

BILL ANALYSIS

C.S.S.B. 282

By: Jackson

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1947, the Texas State Board of Plumbing Examiners (TSBPE) was established to protect the public's health and safety by ensuring that plumbing systems are installed properly by qualified individuals. To accomplish its mission, TSBPE licenses and registers plumbing professionals and enforces the Plumbing License Law. TSBPE is subject to the Sunset Act and is scheduled to be abolished on September 1, 2003.

CSSB 282 continues TSBPE for the standard 12-year period and increases collaboration between TSBPE and the Texas Department of Licensing and Regulation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Plumbing Examiners in SECTION 12 (Section 1301.262, Occupations Code), SECTION 14 (Section 1301.303, Occupations Code), SECTION 17 (Section 1301.3521, Occupations Code), SECTION 18 (Section 1301.3541, Occupations Code), SECTION 21 (Section 1301.451, Occupations Code), SECTION 22 (Section 1301.4521, Occupations Code), SECTION 24 (1301.5071, Occupations Code), and SECTION 25 (Section 1301.702, Occupations Code) of this bill.

ANALYSIS

SECTION 1. (a) Amends Section 1301.002, Occupations Code, by amending Subdivision(4) and adding Subdivision (1-a), as follows: (1-a) Defines "executive director". (4) Amends the definition of "plumber's apprentice." (b) Provides that in accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Section 1301.002(4), Occupations Code, as set out in this section, gives effect to changes made by Section 1, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 2. Section 1301.003, Occupations Code, as follows: Sec. 1301.003. APPLICATION OF SUNSET ACT. Continues the Texas State Board of Plumbing Examiners (TSBPE) until September 1, 2015.

SECTION 3. Amends Section 1301.151(c), Occupations Code, to require appointments to TSBPE to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 4. Amends Section 1301.153, Occupations Code, as follows: Sec. 1301.153. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Defines "Texas trade association." (b) Updates standard Sunset language regarding conflicts of interest. Created from text of existing Subsection (a). (c) Updates standard Sunset language prohibiting certain persons from serving as board members or general counsel. Created from text of existing Subsection (b).

SECTION 5. Amends Section 1301.156, Occupations Code, as follows: Sec. 1301.156. GROUNDS FOR REMOVAL. (a) Sets forth grounds for removal of a TSBPE member. (b) Provides that the validity of an action of TSBPE is not affected by the fact that it is taken when a ground for removal of a TSBPE member exists. (c) Requires the executive director to take certain actions if the executive director has knowledge that a potential ground for removal exists.

SECTION 6. Amends Section 1301.157, Occupations Code, as follows: Sec. 1301.157. OFFICERS. (a) Requires the governor to designate a member of TSBPE as the presiding officer of TSBPE to serve in that capacity at the pleasure of the governor. (b) Requires TSBPE to elect a secretary, rather than a presiding officer and a secretary, from its membership.

SECTION 7. Amends, Chapter 1301C, Occupations Code, by adding Section 1301.159, as follows: Sec. 1301.159. TRAINING. Adds standard Sunset language regarding training for members of TSBPE.

SECTION 8. Amends the heading to Chapter 1301D, Occupations Code, as follows: SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

SECTION 9. Amends Section 1301.201, Occupations Code, as follows: Sec. 1301.201. New heading: EXECUTIVE DIRECTOR AND STAFF. (a) Requires TSBPE to employ an executive director as the executive head of the agency. (b) Created from existing text.

SECTION 10. Amends Section 1301.203(b), Occupations Code, to add to the permitted duties of a field representative.

SECTION 11. Amends Chapter 1301D, Occupations Code, by adding Sections 1301.205-1301.208, as follows: Sec. 1301.205. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Adds standard Sunset language regarding an equal employment opportunity policy. Sec. 1301.206. EMPLOYEE INCENTIVE PROGRAM. Adds standard Sunset language regarding the state employee incentive program. Sec. 1301.207. STANDARDS OF CONDUCT. Adds standard Sunset language regarding to standards of conduct for state officers or employees. Sec. 1301.208. SEPARATION OF RESPONSIBILITIES. Requires TSBPE to develop and implement policies that clearly separate the policy-making responsibilities of TSBPE and the management responsibilities of the executive director and the staff of the agency.

SECTION 12. Amends Chapter 1301E, Occupations Code, by adding Sections 1301.258-1301.262, as follows: Sec. 1301.258. BOARD COMMITTEES. (a) Authorizes TSBPE to create committees to assist TSBPE in exercising its powers and duties. (b) Requires the presiding officer of TSBPE to appoint the members of the committees. Requires each committee member to be a member of TSBPE, except as provided by Subsection (c). (c) Authorizes the presiding officer to appoint only members of the agency staff to an enforcement committee that reviews complaints and license registration, and endorsement applications submitted by applicants who have a criminal conviction history affected by Chapter 53. Sec. 1301.259. MEMORANDUM OF UNDERSTANDING. (a) Requires TSBPE and the Texas Department of Licensing and Regulation to enter into a memorandum of understanding to improve services and coordinate the functions of each agency. (b) Requires the memorandum of understanding to meet certain objectives. Sec. 1301.260. POLICY ON TECHNOLOGICAL SOLUTIONS. Requires TSBPE to develop and implement a policy requiring the executive director and agency employees to research and propose appropriate technological solutions to improve the agency's ability to perform its functions. Requires the technological solutions to meet certain objectives. Sec. 1301.261. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TSBPE shall develop and implement a policy to encourage the use of: (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of agency rules; and (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the

agency's jurisdiction. (b) Requires TSBPE's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. (c) Requires TSBPE to designate a trained person to perform certain duties. Sec. 1301.262. PLUMBING INSPECTOR CODE OF CONDUCT. Requires TSBPE by rule to establish a code of conduct for licensed plumbing inspectors. Requires the code of conduct to require a plumbing inspector to enforce this chapter and TSBPE rules in a consistent manner across job sites.

SECTION 13. Amends Chapter 1301F, Occupations Code, by adding Section 1301.3015, as follows: Sec. 1301.3015. PUBLIC PARTICIPATION. Requires TSBPE to develop and implement policies that provide the public with a reasonable opportunity to appear before TSBPE and to speak on any issue under the jurisdiction of the agency.

SECTION 14. Amends Section 1301.303, Occupations Code, as follows: Sec. 1301.303. COMPLAINTS. (a) No change to this subsection. (b) Updates standard Sunset language requiring information to be maintained on complaints. (c) Requires TSBPE to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of TSBPE's policies and procedures relating to complaint investigation and resolution. (d) Requires TSBPE, at least quarterly and until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. (e) Requires TSBPE by rule to assign priorities and prescribe investigative procedures for investigations of complaints based on certain factors. (f) Requires TSBPE to maintain information about complaints, including source, type, and geographical area, to identify and address regulatory problem areas and focus enforcement in those areas.

SECTION 15. Amends Chapter 1301F, Occupations Code, by adding Section 1301.304, as follows: Sec. 1301.304. INVESTIGATION OF COMPLAINTS. (a) Authorizes 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. (b) Requires the enforcement committee to determine whether a person has committed the violation and recommend appropriate sanctions to TSBPE or, if the enforcement committee determines that the complaint is without merit, dismissal of the complaint. (c) Requires TSBPE to conduct joint investigations with the Texas Department of Licensing and Regulation as circumstances require.

SECTION 16. Amends Section 1301.351, Occupations Code, to prohibit a person from engaging in the business of plumbing unless certain conditions are met.

SECTION 17. Amends Chapter 1301G, Occupations Code, by adding Sections 1301.3521 and 1301.3522, as follows: Sec. 1301.3521. EXAMINATION FEE REFUND. (a) Requires TSBPE to refund the examination fee paid by an applicant who meets certain criteria. (b) Requires TSBPE to adopt rules that establish the required notification period and the emergency situations that warrant a refund. Sec. 1301.3522. EXAMINATION REVIEW COURSE. (a) Requires TSBPE to develop a review course in English and Spanish to assist license applicants in preparation for each license examination offered by TSBPE. Authorizes TSBPE, if TSBPE provides the review course, to charge a fee to an applicant who applies to take the review course. (b) Authorizes TSBPE to provide the review course training materials to private course providers for a fee determined by TSBPE.

SECTION 18. Amends Chapter 1301G, Occupations Code, by adding Section 1301.3541, as follows: Sec. 1301.3541. APPRENTICE REGISTRATION REQUIREMENTS. Authorizes TSBPE by rule to adopt registration requirements for plumber's apprentices, including training and education requirements.

SECTION 19. Amends Section 1301.358, Occupations Code, as follows: Sec. 1301.358. New heading: OUT-OF-STATE APPLICANTS; PROVISIONAL LICENSE. (a) Authorizes TSBPE to waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state. Creates this subsection from existing text. (b) Authorizes TSBPE to issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who meets certain qualifications. (c) Authorizes TSBPE to waive the requirement of Subsection (b)(3) for an applicant if TSBPE determines that compliance with that subdivision would be a hardship to the applicant. (d) Provides that a provisional license is valid until the date TSBPE approves or denies the provisional license holder's application for a license. Requires TSBPE to issue a license under this chapter to the provisional license holder if the provisional license holder meets certain criteria. (e) Requires TSBPE to approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. Authorizes TSBPE to extend the 180-day period if the results of an examination have not been received by TSBPE before the end of that period. (f) Authorizes TSBPE to establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

SECTION 20. (a) Amends Section 1301.403, Occupations Code, as follows: Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a license, endorsement, or registration to renew an unexpired license, endorsement, or registration by paying the required renewal fee to the agency before the expiration date of the license, endorsement, or registration. Provides that a person whose license, endorsement, or registration has expired may not engage in activities that require a license, endorsement, or registration until the license, endorsement, or registration has been renewed. (b) Authorizes a person whose license or endorsement has been expired for 90 days or less to renew the license or endorsement by paying to the agency a renewal fee that is equal to 1-1/2 times the normally required renewal fee. Authorizes a person whose registration has been expired for 90 days or less to renew the registration by paying a renewal fee that is equal to 1-1/2 times the normally required renewal fee. (c) Authorizes a person whose license or endorsement has been expired for more than 90 days but less than two years to renew the license or endorsement by paying a renewal fee that is equal to two times the normally required renewal fee. Authorizes a person whose registration has been expired for more than 90 days but less than two years to renew the registration by paying a renewal fee that is equal to two times the normally required renewal fee. (d) Authorizes the person to obtain a new license, endorsement, or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license, endorsement, or registration. (e) Authorizes a person who held a license, endorsement, or registration in this state, moved to another state, and is currently holding a license, endorsement, or registration and has been in practice in the other state for the two years preceding the date of application to obtain a new license, endorsement, or registration without reexamination. Requires the person to pay a fee that is equal to two times the normally required renewal fee for the license, endorsement, or registration. (f) Requires TSBPE, not later than the 30th day before the date a person's license, endorsement, or registration is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to TSBPE records. (b) Provides that in accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Section 1301.403, Occupations Code, as set out in this section, gives effect to changes made by Section 14, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 21. (a) Amends Section 1301.451, Occupations Code, as follows: Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) Requires TSBPE to revoke, suspend, or refuse to renew a license, endorsement, or registration or to reprimand a holder of a license, endorsement, or registration for a violation of this chapter or a rule of TSBPE. (b) No change to this subsection. (c) Authorizes TSBPE to place on probation a person whose license, endorsement, or registration is suspended. Authorizes TSBPE, if a license, endorsement, or registration suspension is probated, to require the person to perform certain tasks. (d) Requires TSBPE by rule to adopt written guidelines to ensure that probation is administered consistently and develop a system to track compliance with the probation requirements. (b)

Provides that in accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Section 1301.451, Occupations Code, as set out in this section, gives effect to changes made by Section 12, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 22. Amends Chapter 1301I, Occupations Code, by adding Sections 1301.4521 and 1301.4522, as follows: Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION. (a) Requires TSBPE to adopt rules in compliance with the guidelines authorized by Chapter 53 relating to criminal convictions. (b) Requires TSBPE to adopt a method to review the agency's compliance with Chapter 53 and the rules adopted under this section. Sec. 1301.4522. REVIEW OF APPLICATION. (a) Authorizes the enforcement committee to approve, without TSBPE approval, the application for a license, endorsement, or registration of a person who has a criminal conviction if the enforcement committee finds that the criminal conviction does not directly relate to the duties and responsibilities of the business of plumbing in accordance with the rules adopted by TSBPE under Section 1301.4521. (b) Authorizes the person, if the enforcement committee determines that a person is ineligible for a license, endorsement, or registration based on the person's criminal conviction, to request a hearing before an administrative law judge of the State Office of Administrative Hearings to review the enforcement committee's determination. (c) Requires TSBPE, after receipt of the administrative law judge's proposed findings of fact and conclusions of law, to determine the applicant's eligibility. Requires TSBPE to provide an applicant who is denied a license a written statement containing the reasons for TSBPE's action. (d) Authorizes an applicant who has a criminal conviction to appear before TSBPE or the enforcement committee to present information relating to the applicant's criminal conviction.

SECTION 23. Amends Section 1301.502, Occupations Code, as follows: (a) Creates subsection from existing text. (b) Requires TSBPE to adopt guidelines relating to the circumstances when a field representative may issue a citation. Requires the guidelines to encourage the use of other enforcement measures, including imposition of administrative penalties, before the issuance of a citation.

SECTION 24. Amends Chapter 1301J, Occupations Code, by adding Sections 1301.5045 and 1301.5071, as follows: Sec. 1301.5045. CEASE AND DESIST ORDER. (a) Authorizes TSBPE, if it appears to TSBPE that a person is violating this chapter or a rule adopted under this chapter, after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in the activity. (b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter N. Sec. 1301.5071. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION. (a) Requires TSBPE by rule to establish procedures under which an informal settlement conference is conducted to resolve a complaint against a person licensed under this chapter. (b) Authorizes TSBPE to order a person licensed under this chapter to pay restitution to a person as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under Subchapter N. (c) Prohibits the amount of restitution ordered as provided by an agreement resulting from an informal settlement conference from exceeding the amount the person paid to the license holder for a service regulated by this chapter. Prohibits TSBPE from requiring payment of other damages or estimating harm in a restitution order.

SECTION 25. Amends Chapter 1301, Occupations Code, by adding Subchapters M and N, as follows: SUBCHAPTER M. INTERAGENCY COOPERATION AND REGULATION Sec. 1301.651. DEFINITION. Defines "local workforce development TSBPE" Sec. 1301.652. PUBLIC EDUCATION EFFORT. (a) Requires TSBPE and the Texas Workforce Commission to, through the local workforce development boards, coordinate efforts to educate the public about the plumbing profession and the resources available to employers for the recruitment and training of plumbers, including providing: (1) each local workforce development board with: (A) information about the licensing requirements for the plumbing profession; and (B) available statistical data regarding plumbing; and (2) a link to each agency's Internet site and to the Internet sites of other local workforce development boards. (b) Authorizes TSBPE to, during public and industry awareness seminars, raise awareness of the career ladder in the plumbing industry and

the opportunities that plumbing apprenticeships offer. (c) Provides that this section applies to the extent that the plumbing profession is designated as an occupation in demand by a local workforce development board. SUBCHAPTER N. ADMINISTRATIVE PENALTY Sec. 1301.701. IMPOSITION OF PENALTY. Authorizes TSBPE to impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter. Sec. 1301.702. AMOUNT OF PENALTY. (a) Provides that the amount of an administrative penalty may not exceed \$5,000 for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. (b) Requires the amount of the penalty to be based on certain factors. (c) Requires TSBPE by rule or through procedures adopted by TSBPE and published in the Texas Register to develop a standardized penalty schedule based on the criteria listed in Subsection (b). Sec. 1301.703. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Authorizes the enforcement committee, if the enforcement committee determines that a violation occurred, to issue to TSBPE a report stating certain information. (b) Requires the enforcement committee not later than the 14th day after the date the report is issued, to give written notice of the report to the person. (c) Requires the notice to include certain information. Sec. 1301.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person in writing, not later than the 20th day after the date the person receives the notice, to take certain actions. (b) Requires TSBPE by order if, the person accepts the determination and recommended penalty of the enforcement committee, to approve the determination and impose the recommended penalty. Sec. 1301.705. HEARING. (a) Requires the enforcement committee, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires an administrative law judge of the State Office of Administrative Hearings to hold the hearing. (b) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to TSBPE a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Sec. 1301.706. DECISION BY BOARD. (a) Authorizes TSBPE by order based on the findings of fact, conclusions of law, and proposal for a decision, to make certain findings. (b) Provides that the notice of TSBPE's order given to the person must include a statement of the right of the person to judicial review of the order. Sec. 1301.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, not later than the 30th day after the date TSBPE's order becomes final, to take certain actions. Sec. 1301.708. STAY OF ENFORCEMENT OF PENALTY. (a) Authorizes a person who files a petition for judicial review within the 30-day period prescribed by Section 1301.707, to take certain actions. (b) Authorizes the executive director, if the enforcement committee receives a copy of an affidavit under Subsection (a)(2), to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. (c) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond. Sec. 1301.709. DECISION BY COURT. (a) Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. (b) Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed. Sec. 1301.710. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. (b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. (c) Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted. Sec. 1301.711. RELEASE OF BOND. (a) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order, when the court's judgment becomes final, the release of the bond. (b) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount. Sec. 1301.712. COLLECTION OF PENALTY. (a) Authorizes the penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. (b) Authorizes the attorney general to sue to collect the penalty. Sec. 1301.713. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 26. Amends Section 51.351, Occupations Code, is amended by adding Subsections (c) and

(d), as follows: (c) Authorizes a Texas Department of Licensing and Regulation (TDLR) employee to check the license, registration, or endorsement of a person regulated by the Texas State Board of Plumbing Examiners in accordance with the memorandum of understanding under Section 1301.259, Occupations Code, and report any noncompliance to that agency. (d) Requires TDLR to conduct joint investigations with the Texas State Board of Plumbing Examiners as circumstances require.

SECTION 27. Amends Section 2308.303, Government Code, by adding Subsection (e) and (f), as follows: (e) Requires a board to educate the public about the plumbing profession and the resources available to employers for the recruitment and training of plumbers as provided by Section 1301.652, Occupations Code. (f) Authorizes these educational efforts to be conducted to the extent that the plumbing profession is designated as an occupation in demand by a local workforce development board.

SECTION 28. (a) Requires the TSBPE by January 1, 2004, to adopt the rules required by Section 1301.4521, Occupations Code, as added by this Act. (b) Requires the TSBPE by September 1, 2004, to adopt certain guidelines and a certain administrative penalty schedule. (c) Makes the changes in law made by Section 1301.153, Occupations Code, as amended by this Act, and Section 1301.159, Occupations Code, as added by this Act, in the prohibitions on or qualifications of members of the TSBPE prospective. (d) Makes the change in law made by this Act to Chapter 1301, Occupations Code, relating to the investigation of a complaint applies only to a complaint filed with the TSBPE prospective.

SECTION 29. Provides that to the extent of any conflict, this Act prevails over another Act of the 78th Legislature, Regular Session, 2003, relating to non-substantive additions to and corrections in enacted codes.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSSB 282 modifies the engrossed version by changing the language in SECTION 16. Section 1301.351(c), Occupations Code by requiring a supervising or controlling license holder in the business of plumbing of new one and two-family dwellings in unincorporated areas of the state to be trained and have management responsibility, review and inspect the person's work. The license holder is not required to provide continuous or uninterrupted on-the-job oversight of the person's work.

The engrossed version amended Section 1301.351(a), Occupations Code.