9, Article 9102, Revised Statutes) requiring all architectural barrier complaints that allege 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.

Industrialized Housing and Buildings

The bill adds a provision to allow industrialized buildings to be movable, provides a mechanism for reinspection of industrialized buildings, and removes the requirement that all modular components be inspected at the manufacturing plant or facility (Sec. 1202.001 and Sec. 1202.1535, Occupations Code, and conforming changes throughout the article).

Conforming Changes

The bill makes conforming changes throughout the bill changing the term "commissioner" of the Department to "executive director" of the Department.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 2062 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 them with the appropriate licensing agency. The substitute removes language in the original bill requiring TDLR to maintain a database on licensing entities and licensing information.

The substitute removes the provision in the original bill transferring the administration of the mobile amusement park ride program from TDI to TDLR, so that the requirements revert to current law.

The substitute adds language not in the original version that requires all architectural barrier complaints that allege 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 if the building is unable to come into compliance.

The substitute expands provisions in the original bill regarding enforcement time lines for the career counseling services program. The substitute also 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.

The substitute adds a provision to allow industrialized housing and buildings to be movable, and provides a mechanism for reinspection. The substitute grandfathered 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. The substitute

removes language in the Industrialized Housing and Building program that specifies that a person only commits an offense if the person knowingly and willfully violates the chapter.

The substitute clarifies that the Presiding Officer of the Commission of Licensing and Regulation will make advisory committee appointments with the approval of the full Commission.

The substitute reinstates language allowing TDLR to take administrative enforcement action against those who violate orders of the Commission.

The substitute clarifies that TDLR can provide parties with information about the complaint process instead of providing a copy of the complaint procedures and adds an effective date of January 1, 2004, for this provision.

The substitute changes the date requiring TDLR to adopt an administrative penalty matrix from December 1, 2003, to March 1, 2004.

The substitute clarifies that TDLR's license renewal procedures apply to Registered Accessibility Specialists in the Architectural Barriers program.

The substitute removes the specific 30-day time period requirement for notification of a hearing and removes the provision that appellants can file an appeal in a county other than Travis County in the Auctioneers program.

The substitute reinstates language allowing the chief boiler inspector to be the presiding officer of the Boiler Advisory Board, and changes the term "license" to the "commission" in the boiler program, reverting to current law.

The substitute changes the deadline for adopting rules regarding elevator certificates from December 1, 2003, to March 1, 2004.

The substitute removes a provision prohibiting a personnel employment service from reapplying for a new license until the third anniversary of the date the license was revoked.

The substitute repeals provisions that specify the continuing education program for property tax consultants and that allow reciprocity of licenses in the property tax consultants program, which are covered elsewhere in the bill.

The substitute adds instructional language requiring the new one-year renewals for staff leasing services to take effect on January 1, 2004.

The substitute removes language in the Water Well Driller's program that requires TDLR to get advice from the Texas Commission on Environmental Quality when adopting rules, and adds language that eliminates the involvement of the Water Well Drillers Advisory Council in making recommendations to the Commission on certain licensure and enforcement actions.