



# SUNSET ADVISORY COMMISSION

Texas State  
Board of Plumbing  
Examiners



Staff Report  
August 2002

**TEXAS STATE BOARD OF PLUMBING EXAMINERS**

**SUNSET STAFF REPORT**

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# SUMMARY



## Sunset Staff Report

# Texas State Board of Plumbing Examiners

## Summary

The Texas State Board of Plumbing Examiners has not undergone a Sunset review in more than 20 years, but has experienced consideration of major policy changes in recent years. In 1999, the Legislature passed a bill, later vetoed by the Governor, to abolish the Board and transfer its functions to an umbrella agency that regulates mechanical trades, combining the regulatory functions of several agencies. Last session, the Legislature enacted a bill to expand the reach of the Plumbing License Law to most of the state, and to give the Board additional authority to regulate plumbing professionals.

With this backdrop, the Sunset review evaluated organizational alternatives to maintaining a separate agency for regulating plumbers. Specifically, the review sought to identify problems at the Board that would justify restructuring the Board with other agencies. While the review identified no such problems, it did find advantages to better coordinating Board activities with those of the Texas Department of Licensing and Regulation.

The review also assessed the Board's ability to meet the various requirements of recent enactments, seeking to balance public safety concerns with the need to provide enough licensed plumbers to meet the demand for plumbing work in Texas. The review found that improved efforts to better prepare plumber's apprentices to become licensed plumbers, and to take advantage of existing opportunities to raise awareness about the plumbing profession, would help address the shortage of licensed plumbers in Texas.

Specific recommendations resulting from this analysis are summarized in the following material.

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*The Sunset review found advantages to better coordinating Board activities with those of the Texas Department of Licensing and Regulation.*

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*For more information, contact Emilie Leroux, (512) 463-1300. Sunset staff reports are available online at [www.sunset.state.tx.us](http://www.sunset.state.tx.us).*

## **Issues / Recommendations**

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### **Issue 1 Texas Has a Continuing Need for the State Board of Plumbing Examiners.**

#### **Key Recommendations**

- Continue the Texas State Board of Plumbing Examiners for 12 years.
- Establish a formal mechanism for the Plumbing Board and TDLR to work more closely to improve the regulation of plumbing in Texas.
- Authorize field enforcement officers from the Plumbing Board and TDLR, in the performance of their duties, to check proper identification of occupations regulated by the partner agency, and report non-compliance to that agency.

### **Issue 2 The Plumbing Board's Committee Structure Inappropriately Delegates the Board's Policymaking Responsibility to Its Staff.**

#### **Key Recommendation**

- Specify in statute that the Board's committees be composed of Board members only.

### **Issue 3 The Board is Not Well Positioned to Address the Shortage of Licensed Plumbers in the State.**

#### **Key Recommendations**

- Provide the Board with the same statutory authority to set additional requirements for apprentices as it has for all other registrants and licensees.
- Require the Board and the Texas Workforce Commission to coordinate to address the shortage of licensed plumbers in Texas.

### **Issue 4 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.**

#### **Key Recommendations**

- Revise elements of the agency's licensing authority to ensure fairness to the licensee and protection of the consumer in the way the Board addresses applicants' criminal history and in the code of conduct for licensed plumbing inspectors.

- Update elements of the agency's enforcement activities to better protect the public and to ensure consistency and fairness towards licensees, by improving the way the Board conducts and makes decisions on complaints and by providing the agency with a full range of administrative sanctions.
- The Board should explore ways to provide better information to consumers, and improve administrative functions regarding examination fee refunds.

## Fiscal Implication Summary

This report contains several issues that would have a fiscal impact to the State resulting in an overall gain to General Revenue. These recommendations are discussed below, followed by a five-year summary chart.

- *Issue 2* - Specifying that the Plumbing Board's committees be composed solely of Board members would have a negative annual fiscal impact of \$1,500, associated with additional travel costs for Board members needed to serve in place of staff on Board committees.
- *Issue 4* - Authorizing the Board to levy administrative fines would result in an annual gain to General Revenue of approximately \$87,000. In addition, authorizing staff to review the criminal histories of applicants with convictions and to settle complaints, subject to the Board's final approval, would save the State approximately \$1,500 annually in travel costs for Board members. The printing of consumer-oriented brochures may cost the State approximately \$1,500 annually, based on a similar program at the Texas Department of Licensing and Regulation. The initial set up cost of an online system for consumers to check disciplinary orders against licensees may cost approximately \$3,000.

Fiscal Year	Gain to the General Revenue Fund	Savings to the General Revenue Fund	Cost to the General Revenue Fund
2004	\$87,000	\$1,500	\$6,000
2005	\$87,000	\$1,500	\$3,000
2006	\$87,000	\$1,500	\$3,000
2007	\$87,000	\$1,500	\$3,000
2008	\$87,000	\$1,500	\$3,000





## **ISSUES / RECOMMENDATIONS**

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# Issue 1

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## Texas Has a Continuing Need for the State Board of Plumbing Examiners.

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### Summary

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#### Key Recommendations

- Continue the Texas State Board of Plumbing Examiners for 12 years.
- Establish a formal mechanism for the Plumbing Board and TDLR to work more closely to improve the regulation of plumbing in Texas.
- Authorize field enforcement officers from the Plumbing Board and TDLR, in the performance of their duties, to check proper identification of occupations regulated by the partner agency, and report non-compliance to that agency.

#### Key Findings

- The Board is generally effective at regulating plumbing as a stand-alone agency.
- The Board misses opportunities for improving its operations by not partnering with a larger agency.
- An analysis of other states' practices and recent actions in Texas show broad interest in improving coordination in the regulation of plumbing and other occupations.

#### Conclusion

Texas has a continuing need to regulate plumbing at the statewide level to protect its residents from the dangers of improperly installed plumbing systems, and to provide mobility in the industry through uniform licensing standards. Sunset staff reviewed the agency's core functions of licensing and enforcement, and concluded that no specific problems existed that justified consolidating the Board under a larger agency, such as the Texas Department of Licensing and Regulation (TDLR) or the Texas Natural Resource Conservation Commission. Although the Plumbing Board should continue to regulate plumbers as a separate agency, requiring it to enter into an inter-agency agreement with TDLR to share resources, enhance coordination, and improve services when needed would allow the Board to maintain its expertise, independence, and accessibility, while reaping some of the desirable benefits of consolidation.

## Support

### The mission of the State Board of Plumbing Examiners is to protect the public’s health and safety.

- The regulation of plumbing in Texas began at the local level in 1897. In 1947, the Legislature created the State Board of Plumbing Examiners (the Board) to provide for the uniform statewide examining and licensing of master plumbers, journeyman plumbers, and plumbing inspectors. Since that time, the Legislature has increasingly broadened the Board’s oversight and regulation of the plumbing industry.
- The Board plays an important role in protecting the public by ensuring that qualified individuals install and repair plumbing in Texas, and by sanctioning practitioners who violate the law. To achieve its mission, the Board performs two core functions: licensing and registration, and enforcement. The Board licenses master plumbers, journeyman plumbers, tradesman plumbers, and plumbing inspectors and registers plumber’s apprentices. Additionally, the Board monitors plumbing job sites and investigates all complaints to ensure that licensees comply with the Plumbing License Law and Board rules and that plumbing is installed according to minimum standards set by the State’s Plumbing Codes. As indicated in the textbox, *Board Activities*, the Plumbing Board licensed about 21,000 plumbers, monitored more than 12,000 job sites, and investigated 485 complaints in FY2001. These activities resulted in the issuance of 508 citations that year.

*The Legislature created the State Board of Plumbing Examiners to provide uniform examining and licensing for plumbing professionals.*

Board Activities	
Activity	FY 2001
<u>Licensees Regulated</u>	
Master Plumber Licenses	8,883
Journeyman Plumber Licenses	10,973
Plumbing Inspector Licenses	1,028
<u>Enforcement Activities</u>	
Job Sites Monitored	12,197
Field Investigations Conducted	485
Seminars and Training Sessions	75
<u>Enforcement Actions</u>	
Number of Complaints Resolved	590
Citations Issues	508
License Revocations	6

### Texas has a continuing interest in regulating the plumbing industry to protect the health and safety of Texans.

- The installation of plumbing systems is an essential part of Texas’ multibillion dollar commercial and residential building industry. Quality plumbing systems are important to protect the health and safety of Texans as improper installation or repairs – such as improperly connected or ventilated plumbing systems, cross-connected medical gas pipes, or improperly installed water heaters – can transmit diseases, cause fires or explosions, or create leaks

that may lead to the spread of hazardous molds in residential and commercial buildings.

- Texas has a need to regulate plumbers at the state level, as leaving this responsibility to local governments may lead to inconsistent standards of regulation, potentially harming consumers and plumbers through the resulting patchwork of plumbing requirements and standards. The Board's creation in 1947 was designed to correct these problems by creating statewide licensing standards, and requiring licensure of plumbers working in cities of more than 5,000 inhabitants.
- In 2001, the 77th Legislature further acknowledged the importance of statewide regulation by removing this exemption, extending the Plumbing License Law to most of the state by requiring that all plumbing work connected to a public water system or performed in cities of any size be performed by a licensed plumber.

**The Board is generally effective at regulating plumbing as a stand-alone agency.**

- The Plumbing Board has generally been effective in carrying out the duties it was set out to perform by the Legislature. Indeed, the Board satisfactorily accomplishes its licensing and enforcement functions. The agency issues examination results within one week and resolves about 80 percent of all complaints within six months. The Plumbing Board's FY2000 Customer Service Survey indicates that 95 percent of surveyed customers expressed overall satisfaction with services rendered by the agency. The Board and its staff are widely respected by the Texas industry and other states, which regard the Board's hands-on practical examination as a model in the nation.
- The agency has the needed expertise to perform its duties both at the policymaking level and at the administrative level. The Board consists of nine members, representing the interests of licensees, business and design professionals, as well as consumers of plumbing services, including the public. Agency staff has many years of experience working with the agency and in the plumbing industry, creating a useful knowledge base. The Board's Administrator, Chief Enforcement Officer, and Chief Examiner are licensed master plumbers, and all of the Board's field representatives are experienced licensees of the agency.
- The Board recovers all costs through fees collected from licensees; therefore, no direct tangible cost savings would result if the Board were abolished or consolidated with another agency. Because the cost of operating the agency is paid by regulated entities, the Board does not present a burden to the General Revenue Fund. To the contrary, the Board contributes about \$478,000 more to General Revenue than it is appropriated during the budgeting process.

*The Board has generally been effective in carrying out its duties as a stand-alone agency.*

*The Board has no specific problems that justify the transfer of its functions to another state agency.*

- The Board has no specific problems that justify the transfer of its functions to another state agency, such as the Texas Department of Licensing and Regulation (TDLR), the Texas Natural Resource Conservation Commission (TNRCC), or to another entity.

TDLR, the state's umbrella licensing agency for 20 occupations, has an established structure for occupational licensure and enforcement and could potentially perform the functions of the Plumbing Board. However, TDLR likely would require the same or similar expertise as currently exists on the Board's staff, and on the Board itself, to adequately regulate the plumbing professions and to advise on rulemaking and policymaking issues related to plumbing. TDLR would also face space limitations in accommodating the Plumbing Board's practical shop examination.

As the agency charged with ensuring clean waters, TNRCC regulates occupations related to plumbing, such as landscape irrigators and installers, backflow prevention assembly testers, on-site sewage facility installers, or customer service inspectors. However, TNRCC and the Legislature have been working to focus the agency more clearly on its environmental protection mission, getting it away from extraneous activities such as regulating occupations. The oversight of plumbers does not fit with the mission of an agency that will soon be known as the Commission on Environmental Quality.

The Mechanical Contractors Association of America at the national level, and several statewide plumbing heating and cooling mechanical contractors associations in Texas develop standards for the industry and provide educational and training programs. However, as membership associations, they do not perform licensing functions and are not equipped to take regulatory actions against individuals.

**The Board misses opportunities for improving its operations by not partnering with a larger agency.**

- The Plumbing Board is a small agency with limited resources. The agency is composed of a total of 24 FTEs, including 16 at the agency's Austin headquarters and eight field representatives. The agency relies on the Department of Information Resources (DIR) for e-mail and Internet services, and its Web site is maintained by a vendor through the TEXAN 2000 contract. The Board is also a member of the Small State Agency Task Force, which identifies and provides assistance on issues faced by Texas state agencies with fewer than 100 FTEs.
- The advantages of consolidation, such as pooled resources and consistent licensing and enforcement practices, could be partially achieved through greater coordination between the Plumbing Board

and a larger agency, such as TDLR, while allowing the Board to maintain its expertise, independence, and accessibility. Functional areas of the Board's operations, such as enforcement and information technology could benefit from outside assistance.

For example, TDLR employs 23 field enforcement officers throughout the state, whose investigations and inspections relating to air conditioning contractors, boiler installations, and architectural barrier construction projects, take them to many of the same construction sites and locations where plumbing is installed. Improved coordination between the two agencies could expand the reach of both in conducting field investigations and inspections.

Although the Plumbing Board appropriately follows DIR requirements for information technology services, the Board could benefit from TDLR's experience and expertise using information technology for occupational licensing. TDLR could act as a resource on good practices using information technology, such as providing consumers with information on enforcement actions taken against licensees on the agency's Web site.

*The Board could improve its operations by partnering with a larger occupational licensing agency.*

- Another opportunity for improving the Plumbing Board's operations arises from the possibility of transferring plumbing-related programs from TNRCC to TDLR. While the proposal must still receive legislative approval, the Sunset Commission at its June 26, 2002 meeting, voted to transfer the regulation of backflow prevention assembly testers, landscape irrigators and installers, customer service inspectors, and water treatmentspecialists, from TNRCC to TDLR. To the extent that TDLR receives any or all of these programs, improved coordination between the Board and TDLR would enhance regulation by both agencies.

**An analysis of other states's practices and recent actions in Texas show broad interest in improving coordination in the regulation of plumbing and other occupations.**

- The chart, *Oversight of the Plumbing Industry in the United States*, describes the various organizational schemes that states have adopted to regulate plumbers. Most states regulate plumbing at the statewide level, although eight states delegate that authority to local jurisdictions, such as counties or cities. Only nine states, including Texas, use a separate, stand-alone agency. Instead, 33 states place regulation of plumbing within an umbrella agency, such as a general regulatory agency or one regulating industrial trades. For example, 13 states consolidated the regulation of plumbing with that of other industrial trades, and 12 states merged it with the oversight of other general occupations.

Oversight of the Plumbing Industry in the United States			
	Organizational Structures	Number of States	States
Umbrella Agency	Agency regulating industrial trades (ex: Board of Contractors)	13	AZ, CA, CT, GA, ID, KT, MI, MT, NV, OR, RI, UT, WA
	Agency overseeing general occupations (ex: Department of Licensing and Regulation)	12	AK, DE, FL, HI, IN, MA, NJ, NM, SC, VT, VA, WV
	Health Department	6	AR, IL, IA, ME, MN, OK
	Department of Commerce	2	OH, WI

*Recent legislative actions show broad interest in improving coordination between the regulation of plumbing and other occupations.*

- The Legislature expressed its own interest in better coordinating the regulation of plumbing in 1999, when it passed a bill, which was later vetoed by the Governor, that would have abolished the Board of Plumbing Examiners and created the Texas State Board of Mechanical Industries to regulate plumbing, air conditioning, refrigeration, and back flow prevention services. In addition, the Sunset Commission’s recent decision to transfer several plumbing-related licensing programs from TNRCC to TDLR shows its interest in improving coordination among state agencies with similar functions. The Sunset Commission also directed TDLR to operate a toll-free referral line for inquiries about occupational licensing agencies, and to assist these agencies in their transition to Texas Online.

## Recommendation

### Change in Statute

#### 1.1 Continue the Texas State Board of Plumbing Examiners for 12 years.

This recommendation would continue the Plumbing Board as an independent agency responsible for overseeing the plumbing industry in Texas for the standard 12-year period.

#### 1.2 Establish a formal mechanism for the Plumbing Board and TDLR to work more closely to improve the regulation of plumbing in Texas.

This recommendation would require the Board and TDLR to negotiate and enter into an inter-agency agreement under which the two agencies would share resources, enhance coordination, and improve services when needed. This change would help expand the Plumbing Board’s ability to carry out its mission. The Plumbing Board and TDLR should communicate on ways to use

information technology to support the regulation of occupational licenses, and investigate the feasibility of establishing an online database on the Board's Web site that enables viewers to check enforcement actions against the agency's licensees. The Board and TDLR should also share information on regulatory practices for licensing occupations, including policy issues that affect the regulation of licensed occupations, standardization of complaint and enforcement techniques, and model licensing techniques.

**1.3 Authorize field enforcement officers from the Plumbing Board and TDLR, in the performance of their duties, to check proper identification of occupations regulated by the partner agency, and report non-compliance to that agency.**

This recommendation would require the Plumbing Board and TDLR to enter into a reciprocity agreement under which enforcement officers from both agencies would, in the performance of their duties, be authorized to check licenses held by occupations regulated by the partner agency, and report non-compliance to that agency. Plumbing Board and TDLR enforcement staff should conduct joint investigations as circumstances dictate. This recommendation would improve the enforcement of both agencies, and allow the Plumbing Board field representatives to better focus their expertise on monitoring job compliance with Plumbing Codes and investigating complaints.

### **Impact**

These recommendations would continue the Plumbing Board as a stand-alone agency for an additional 12 years, but would help it expand on its current capabilities by drawing on the administrative and enforcement resources of TDLR. Increased coordination and sharing of resources between TDLR and the Plumbing Board would provide many of the benefits of consolidating the two agencies without harming the level of expertise or the current focus that the Board of Plumbing Examiners brings to the regulation of plumbing.

### **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the State. If the Board is continued, its current annual appropriation of \$1.5 million would continue to be required to maintain the operation of the agency.





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## Issue 2

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### **The Plumbing Board's Committee Structure Inappropriately Delegates the Board's Policymaking Responsibility to Its Staff.**

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## Summary

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### **Key Recommendation**

- Specify in statute that the Board's committees be composed of Board members only.

### **Key Finding**

- Having non-Board members participate in the Board's committees creates an improper delegation of authority and does not necessarily provide the Board with advice and expertise on issues.

### **Conclusion**

The Board uses committees to divide its workload among members. These committees are composed of Board members and voting staff, thereby blurring the lines of responsibility between the Board's role to make policies and the staff responsibility to implement them. The presence of staff on committees is an improper delegation of policymaking authority that should be the sole responsibility of the Board. Leaving this responsibility to the Board would ensure accountability to the Governor, and prevent staff from making decisions on matters in which it has a direct interest.

## Support

### The Plumbing Board uses committees to assist it in its work.

- State agencies use committees of their governing boards to help them discharge their duties. Committees provide a way for policymaking bodies to divide the workload among members. They also provide the opportunity for members to either develop or share their expertise in a given area. Board committees typically meet before each full board meeting, passing recommendations to the full board for approval.
- The Plumbing Board has eight standing committees, as listed in the chart, *Structure of the Board's Committees*. For example, one committee reviews course materials, providers, and instructors for the Board's continuing professional education program. Another committee develops and reviews proposed rules for submission to the full Board. The Board has also established a Special Purpose Committee to consider issues related to the implementation of new licensing and registration requirements created during the last legislative session.

*All but one of the Board's committees have staff members with the same voting privileges as Board members.*

Structure of the Board's Committees			
	Number of Board Members	Number of Staff	Frequency of Meetings
Continuing Education Committee	3	2	Once a year
Rules Committee	4	2	Once a year
Enforcement Committee	2	2	Twice a month
Legislative Committee	2	0	Last meeting in 1997
Examination Committee	2	2	Once a year
Medical Gas Piping Installation Committee	2	2	Last meeting in 1997
Water Supply Protection Specialist Committee	2	1	Last meeting in 1994
Personnel Committee	3	1	Last meeting in 1994

- Of the Board's committees, all but one include staff members who have the same voting privileges as Board members. The Board Chair appoints each committee, which were last appointed in 2002. Until 1998, the Board's committees were composed of interest groups with equal voting rights as Board members.

**Having non-Board members participate in the Board's committees creates an improper delegation of authority and does not necessarily provide the Board with advice and expertise on issues.**

- The system of Board governance holds agencies accountable to the Governor through the appointment of Board members, and provides the professional expertise and diverse perspective that staff may lack. Whereas Board members are responsible for developing policy, the role of agency staff is to implement Board policies. Because of the distinct difference between making and implementing policy, the Sunset Commission has adopted an across-the-board recommendation for agencies to develop and implement policies that clearly separate these functions.

Staff presence on Board committees blurs the lines of responsibility between Board members and staff. This results in staff improperly serving in the policy development role that should be the sole responsibility of the Board members appointed for that purpose. This practice also diminishes the Board's accountability to the Governor.

- The staff's dual role as a resource and a participant in the policymaking process is inappropriate when the staff has the opportunity to vote on matters it submitted to the Board. This is especially the case when staff has a direct interest what is being decided, such as when staff votes on its own proposals or when it votes to delay the implementation of provisions it is charged with implementing.

For example, as a member of the Rules Committee, the Administrator routinely votes on recommended language for rules that the Administrator submitted to the Board. In addition, staff may vote on matters outside its jurisdiction, such as the Administrator voting on personnel matters not within the Administrator's authority during the Board's Personnel Committee meetings.

- Having staff on committees is not an appropriate way for the Board to receive needed advice and expertise. While staff appropriately shares its expertise through the routine preparation of materials and proposals for the Board, other mechanisms provide better opportunities for the Board to receive the additional expertise it needs. For example, advisory committees allow boards to hear

*Staff presence on Board committees is an improper delegation of the Board's policymaking role.*

from interest groups and the public on targeted policy issue. Boards are able to tailor the make up and mission of these advisory committees to serve the Board’s specific needs. In 2001, the Legislature granted the agency the authority to set up advisory committees, but the workload involved in implementing laws of the 77th Legislature has not allowed the Board time to set up advisory committees to date.

## Recommendation

### Change in Statute

#### 2.1 Specify in statute that the Board’s committees be composed of Board members only.

This recommendation would specify that each of the Board’s committees are composed solely of Board members, as appointed by the Chair. As discussed in Issue 4, this change would not apply to the Board’s current enforcement committee which reviews complaints and applicants with criminal convictions. Sunset staff recommends that these functions be left entirely to staff with final approval from the Board.

### Impact

This recommendation would ensure that policymaking responsibilities are left solely to Board members, thereby ensuring accountability to the Governor for Board decisions. Such a change is consistent with the Sunset ATB that requires all state agencies to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff. This recommendation would also keep the staff from making decisions on matters in which it has a direct interest. The Board would still be able to receive the advice and expertise it needs on policy issues through the use of advisory committees, common to other agencies.

### Fiscal Implication

This recommendation would have a small negative fiscal impact associated with additional travel costs for Board members needed to serve in place of staff on Board committees. However, these costs would be offset by savings from delegating the functions of the Board’s enforcement committee to the staff, as discussed in Issue 4.

Fiscal Year	Costs to the General Revenue Fund
2003	\$1,500
2004	\$1,500
2005	\$1,500
2006	\$1,500
2007	\$1,500

## Issue 3

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### The Board is Not Well Positioned to Address the Shortage of Licensed Plumbers in the State.

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## Summary

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### Key Recommendations

- Provide the Board with the same statutory authority to set additional requirements for apprentices as it has for all other registrants and licensees.
- Require the Board and the Texas Workforce Commission to coordinate to address the shortage of licensed plumbers in Texas.

### Key Findings

- New legislative requirements mean that the state will need more licensed plumbers, and the industry is experiencing some growing pains trying to keep up with the demand.
- The Board's statutory authority over apprentices is inconsistent with that of other registration categories and does not ensure that apprentices receive the training needed to become licensed plumbers.
- Several opportunities are available to help address the training needs of plumber's apprentices, and the shortage of licensed plumbers in Texas.

### Conclusion

At the same time that population growth in Texas has stretched the ability of licensed plumbers to meet the demand for plumbing work, the Legislature, in 2001, extended the reach of the Plumbing License Law to require most plumbing work statewide to be performed or supervised by a licensed plumber. In response to these pressures, the Legislature created a new plumber's license and registration categories, and required the registration of plumber's apprentices. The Board, however, is not able to ensure that plumber's apprentices receive the training and expertise they need to become successful plumbers, as it does for other licensees and registrants.

The Sunset review examined the Board's licensing process, seeking to balance public safety concerns with the need to provide enough licensed plumbers to perform plumbing work in Texas. By authorizing the Board to set training and continuing education requirements for plumber's apprentices, and taking advantage of existing training opportunities, the Board can help ensure that plumber's apprentices receive the training and expertise needed to become licensed plumbers, and thus help meet the demand for their services.

## Support

**In 2001, the Legislature greatly expanded the regulation of plumbing statewide and the Board’s authority for ensuring the qualifications and availability of plumbers.**

- Last session, the Legislature extended the Plumbing License Law to all plumbing work connected to a public water system or performed in any city in the state. Previously, the law required plumbing work to be done or supervised by a licensed plumber only in cities with a population of greater than 5,000, effectively exempting all other areas of the state.
- In addition to the removal of the 5,000 exemption, the Legislature began the mandatory registration of apprentices, and created three new categories of registrants and one new category of licensee, as described in the chart, *New License and Registration Categories*. The mandatory registration of apprentices was partly designed to address the shortage of plumbers by enabling the Board to track the hours of experience of each apprentice so that they can qualify for the licensing exam, or for a higher degree of registration, which would allow them to work under less supervision.

*In 2001, the Legislature extended the Plumbing License Law to most of the state, by removing an exemption from licensure in cities of 5,000 or fewer inhabitants.*

New License and Registration Categories	
Category	Requirements
Tradesman-limited License	<ul style="list-style-type: none"> <li>• 4,000 hours experience</li> <li>• Examination</li> <li>• Board approved continuing professional education</li> </ul>
Residential Utility Installers Registration	<ul style="list-style-type: none"> <li>• 2,000 hours experience</li> <li>• Register with the Board</li> <li>• Board approved training program</li> </ul>
Drain Cleaners Registration	<ul style="list-style-type: none"> <li>• 4,000 hours experience</li> <li>• Register with the Board</li> <li>• Board approved training program</li> </ul>
Drain Cleaners-restricted Registration	<ul style="list-style-type: none"> <li>• Register with the Board</li> <li>• Board approved training program</li> </ul>

All of the Board’s registrants and license applicants must first register as a plumber’s apprentice. The

Legislature also clarified that plumbing work done by the Board’s registrants must be under the general supervision of a responsible master plumber and under the direct supervision of a licensed plumber, such as a journeyman or a tradesman. All registrations and licenses must be renewed on an annual basis.

- The Legislature also changed the requirements for licensure as a plumber. It increased the experience requirement to become a journeyman from 6,000 to 8,000 hours as a plumber’s apprentice, and created the new tradesman-limited license category, allowing the licensee to perform and supervise plumbing work done in one

and two-family residences. To be eligible as a tradesman, a person must obtain 4,000 hours of experience as a plumber's apprentice and pass an examination based on residential plumbing systems.

**New legislative requirements mean that the state will need more licensed plumbers, and the industry is experiencing some growing pains trying to keep up with the demand.**

- Eliminating the 5,000 exemption has increased the demand for licensed plumbers, particularly in rural and unincorporated areas, previously exempt from regulation, where much of the new home construction in the state is taking place. As a result, more plumbing must now be done either by a licensed plumber or a registered plumber's apprentice under the direct supervision of a licensed plumber.

Because of concerns raised about the number and availability of licensed plumbers in these newly regulated areas, the Board has had to delay enforcement of many of its new regulatory programs. The Board has delayed from January 1, 2002 to January 1, 2003 enforcement in the unincorporated areas of the requirement that all plumbing work be performed under the direct supervision of a licensed plumber. It has also delayed from March 1, 2002 to January 1, 2003 enforcement of the requirement for drain cleaners to secure the services of a licensed master plumber. Until these dates, field representatives are issuing warning citations in the new jurisdictional areas and raising awareness of the new requirements among plumbing professionals and city officials.

- The Board's early experience with the new tradesman-limited license, which was partly created to address the shortage of licensed plumbers, reveals a lower pass rate for applicants than had been anticipated. As of June 26, 2002, only 143 of 314 applicants, or 46 percent, had passed the licensing exam.<sup>1</sup> While these numbers are preliminary, such low performance, due to the degree of training received by plumber's apprentices, affects the Board's ability to license plumbers.
- Although the Board tries to raise awareness of the plumbing profession, using its portable cross-connection unit at public and industry awareness seminars throughout the state, the agency lacks the resources for a sustained recruitment effort. In fiscal year 2001, field representatives attended 75 of these public and industry awareness seminars; such as plumbing and trade association training conferences, job fairs, and meetings with local officials and community organizations.<sup>2</sup>

*The Board's early experience with the new tradesman-limited license, designed to address the shortage of licensed plumbers, reveals a lower than anticipated pass rate.*



**The Board's statutory authority over apprentices is inconsistent with that of other registration categories and does not ensure that apprentices receive the training needed to become licensed plumbers.**

- The Board determines who may perform plumbing work in Texas through its licensing and enforcement activities, and thus has an interest in seeing that applicants possess the qualifications and skills needed to successfully perform this work. In addition, because the Board's mission is to protect the health and safety of the public, the Board has an interest in ensuring that the public has access to well-trained plumbers.
- The Board currently has statutory authority to require training and set educational requirements for all of the Board's licensees and registrants, except for plumber's apprentices. For example, the Board requires licensees to complete six hours of continuing professional education (CPE) annually. It also requires residential utilities installers, drain cleaners and drain cleaner-restricted registrants to complete a one-time training course. In addition to these requirements, plumbers seeking a medical gas piping installation endorsement or water supply protection specialist endorsement must also complete a Board approved training program. However, because it lacks the authority to do so, the Board has no requirements for apprentices to be trained to perform the full range of tasks needed to pass the licensing exam. Although the Board does not specifically track the performance of applicants' according to their background, staff has observed that the pass rate for applicants who have completed an apprenticeship training program is substantially higher than that of those who have not received comparable training.
- Although the Plumbing License Law requires a licensed plumber to provide direct on-the-job supervision to apprentices, this requirement does not ensure that apprentices receive all of the training necessary to advance in the profession, by learning a broad range of necessary skills. Indeed, this requirement is intended more to protect the public's health and safety, by ensuring that the plumbing work is done properly, than to provide all around training for apprentices. Supervision, for example, does not ensure that apprentices learn the laws and codes needed to pass the written portion of the exam to become tradesman or journeyman plumbers.

*The pass rate for licensure of applicants who have completed an apprenticeship training program is substantially higher than that of those who have not received comparable training.*

**Several opportunities are available to help address the training needs of plumber's apprentices, and the shortage of licensed plumbers in Texas.**

- Job training in Texas is available from the Texas Workforce Commission (TWC) through its apprenticeship program and other direct services provided by local workforce development boards

located throughout Texas. The textbox, *Sample of TWC Direct Employer Services*, provides examples of TWC programs designed to assist employers. TWC's apprenticeship program provides limited funding for work-training programs, defraying employer's costs by reimbursing 40 percent of training expenses, while expanding the pool of experienced, skilled workers.

TWC's direct services, provided through local workforce boards, could also help the plumbing industry address the shortage of licensed plumbers, which TWC had ranked as the sixth highest of 289 targeted professions suffering a shortage in the state.<sup>3</sup> For example, the local workforce board in Houston worked with health care industry executives and hospitals in the area to correct the shortage of nursing instructors, which was seen as a barrier to increasing the number of nurses.

- The U.S. Department of Labor, through the Bureau of Apprenticeship and Training (BAT), currently administers a program to register apprenticeship programs in 23 states. Employers participating in the program receive a stipend of \$2.30 per contact hour from BAT to help cover the costs of classroom training for apprentices. The apprenticeship program requires 144 hours of class time and 2,000 hours a year of on-the-job training. Classes are provided at community colleges in all of the major cities in Texas, and through distance learning and correspondence.<sup>4</sup>
- Texas's eight local plumbing unions currently require around 250 hours of class time for their apprenticeship programs, which is more than 100 hours in excess of BAT requirements. According to union representatives, these apprenticeship programs promote retention among apprentices by ensuring consistency in promotion and employment.
- Other states recognize the need to provide training for plumber's apprentices. At least 11 states require apprentices to register and enroll in an apprenticeship program or to complete continuing professional education.<sup>5</sup>

Sample of TWC Direct Employer Services	
Program	Service
Customized Training	The Skills Development Fund provides customized training for businesses. In FY 01, TWC awarded \$12.6 million in training grants to 241 employers and 19 consortia, resulting in the creation or upgrade of 13,130 jobs.
	The Self-Sufficiency Fund finances job training for welfare recipients. TWC awarded \$11.9 million to 195 employers, resulting in the creation of 3,607 jobs.
Employment Services	TWC provides services, such as job matching and job fairs, in the local workforce centers. In FY 01, 1.4 million job seekers and employers received services.
Alien Labor Certification	TWC processes applications for employers wanting to hire foreign workers. In FY 01, TWC handled more than 10,805 such applications.
Work Opportunity Tax Credits	TWC administers federal tax credit programs that reduce tax liability for private employers who hire workers from targeted groups. In FY 01, TWC awarded \$55 million in credits.

*TWC's local workforce boards could help the plumbing industry address the shortage of licensed plumbers.*

## Recommendation

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### Change in Statute

#### **3.1 Provide the Board with the same statutory authority to set additional requirements for apprentices as it has for all other registrants and licensees.**

This recommendation would provide consistency in the Board's authority over licensees and registrants, by providing the Board with the authority to set additional requirements for the registration of apprentices. This would allow the Board to develop rules defining the type of training and education requirements that are best suited for apprentices. Providing the Board with general authority over the training and continuing professional education of apprentices would ensure that the Board has the flexibility to adjust these requirements as changing circumstances may require. The Board would be able to determine at what point an apprentice needs to begin training and how much training would be required.

#### **3.2 Require the Board and the Texas Workforce Commission to coordinate to address the shortage of licensed plumbers in Texas.**

Coordination between the Board of Plumbing Examiners and the Texas Workforce Commission would aim to raise awareness of resources available to employers to recruit plumbers. This would enable TWC to better meet the workforce needs of the industry. TWC could act as a liaison between industry groups and local workforce boards, where most of the recruiting effort would take place. The Board could work with TWC and industry groups to raise awareness of the career ladder in the plumbing industry and the opportunities that apprenticeship programs offer. The Board and TWC should also provide links to each other's Web site and to those of local workforce boards. This would allow visitors to the Board's Web site to easily access useful information relating to the state's recruitment effort for plumbers.

### Impact

The application of these recommendations would provide the Board with the authority to set training and continuing education requirements consistent with that of other registrants and licensees, and would require the Board and the Texas Workforce Commission to coordinate to address the shortage of licensed plumbers in Texas. Providing the Board with statutory authority to set training and continuing education requirements for apprentices would better ensure quality plumbing for consumers, benefit apprentices by improving their ability to advance in the profession, and help address the shortage of licensed plumbers statewide.

### Fiscal Implication

These recommendations would have no significant fiscal impact to the State. These changes would not require the Board to provide training, but to verify that apprentices have received training through outside providers, as the Board currently does for license renewals. The Board and the Texas Workforce Commission would coordinate their efforts within existing resources, at no additional costs to the State.

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<sup>1</sup> Texas State Board of Plumbing Examiners, Total Combined Examination Statistics for September 1, 2001 to June 26, 2002 (FY 2002) and September 1, 2000 to August 31, 2001 (FY 2001), by Vernon Emken (Austin, Texas, June 2002).

<sup>2</sup> Texas State Board of Plumbing Examiners, Chief of Field Services/Investigations, "Re: promoting plumbing as a profession," e-mail sent to the Sunset Advisory Commission, July 10, 2002.

<sup>3</sup> Texas Workforce Commission, Final Targeted Occupations by the 28 LWDBs in Texas - 2001 Reports, (Austin, Texas, June 7, 2002)

<sup>4</sup> Telephone interview with Bureau of Apprenticeship and Training staff (May 28, 2002).

<sup>5</sup> As part of the Sunset review of the State Board of Plumbing Examiners, Sunset staff designed a survey to gather information on how other states regulate plumbing. In May 2002, Sunset staff sent this survey to all 50 states, and received a total of 31 responses, or 62 percent of all states. States that require training for apprentices include Arkansas, Delaware, Idaho, Indiana, Montana, New Jersey, Oregon, Rhode Island, Vermont, Virginia, and Washington. See Appendix D for complete survey results.



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## Issue 4

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### **Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.**

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## Summary

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### **Key Recommendations**

- Revise elements of the agency's licensing authority to ensure fairness to the licensee and protection of the consumer in the way the Board addresses applicants' criminal history and in the code of conduct for licensed plumbing inspectors.
- Update elements of the agency's enforcement activities to better protect the public and to ensure consistency and fairness towards licensees, by improving the way the Board conducts and makes decisions on complaints and by providing the agency with a full range of administrative sanctions.
- The Board should explore ways to provide better information to consumers, and improve administrative functions regarding examination fee refunds.

### **Key Findings**

- Licensing Provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statutes could reduce the agency's consistency and its effectiveness in protecting the consumer.
- Certain administrative practices could reduce the flow of needed information to the public, and affect the Board's ability to manage its affairs.

### **Conclusion**

Various licensing and enforcement processes in the Plumbing License Law and in the Texas State Board of Plumbing Examiners' Board rules do not match model licensing standards that Sunset staff have developed from experience gained through more than 70 occupational licensing reviews in 25 years. For example, the lack of enforcement tools and guidelines for using them may affect the agency's ability to protect the public from substandard or unlicensed practitioners. The Sunset review identified several recommendations by comparing the Board's programs and statute against these licensing standards to identify unwarranted variations and to recommend changes to bring them in line with the model standards.

## Support

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### **The Board licenses and regulates plumbers in Texas.**

- The Board's mission is to protect the public's health and safety by ensuring that competent individuals do plumbing work in Texas, and that they do so in compliance with plumbing codes designed to provide minimum health and safety standards. The Board was created in 1947 and was last reviewed by the Sunset Advisory Commission in 1981.
- To accomplish its mission, the Board performs two key functions, licensing and enforcement. The Board licenses plumbers through an examination, comprised of a written and two practical portions. The agency enforces the Plumbing License Law and Board rules through the investigations of complaints and random on-site inspections conducted by eight field representatives located throughout the state.

*The Board's last Sunset review was in 1981.*

### **The Sunset Commission's experience from reviewing more than 70 occupational licensing programs during the last 25 years has been documented for application to future reviews.**

- The rapid increase and questionable practices of some occupational licensing programs were a major impetus behind the creation of the Sunset Advisory Commission. For this reason, the Commission has a historic role in evaluating licensing agencies. Currently, about 65 professional or occupational licensing functions exist in Texas as free-standing agencies, member agencies, or programs under an umbrella agency, such as the Texas Department of Licensing and Regulation. Forty-five licensing programs have undergone Sunset review since the Commission's creation in 1977, and 24 of these programs have been reviewed more than once, resulting in more than 70 evaluations of licensing functions.
- Sunset staff has documented lessons learned in reviewing licensing programs to guide reviews of occupational licensing agencies. These standards are not intended for blanket application to all licensing agencies, but provide a model for evaluating a licensing program's structure. The following material highlights areas where the Board's statutes and rules differ from these model standards, and describes the potential benefits of bringing the statute and rules into conformity with standard practices.

### **Licensing Provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.**

- *Criminal Convictions.* Chapter 53 of the Occupations Code provides a general standard to guide licensing agencies in

determining what crimes should affect licensure for that agency. In general, this law provides that a criminal conviction affects licensing qualifications when a crime is related to the profession, according to guidelines adopted by the agency and published in the Texas Register. The guidelines allow the agency to suspend or revoke a license, or to disqualify individuals from receiving a license or taking the exam, because of specific criminal activities.

The Board's rules currently set out general guidelines for denials of applicants, but these rules do not address the aggravating and mitigating factors that the Board's Enforcement Committee should take into account when considering applicants with criminal convictions. In addition, Board rules do not specify the type of criminal convictions that may be approved by staff, despite the fact that approvals of applicants are not submitted to the full Board for final decisionmaking. In addition, the Board does not formally track how the agency follows these guidelines, which may lead to inconsistent treatment of applicants with similar criminal convictions.

Referencing Chapter 53 in the Plumbing License Law would clarify the Board's authority over criminal convictions. In addition, the adoption of more specific guidelines for the approval of applicants, and a system to track and assess how the agency follows its criminal conviction guidelines, would ensure consistent and fair treatment of licensees, registrants and applicants.

- *Practice.* When appropriate, a regulatory agency should have clear standards of conduct or operation to provide a sound basis for acting on consumer complaints. These standards define appropriate behavior for licensees and give the affected public a measuring stick for judging appropriate behavior, and a basis for complaining to the agency when these standards are not met. Standards of operation, defining how certain tasks should be accomplished, also are helpful to the consumer to determine whether a job was performed appropriately. The Board has developed in rules a code of conduct for licensed plumbers, but this code does not cover plumbing inspectors, who must interact with both the public and the regulated community, including helping the Board enforce the Plumbing License Law and Board rules throughout much of the state.

**Nonstandard enforcement provisions and procedures could reduce the agency's consistency, timeliness and effectiveness in protecting the consumer.**

- *Complaint investigation.* Complaints should be placed in priority order so that the most serious problems are handled first. Addressing complaints based on seriousness places the agency's

*The Board's code of conduct for licensees does not cover plumbing inspectors.*



*Having Board members involved in the investigative or settlement phase of the complaint process may conflict with their role in judging and ruling on cases when they come before the full Board.*

attention where it is most needed. The Board currently investigates complaints on a first-come first-served basis, unless field representatives determine that the public's health and safety are endangered, in which case such complaints take priority. However, these procedures are neither specifically stated in statute nor have they been formally adopted through Board rules.

- ***Tracking of complaints.*** Analyzing sources and types of complaints helps regulatory agencies identify problem areas and trends that can help them respond to changing conditions, such as identifying issues with exempt or unlicensed practitioners. Also, tracking complaints by geographical areas can assist agencies in determining where to focus their enforcement efforts. The agency currently tracks certain types of complaint information, but does not track complaints according to sources, types, and geographical areas. Without this information, the Board misses an opportunity to get a complete picture of the enforcement issues it is charged with resolving.
- ***Enforcement committee.*** Complaint processes should separate investigative and adjudicative activities to maintain the objectivity of the final decisionmaker. Having Board members involved in the investigative or settlement phase of the complaint process may conflict with their role in judging and ruling on cases when they come to the full Board. The Board currently has an enforcement committee, composed of two Board members and two staff, to conduct informal settlement conferences and to review the criminal history of applicants. The full Board must still approve agreed final orders and recommendations to deny applicants licensure or registration because of their criminal history. The agency's staff has the expertise to adequately perform these functions without Board member involvement, thereby maintaining the Board's objectivity in making the final decision.

Board members' participation in the enforcement committee may also delay enforcement action, as the committee only met three times in fiscal year 2001 to take disciplinary action against licensees. Although the Board meets its performance measure for time of complaint resolution, complaint resolution may be more timely if staff resolved all complaints, subject to final approval by the Board.

- ***Range of Sanctions.*** A licensing agency's statute should authorize a full range of penalties to accommodate the seriousness of the offense before the agency. While the Sunset Commission has adopted an across-the-board recommendation to ensure that agencies have a full range of sanctions, the following provisions address some of the standard and emerging tools for improving enforcement.

Administrative Penalties. The ability to impose a fine in an administrative process gives agencies a powerful tool to encourage compliance without having to revoke a license. Agencies may impose the fine themselves, without having to go to court, as they must to enforce civil or criminal penalties. The Board does collect penalties in the informal settlement conferences, but it does not have clear statutory authority to do so. Instead, statute allows the Board to issue criminal citations, which are a Class C misdemeanor, filed by the Board's field representatives with local justices of the peace, for most violations of the Plumbing License Law. Last year, the Board's field representatives filed 214 citations relating to complaints and 294 citations resulting from job site monitoring. These citations generated \$91,805 in revenue that stayed in the local community and was not deposited into General Revenue. In addition, field representatives spend much of their time filing these citations with widely dispersed justices of the peace, and preparing for and attending court cases. Giving the Board the authority to issue administrative fines would provide an additional tool for the agency to ensure compliance with plumbing laws and rules, and would relieve time pressure on field representatives in having to pursue cases in justice of the peace courts. It would also ensure that fines for violating state law go to the state and not to local governments.

Administrative penalty authority should go hand in hand with a penalty matrix to establish penalty levels for specific violations and to help ensure fair and consistent treatment for all violators. The matrix should be adopted by the agency's policymaking body in procedures or rule so that opportunity exists for public awareness and debate. A penalty matrix would help the Board consistently implement its administrative penalty authority.

Probation procedure. Probation of a license allows licensees found in violation of a regulatory requirement to continue practicing while they take corrective actions to address the agency's concerns. Probation procedures typically provide for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress to ensure compliance with the terms of probations. Currently, the Board uses probation to correct violations of the law or rules, but has no formal guide to structure the terms of a licensee's probation or track compliance with the conditions of the probation.

Cease and Desist Orders. A licensing agency should have enforcement authority not only over its licensees, but over those who engage in the unlicensed activity of the profession. However, the standard range of sanctions against licensees do not apply to such unlicensed activity. While injunctive authority allows agencies

*Administrative fines would provide an additional tool for the agency to ensure compliance with plumbing laws and rules, and relieve time pressure on field representatives.*

to take legal action to stop unlicensed activity, cease and desist orders provide an interim step before injunctions. As an administrative tool, these orders may be used by agencies without having to go to court, as is required for injunctions.

Currently, the agency lacks authority to issue cease and desist orders to enforce the Plumbing License Law on unlicensed practitioners, limiting its ability to stop unlicensed activity that threatens the public's health and safety. Although the agency can seek injunctions through the Attorney General's Office, this process is cumbersome and time consuming. Cease and desist orders provide for faster action by regulatory agencies, especially when violators of these orders are subject to additional sanctions, such as administrative penalties. In addition, violations of cease and desist orders may help the agency obtain injunctive relief more easily.

*The agency's lack of cease and desist authority limits its ability to stop unlicensed activity.*

Restitution. The goal of restitution is to return complainants to some or all of the condition that existed before the act that caused the complaint. Restitution is sometimes granted in situations where a member of the public has been defrauded or subjected to a loss that can be quantified. Currently, the Board awards restitution in some cases that come before the enforcement subcommittee, but lacks the statutory authority to do so. In the instances where the Board has awarded restitution as a condition of an agreed final order, this restitution is generally having the licensee repair any defects in the plumbing work done.

The Board's enforcement tools are designed to correct licensees' behavior, but do not provide compensation for the aggrieved party. Providing the agency with statutory authority to order restitution, not to exceed the amount paid by the consumer, in cases where damages can easily be assessed would offer some degree of relief to consumers, who would otherwise have to seek redress in court through the Deceptive Trade Practices Act, which is burdensome and may cost more than original damages.

- **Enforcement Information.** Making enforcement information, such as final disciplinary orders and sanctions, readily available helps the public make informed choices when obtaining services. Methods commonly used to disseminate disciplinary orders and sanctions include the agency Web site, press releases sent to media, national databases, agency newsletters, and responses to requests from the public. Currently, the agency makes this information available upon request. This process not only takes up staff time, but is also more burdensome on the consumer than simply obtaining this information from the agency's Web site.

**Certain administrative practices could reduce the flow of needed information to the public and affect the Board's ability to manage its affairs.**

- *Refundable Fees.* The agency incurs a cost in administering exams, which should be covered by the applicant. These costs include the preparation of exam materials, staff time in processing the application and reserving a space for the applicants to take the exam. Currently, an applicant must give notice at least ten days before the scheduled test date to have the examination fee refunded. Such a policy costs the agency time and money to process these cancellations and does not ensure optimum usage of the exam facilities, as other applicants may have been denied sitting based on limited space. Recognizing emergency circumstances, such as a death in the family and reasonable advance notice of withdrawal, as legitimate reasons for a refund would balance the needs of both the agency and the applicant.
- *Availability of public information.* A licensing agency exists to protect the public, and the public should have access to general information about the profession and the operation of the agency. This information can help consumers understand their options when seeking services and seeking recourse if they have a complaint. The Board is statutorily required to develop information of consumer interest and has developed a brochure with general information about plumbing regulation in Texas, which it distributes during continuing education seminars, and has posted information about the Board's operation on its Web site. However, the Board's brochure is not easily available and does not provide complete information to help consumers searching for plumbing services.

In addition, licensees are required by statute to provide the name, mailing address and telephone number of the Board on each written contract for plumbing services. The Board has a toll-free number that it requires licensees to provide on contracts and that is printed on each license card. The Board also requires licensees to post a certificate of licensure in their place of business. However, the certificate does not provide customers with the agency's toll-free number in case of complaints.

*General information about the profession and the agency can help consumers understand their options when seeking plumbing services or seeking recourse if they have a complaint.*

## Recommendation

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### Change in Statute

#### Licensing

#### **4.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code, and authorize staff to review criminal convictions based on guidelines developed by the Board.**

This recommendation would clarify the Board's authority to adopt rules that follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by specifically referencing Chapter 53 in the Plumbing License Law. The Board would not need to adopt new rules defining which crimes relate to the plumbing licenses and registrations, because its current rules meet the standard of this statute. However, based on Chapter 53 as it relates to the plumbing industry, the Board would need to adopt guidelines in rules that explain the aggravating and mitigating factors that the agency staff should consider in accepting or denying applications and renewals. In addition, this recommendation would require the Board to adopt a system to track and assess how the agency follows its criminal conviction guidelines.

This recommendation would also authorize agency staff to perform criminal conviction reviews, eliminating the need for Board member involvement in the approval process of applications for licensure and registrations. Authorizing staff to perform criminal conviction reviews would reduce processing time for applicants with criminal convictions, as staff is able to meet more often than a committee of the Board. The staff enforcement committee would retain its authority to approve applicants with certain criminal convictions without the need for full Board approval, based on guidelines for approval of convictions that should be developed and adopted by the Board. The staff committee would retain its authority to deny applicants subject to hearing before the State Office of Administrative Hearings and final approval by the Board. In addition, staff should maintain current procedures allowing applicants to appear and present information during criminal conviction reviews. In order to maintain Board accountability, the staff's criminal conviction review committee should be appointed by the Board.

#### **4.2 Require the Board to adopt, by rule, a separate code of conduct for licensed plumbing inspectors.**

This recommendation would require the Board to adopt a separate code of conduct for plumbing inspectors similar to that of other licensees and registrants. The recommendation would ensure the fair and uniform enforcement of the Plumbing License Law and Board rules by licensed plumbing inspectors and would provide the Board with a sound basis for acting on complaints by consumers or by licensed plumbers. These rules should specify that licensed plumbing inspectors shall enforce the Plumbing License Law and Board rules in a consistent manner across job sites.

## **Enforcement**

### **4.3 Require the Board to investigate complaints according to risk.**

This recommendation would require the Board to place complaints in priority order so that the agency handles the most serious problems first. Addressing complaints based on seriousness would ensure that the agency's attention is placed where it is most needed.

### **4.4 Require the Board to track complaints according to sources, types, and geographical areas.**

This recommendation would require the Board to maintain information about complaints it receives, including sources, types and geographical areas. This change would ensure that the Board is able to identify and address regulatory problem areas, and better focus its enforcement in needed areas of the state.

### **4.5 Authorize staff to settle complaints, subject to the Board's final approval.**

This recommendation would largely eliminate the need for Board member involvement in the agency's investigation and review activities, which are more appropriately handled by staff. The Board would, however, retain final decisionmaking authority over the staff's recommendations. Staff should maintain current procedures allowing complainants and respondents to appear and present information during enforcement meetings. The Board should appoint the staff's enforcement committee.

### **4.6 Provide the agency with a full range of sanctions.**

This recommendation would grant the Board the full range of sanctions common to most regulatory agencies to enforce the Plumbing License Law and Board rules. Specific elements include the following.

- Administrative Penalties. This recommendation would authorize the Board to levy administrative fines not to exceed \$5,000 per day per violation as an additional enforcement tool. Using administrative fines rather than criminal citations would streamline the agency's enforcement process and help the State recover enforcement costs, since all administrative fines collected would be deposited in General Revenue. While this recommendation provides a new enforcement tool, it would not remove the criminal penalties currently in statute. The Board may continue to pursue criminal penalties, but it should do so only on an exception basis, and it should clearly define in rule the circumstances that would guide such a decision.

This recommendation would also require the Board to establish a matrix to use in determining the amount of penalties assessed against violators and to ensure that these amounts relate appropriately to different violations of the Plumbing License Law or Board rules. In developing this matrix, the Board should take into account factors including the licensee's compliance history, seriousness of violation, or the threat to the public's health and safety. The agency may develop this matrix in procedures and not in formal rules; however, the procedures should be adopted by the Board and published in the Texas Register, after giving the public the opportunity to comment.

- Probation. This recommendation would require the Board to adopt guidelines in rule for probating license suspensions and to develop a system for tracking compliance with the probation. These changes would ensure that the probation sanction is consistently used and that licensees actually meet the terms of their probation.

- **Cease and Desist.** Providing the Board with the authority to issue cease and desist orders would enable it to move more quickly to stop work that is unsafe or performed by unlicensed persons. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease and desist orders.
- **Restitution.** The Board would be allowed to include restitution as part of an informal settlement conference. Authority would be limited to ordering a refund not to exceed the amount the consumer paid to the plumber or other licensee. Any restitution order would not include an estimation of other damages or harm. The restitution may be in lieu of or in addition to a separate Board order assessing an administrative penalty.

### **Administration**

#### **4.7 Require the Board to establish a policy for refunding examination fees under certain circumstances.**

This recommendation would standardize the Board's exam refund policy to allow refunds only to applicants who provide reasonable advance notification of their inability to sit for the exam, or who miss the exam because of emergency circumstances. The Board would need to develop a rule to define the reasonable notification period and the emergency situations that would warrant a refund.

### **Management Action**

#### **Administration**

#### **4.8 The Board should explore ways to provide better information to consumers.**

This recommendation would require the Board to promote greater consumer awareness about the plumbing profession and the operations of the agency through the Internet and brochures. For example, the Board's Web site and brochures could provide a checklist of what consumers should look for when searching for a plumber, including a valid plumber's license, necessary permits, and a written estimate. The Board should also expand efforts to provide public information on how to file a complaint with the Board, including providing its toll-free number on certificates of licensure. In addition, the Board would be required to explore the possibility of developing an online system allowing consumers to check disciplinary orders and sanctions against the Board's licensees. This information helps the public make informed choices when obtaining plumbing services.

### **Impact**

The application of these recommendations to the Board would result in efficiency and consistency from fairer processes for the licensees, additional protection to consumers, administrative flexibility, and standardization of Board processes. The chart, *Benefits of Recommendations*, categorizes the recommendations according to their greatest benefits.

<b>Benefits of Recommendations</b>				
<b>Recommendation</b>	<b>Benefits</b>			
	<b>Efficiency from Standardization</b>	<b>Administrative Flexibility</b>	<b>Fairness to Licensee</b>	<b>Protection of Consumer</b>
<b>Licensing</b>				
4.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupational Code, and authorize staff to review criminal convictions based on guidelines developed by the Board.	✓	✓	✓	✓
4.2 Require the Board to adopt, by rule, a separate code of conduct for licensed plumbing inspectors.			✓	✓
<b>Enforcement</b>				
4.3 Require the board to investigate complaints according to risk.	✓		✓	✓
4.4 Require the Board to track complaints according to sources, types, and geographical areas.	✓			
4.5 Authorize staff to settle complaints, subject to the Board's final approval.	✓	✓		
4.6 Provide the agency with a full range of sanctions.	✓	✓	✓	✓
<b>Administration</b>				
4.7 The Board should explore ways to provide greater information to consumers.		✓		✓
4.8 Require the Board to establish a policy for refunding examination fees under certain circumstances.	✓	✓		

## **Fiscal Implication**

These recommendations would result in an annual gain to General Revenue of approximately \$87,000. This gain would result from shifting the Board's enforcement approach from the issuance of criminal citations to the levying of administrative penalties, resulting in additional penalty amounts being deposited in General Revenue instead of going to local governments. This figure is based on the amount of criminal fines paid over the last five years as a result of the Board's enforcement. In



addition, eliminating the need for Board member involvement in the agency's enforcement committee would save the State about \$1,500 annually, resulting from reduced travel for these Board members.

The recommendation that the agency explore ways to provide better information to consumers may cost the State approximately \$1,500 annually for the printing and distribution of brochures, based upon a similar program at the Texas Department of Licensing and Regulation. The initial set up cost of an online system for consumers to check disciplinary orders and sanctions against the Board's licensees may cost \$3,000, based on estimates from Northrop Grumman, the agency's contractor for Web services though the State TEXAN 2000 contract. The other recommendations would not have a significant fiscal impact to the State as they change procedures in ways that do not require additional resources. Some savings may result from increased efficiencies, but this amount cannot be estimated for this report, and any savings would be available to meet the Board's other operational needs.

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Cost to the General Revenue Fund</b>
2004	\$87,000	\$1,500	\$4,500
2005	\$87,000	\$1,500	\$1,500
2006	\$87,000	\$1,500	\$1,500
2007	\$87,000	\$1,500	\$1,500
2008	\$87,000	\$1,500	\$1,500

## **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas State Board of Plumbing Examiners</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Do Not Apply	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	9. Provide for public testimony at meetings of the policymaking body.
Update & Modify	10. Require information to be maintained on complaints.
Apply	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

<b>Texas State Board of Plumbing Examiners</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Update & Modify	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Already in Statute	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Update	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Apply	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Already in Statute	5. Authorize the staggered renewal of licenses.
Update & Modify	6. Authorize agencies to use a full range of penalties.
Already in Statute	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Already in Statute	8. Require the policymaking body to adopt a system of continuing education.

## **AGENCY INFORMATION**

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# Agency Information

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## Agency at a Glance

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The Texas State Board of Plumbing Examiners regulates plumbers in the state to ensure that plumbing systems are installed by qualified individuals. To accomplish its mission, the Board:

- licenses and registers plumbing professionals, and approves continuing professional education programs;
- monitors plumbing job sites;
- investigates and resolves complaints, taking disciplinary action when necessary to enforce the Plumbing License Law and Board rules; and
- conducts public and industry awareness seminars.

*On the Internet  
Information about  
TSBPE is available at:  
[www.tsbpe.state.tx.us](http://www.tsbpe.state.tx.us)*

## Key Facts

- **Funding.** In fiscal year 2001, the Board operated on a \$1.4 million budget and collected about \$2.2 million in revenue from industry fees.
- **Staffing.** The Board employed 24 full-time equivalent positions in fiscal year 2001. Employees work in the agency's Austin headquarters and in field offices located in their homes in Houston, Dallas, Fort Worth, San Antonio, El Paso, Lubbock, and Harlingen.
- **Licensing and registration.** In fiscal year 2001, the Board licensed a total of 21,004 individuals, including 8,883 master plumbers, 10,973 journeyman plumbers, and 1,028 plumbing inspectors. That year, about 1760 plumbers held an endorsement for medical gas installers, and 239 for water supply protection specialists.
- **Enforcement.** The Board received 635 jurisdictional complaints in fiscal year 2001, for which it conducted 485 field investigations and issued 214 citations in local justice of the peace courts. In 2001, field representatives also monitored 12,197 job sites, issuing an additional 294 citations as a result of these visits. Additionally, field representatives performed 75 continuing education and public and industry awareness seminars during that year.

## Major Events in Agency History

The Legislature passed the Plumbing License Law in 1947, creating the Texas State Board of Plumbing Examiners to provide for the uniform examining and licensing of master plumbers, journeyman plumbers, and plumbing inspectors in cities of 5,000 inhabitants or more. The Board last went through Sunset review in 1981, at which time two public members, a plumbing contractor and a plumbing inspector were added to the governing board.

Last session, the Legislature extended the reach of the Plumbing License Law to most of the state by requiring a license for plumbing work performed in cities of any size or connected to a public water supply. The Legislature also established a new license category for tradesman plumbers, requiring fewer hours of experience than journeyman plumbers. The Legislature also established mandatory registration of plumber’s apprentices, who must work under the direct supervision of a licensed plumber; residential utilities installers; drain cleaners; and drain cleaner-restricted registrants, all of whom must work under the general supervision of a master plumber.

## Organization

### Policy Body

The Board consists of nine members, appointed by the Governor. Two are public members; three are licensees — a master and journeyman plumber and a plumbing inspector; and four are professionals with direct involvement in the plumbing industry — a plumbing contractor, a residential builder, a commercial builder, and a professional engineer.

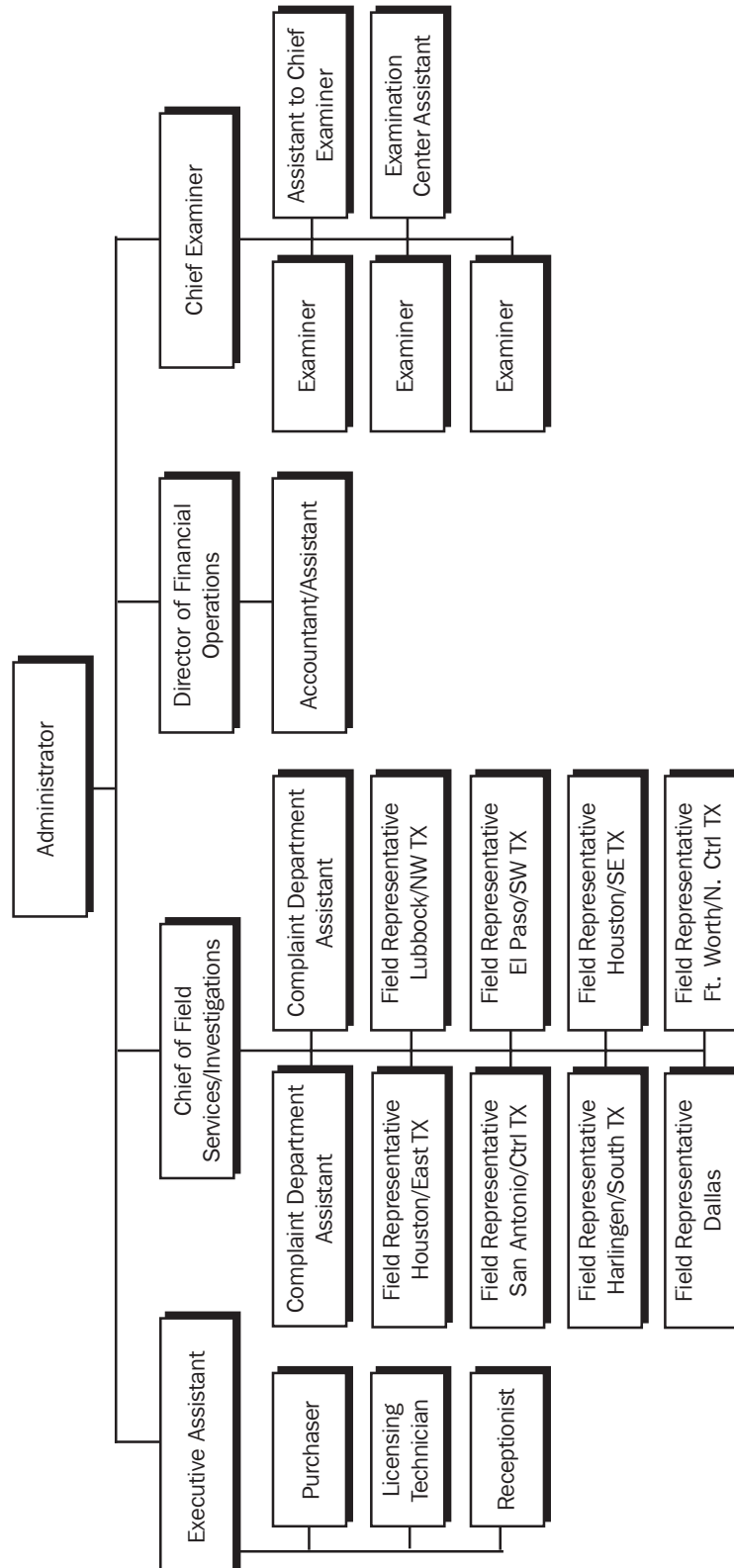
Texas State Board of Plumbing Examiners Policy Body	
Walter L.Borgfeld, Jr., Chair (Lufkin)	Public Member
Michael Thamm, Vice Chair (Cuero)	Master Plumber
Lawrence Lemon, Jr., Secretary (Slaton)	Plumbing Contractor
Al Tarver, (Nederland)	Homebuilder
John Hatchel, (Woodway)	Public Member
Art Cuevas (Lubbock)	Commercial Builder
Min Chu, P.E. (Houston)	Professional Engineer
Carol McLemore (La Marque)	Plumbing Inspector
Terry Wayne Moore (Sachse)	Journeyman Plumber

The chart, *Texas State Board of Plumbing Examiners Policy Body*, identifies current Board members, their qualifications, and places of residence. The Board appoints the agency head, sets policies for the plumbing industry, participates in disciplinary proceedings, and reviews and approves applicants with criminal histories and continuing education programs.

### Staff

The *Texas State Board of Plumbing Examiners Organizational Chart*, depicts the agency’s structure and the number of full-time equivalent positions in each division. In fiscal year 2001, the Board was fully staffed with 24 full-time equivalent

### Texas State Board of Plumbing Examiners Organizational Chart





employees (FTEs). The Board is headquartered in Austin, and has eight field representatives with one each in Dallas, Fort Worth, San Antonio, El Paso, Harlingen, Lubbock and two in Houston. Appendix A compares the agency’s workforce composition to the minority civilian labor force.

## Funding

### Revenues

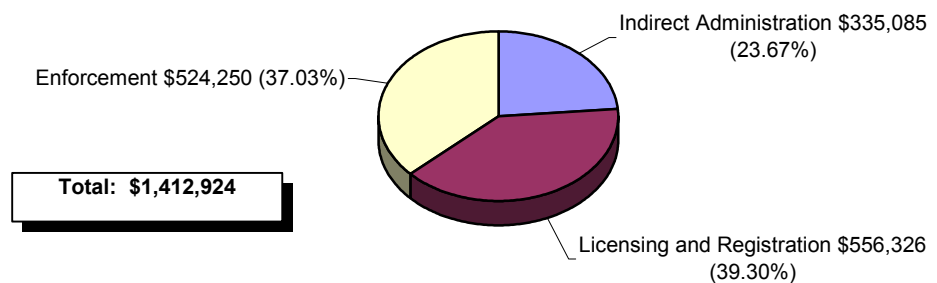
In fiscal year 2001, the Board operated on revenues of \$1.4 million, almost entirely from General Revenue. To cover its administrative costs, the Board raises revenue through licensing fees, which are deposited into the General Revenue Fund. In fiscal year 2001, the total revenue raised by the agency through licensing, registration, and examination was about \$2.2 million. This amount excludes criminal penalties, because this revenue goes to local governments and is not deposited into General Revenue. The Board collected \$478,000 more than it spent in fiscal year 2001.

*The Board collected \$478,000 more than it spent in FY 2001.*

### Expenditures

The Board’s expenditures, in fiscal year 2001, were divided among the agency’s three strategies: licensing and registration, enforcement, and indirect administration. The chart, *Expenditures by Strategy*, illustrates the agency’s budget allocations.

**Expenditures by Strategy  
Fiscal Year 2001**



In addition to the expenditures shown in the chart, the Legislature has directed the Board and other licensing agencies that pay the costs of regulatory programs with fees levied on licensees to also cover direct and indirect costs appropriated to other agencies. Examples of these costs include rent and utilities paid by the State Building and Procurement Commission, employee benefits paid by the Employees Retirement System, and accounting services provided by the Comptroller of Public Accounts. In 2001, this amount totaled \$311,710 for the Board.

Appendix B describes the agency's use of Historically underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 1998 to 2001.

## **Agency Operations**

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The mission of the Texas State Board of Plumbing Examiners is to protect the public by ensuring that qualified individuals engage in the installation, repair and inspection of plumbing work done in Texas, and by sanctioning plumbers who violate the law. To accomplish this goal, the Board licenses and registers plumbers, and enforces the Plumbing License Law and Board rules.

### **Licensing and Examination**

Until fiscal year 2001, the Board licensed master and journeyman plumbers and plumbing inspectors, and registered plumbing apprentices on a voluntary basis. Master and journeyman plumbers may also apply for a medical gas installation or a water supply protection specialist endorsement. In 2001, the Legislature created a new category for tradesman plumbers. It also made the registration of apprentices mandatory and added registration requirements for residential utilities installers, drain cleaners, and drain cleaner-restricted registrants. Appendix C summarizes key information about the plumbing occupations that the Board regulates.

#### Examinations

The Board provides in-house examinations for applicants seeking to become a master, journeyman, or tradesman plumber, and a plumbing inspector. It also administers examinations for licensees seeking medical gas installation and water supply protection specialist endorsements.

Examinations consist of three portions that can be completed in one to two days; a written component and two shop components. The first shop component uses a reduced scale building to test the applicant's planning, layout and installation of sanitary waste and vent systems; and the second mechanical hands-on shop component tests the applicant's knowledge and ability to use plumbing tools and to properly assemble materials. Exams are offered daily in the agency's Austin headquarters, and the Board's field representatives also administer the written portion in Harlingen and El Paso. The Board administered examinations for 2,875 individuals in fiscal year 2001, with a total passing rate of 61 percent.

#### Licenses

*Master Plumbers* are the only licensees that may enter into contracts with the general public and secure permits to do plumbing work. By

allowing a company to use their license to perform plumbing work and obtain permits, *Responsible Master Plumbers* are directly responsible for any plumbing work performed by their company, and have general supervisory responsibility over all other plumbers in their employ.

*Journeyman Plumbers* may do plumbing work under the general supervision of, and under contracts secured by, a responsible master plumber, and may directly supervise the work done by a plumber's apprentice.

*Tradesman Plumbers-Limited* may engage in plumbing work, or supervise plumbing work done by a plumber's apprentice, only in a one- or two-family residential building. A tradesman plumber-limited is required to work under the general supervision of, and under contracts secured by, a responsible master plumber.

*Plumbing Inspectors* may conduct plumbing inspections of new commercial and residential construction and repair sites for compliance with health and safety standards. Texas cities with a population of 5,000 or greater are required to perform plumbing inspections.

#### Endorsements

In addition to licensing individuals employed in the plumbing trade, the Board offers two types of endorsements for master and journeyman plumbers who successfully complete a training course and pass the appropriate examination. These plumbers may receive a *Medical Gas Installer* endorsement to install medical gas piping, or a *Water Supply Protection Specialist* endorsement to perform limited inspections of plumbing connected to public water systems.

#### Registrations

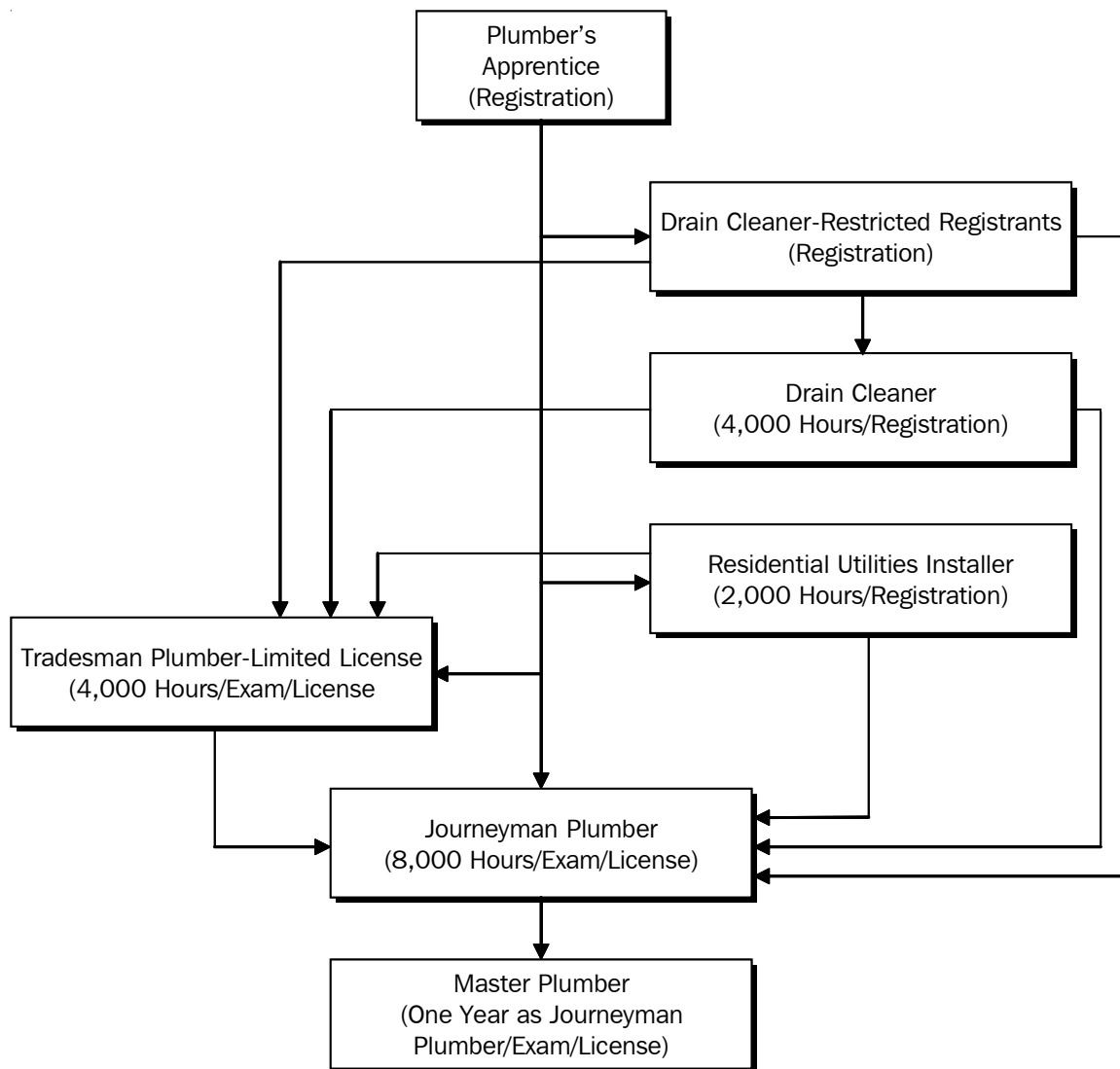
*Plumber's Apprentices* engage in learning or assisting in the installation or repair of plumbing under the direct supervision of a licensed plumber and the general supervision of a responsible master plumber.

*Residential Utilities Installers* may install outside water and sewer piping for one- and two-family dwellings under the general supervision of a responsible master plumber, but without the direct, on-the-job supervision of a licensed plumber.

*Drain Cleaners-Restricted Registrants* may clear obstructions in sewer and drain lines through existing openings without the direct, on-the-job supervision of a licensed plumber. *Drain Cleaners* may disassemble or cut into existing plumbing to clear stoppages. Both registrants are required to work under the general supervision of, and under contracts secured by, a responsible master plumber.

The chart, *Plumbing License and Registration Ranking*, shows the relationship between the Board's registration and license categories. The hours noted indicate the experience required to qualify for a particular license or registration. The plumber's apprentice registration must be maintained until the person passes an examination. Registrations for drain cleaner-restricted registrant, drain cleaner, and residential utilities installer are held in addition to the plumber's apprentice registration.

### Plumbing License and Registration Ranking



### Enforcement

The agency enforces the Plumbing License Law and Board rules both through its own administrative process and through local courts by issuing citations for violations. The Board investigates consumer complaints, monitors plumbing job sites, cooperates with plumbing inspectors and local municipalities, and conducts public and industry awareness seminars. The Board’s field representatives carry out most of the enforcement by interacting with plumbers and local authorities on a daily basis.

The chart, *State Board of Plumbing Examiners Complaint Process*, shows how the Board pursues complaints both administratively and through the courts. Field representatives, plumbing inspectors or members of the public may file complaints with the Board. Staff determines if the complaint is jurisdictional to the agency and prioritizes each case according to their threat to the public. Staff also notifies the complainant, respondent, and others, such as city officials, to obtain information to determine if requirements of the law and Board rules have been met. The staff may issue citations in justice of the peace courts to prosecute violations as a Class C misdemeanor, punishable by a fine up to \$500. In fiscal year 2001, the Board’s staff issued 214 citations relating to complaints the agency had received.

Staff may also refer serious violations or cases involving repeat offenders to the Board’s Enforcement Committee, comprised of two Board members and two staff members, which may conduct an informal conference, return the case for further investigation, or direct that a citation be issued.

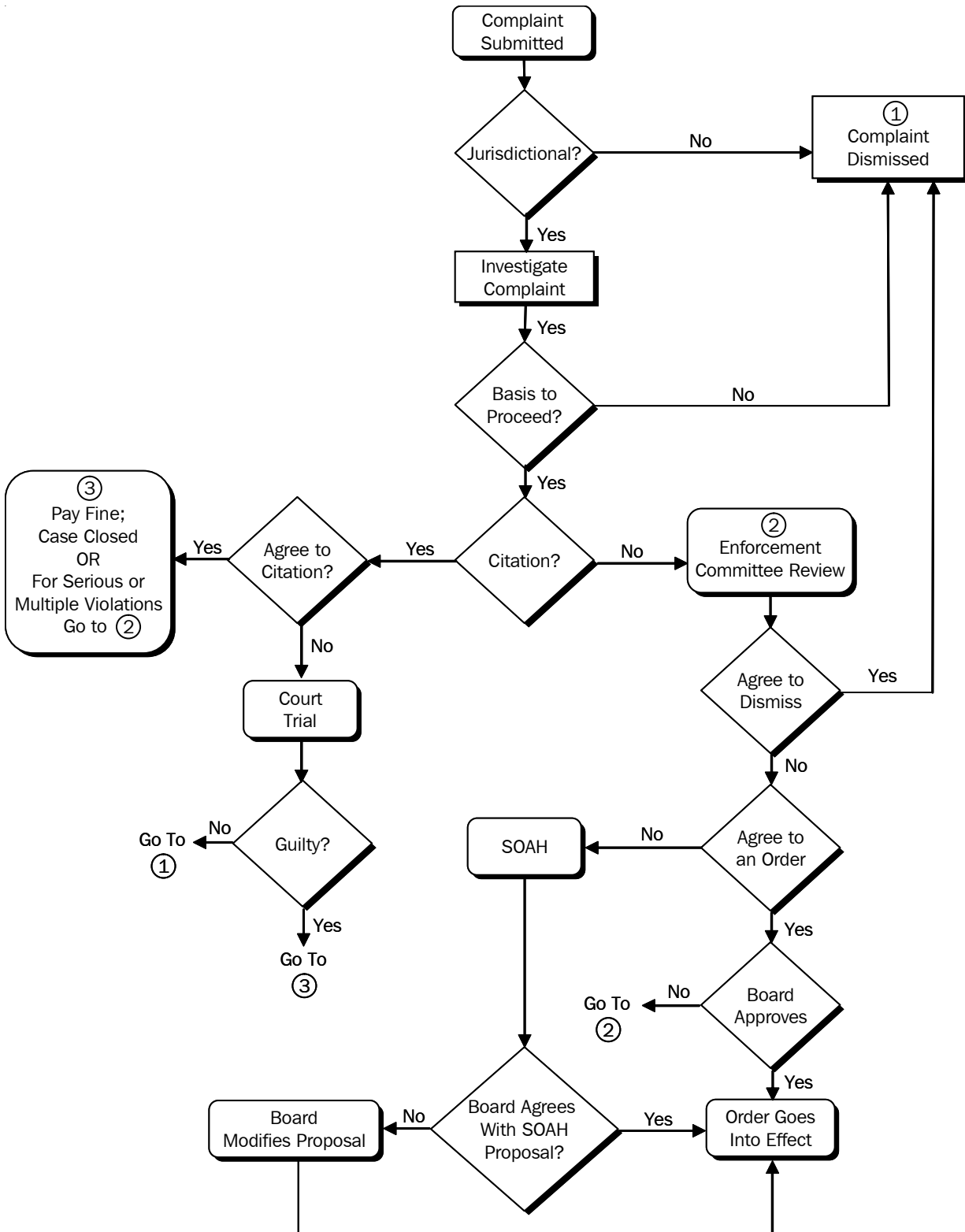
State Board of Plumbing Examiners Enforcement Statistics	
Activity	FY 2001
Complaints Received	669
Field Investigations Conducted	485
Complaints Resolved	590
Citations Resulting from Complaints	214
Complaints Dismissed	265
- No violation	182
- No jurisdiction	34
- Others	49
Voluntary Compliance	81
Examination Application Denied	6
Final Action Pending	24

The chart, *State Board of Plumbing Examiners Enforcement Statistics*, shows the Board’s activities in resolving complaints during fiscal year 2001. That year, the Board received 669 complaints, and resolved 590, not all of which were filed in the same year. The Board took an average of 144 days to resolve a complaint in 2001, compared with an average of 147 days the previous year.

Of the complaints resolved, the Board dismissed about 45 percent following an investigation, for reasons such as no violation, lack of evidence, or withdrawal by complainants; and issued citations for another 36 percent. Respondents voluntary resolved 14 percent of complaints by agreeing to take action to redress the customer’s grievance. The same year, the Board also revoked six licenses.

Field representatives also monitor plumbing work across the state by making on-site visits to new construction or repair sites. Field representatives check licenses to ensure that only

### Complaint Process



<b>Citation Data</b>	
<b>Citation Types</b>	<b>Number of Citations</b>
Employing	71
Evading Responsibility	59
Municipal Ordinance	68
No Master	22
No Vehicle Markings	20
Non Performance	1
Unlicensed Inspector	4
Unlicensed Plumber	113
Other	150
<b>TOTAL</b>	<b>508</b>

licensed plumbers and registered apprentices engage in plumbing, and that all work complies with the Plumbing License Law and Board rules. The Board monitored 12,197 plumbing job sites in fiscal year 2001. The Board's staff issued 294 citations for violations discovered in these visits. Including citations issued as a result of complaints received, the Board issued a total of 508 citations in fiscal year 2001. The table, *Citation Data*, provides a break down of the violations for which the Board issued citations.

The Board also engages in promoting public awareness of plumbing safety and health issues. The Board offers public awareness seminars at the request of local jurisdictions, associations of plumbers and plumbing inspectors, and justices of the peace and constable associations. The agency often uses its portable backflow and cross-contamination display to illustrate the risks of improperly installed plumbing. In fiscal year 2001, the agency hosted 75 awareness seminars for a total of 3,619 attendees.

# APPENDICES



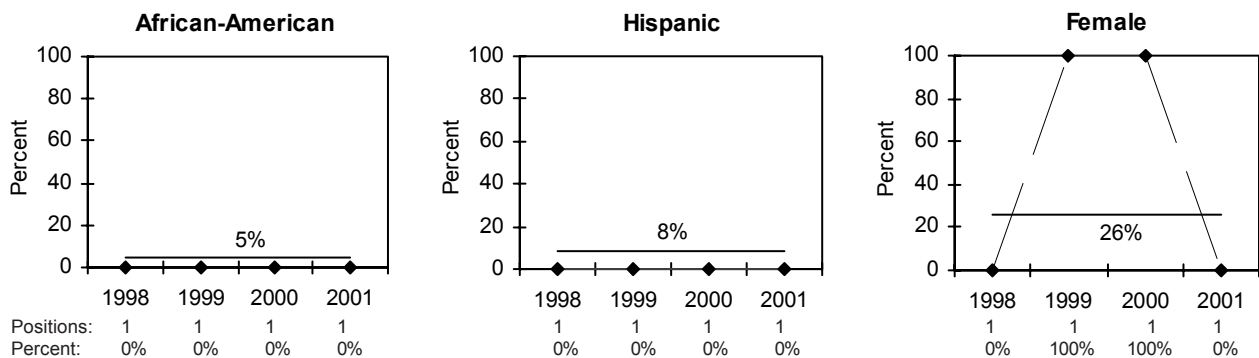
## Appendix A

### Equal Employment Opportunity Statistics

#### 1998 to 2001

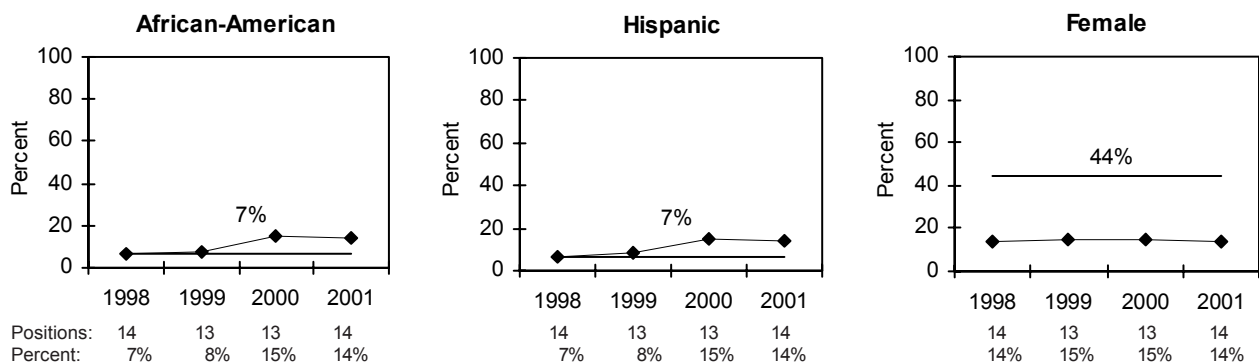
In accordance with the requirements of the Sunset Act, the following material shows trend information for the agency's employment of minorities and females in all applicable categories of the labor force.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian labor force that African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1998 to 2001. The Plumbing Board does not employ persons in some job categories – skilled craft, and protective services. In FY 2001, the Board employed 24 FTEs. The agency's small size renders meaningful comparisons to the civilian labor force difficult to establish.

#### State Agency Administration



The agency has fallen short of the state goal for Hispanics and African-Americans each year, but exceeded goals for female employment in fiscal years 1999 and 2000. The Board has only one FTE position in this category, making meaningful conclusions difficult to make.

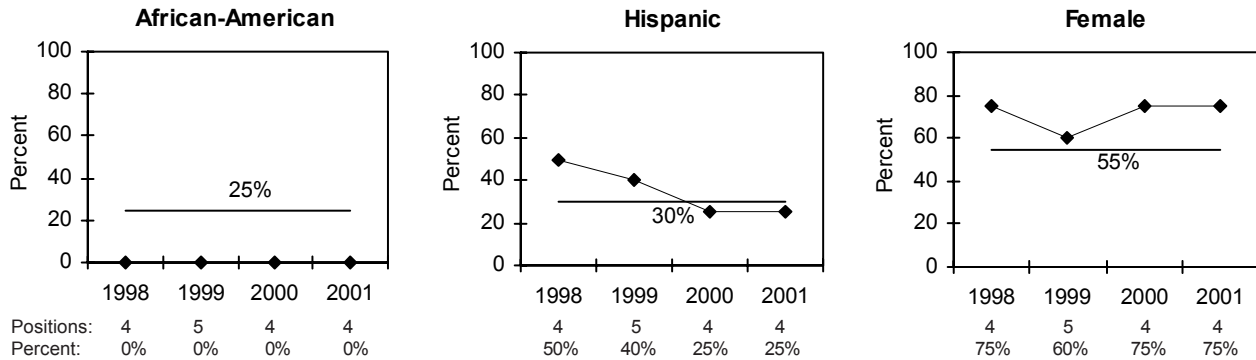
#### Professional



The Board's employment of African-Americans and Hispanics in professional positions has met or exceeded the civilian labor force average in this category. However, the Board has lagged behind state goals for women by employing less than half of the civilian labor force average for women.

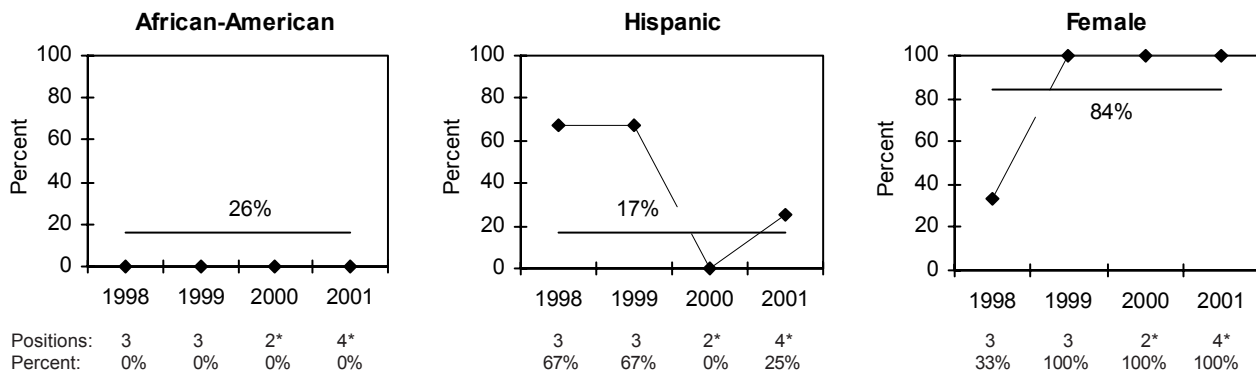
## Appendix A

### Para-Professional Support



The Board has exceeded the state goal for women in para-professional positions and has generally met the goal for Hispanics. However, the agency fell below the state goals in its employment of African-Americans from 1998 to 2001.

### Administrative Support



The Board has generally exceeded state goals for employing Hispanics and women in administrative support positions, but the low number of employees in this job category makes meaningful conclusions difficult to make.

\*Includes one American Indian, not shown on this chart.

<sup>1</sup> Texas Government Code, ch. 325, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, ch. 21, sec. 21.501

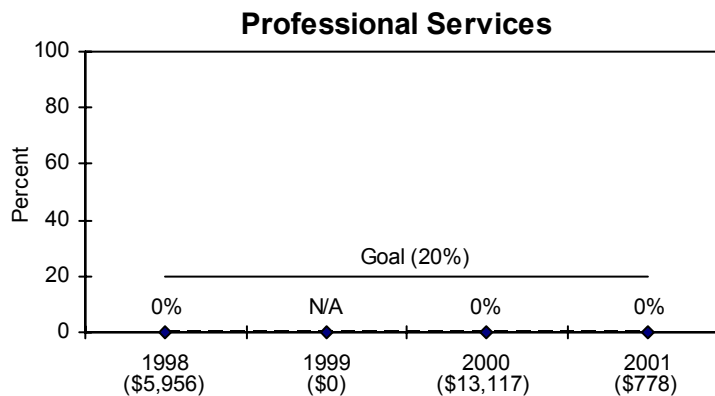
## Appendix B

### Historically Underutilized Businesses Statistics

#### 1998 to 2001

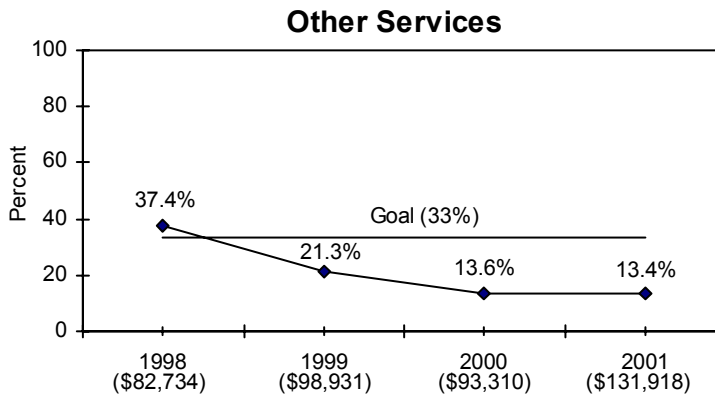
The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup> The review of the Texas State Board of Plumbing Examiners revealed that the agency is complying with all state requirements concerning HUB purchasing.

The following material shows trend information for the Texas State Board of Plumbing Examiners use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The dashed lines represent the percentage of each spending with HUBs in each purchasing category from 1998 to 2001. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. Generally, the Board has fallen short of state goals for professional services and other services, and has exceeded the goals for commodities.

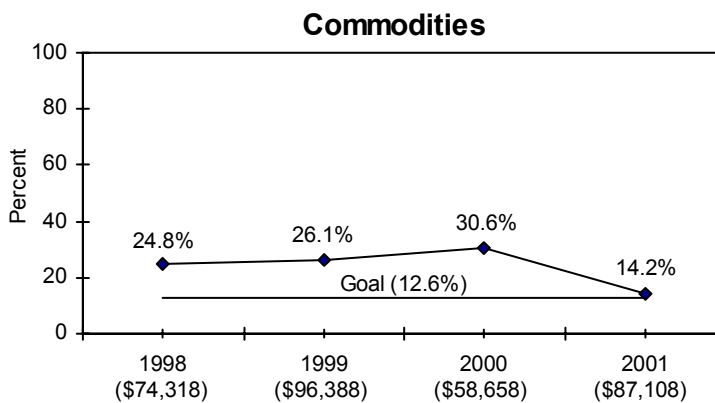


The Board of Plumbing Examiners fell below the state goal for HUB purchasing of professional services from 1998 to 2001. This is due to the fact that the Board contracted with only one vendor providing specialized professional services for financial and accounting services.

## Appendix B



The agency exceeded the state goal in 1998, but has fallen below this goal since 1999. This decline is due to the agency's large contract with Northrop Grumman, as part of the TEXAN 2000 contract.



The agency has exceeded the state goal for HUB purchasing of commodities.

<sup>1</sup> Texas Government Code, ch. 325, sec. 325.011(9)(B) (Vernon 1999).

<sup>2</sup> Texas Government Code, ch. 2161.

## Appendix C

### Plumbing License and Registration Requirements

Job Category	Major Regulatory Requirements	Number (FY 2001)	Examination Fee	License Fee
<b>Licenses</b>				
Master Plumber	<ul style="list-style-type: none"> <li>● Have at least one year experience as a current journeyman plumber licensee before filing master plumber application</li> <li>● Pass master plumber examination</li> </ul>	8,883	\$150	\$180
Journeyman Plumber	<ul style="list-style-type: none"> <li>● Be registered as a plumber's apprentice with 8,000 hours specified experience under supervision of a master plumber</li> <li>● Pass journeyman plumber examination</li> </ul>	10,973	\$25	\$27
Plumbing Inspector	<ul style="list-style-type: none"> <li>● Be a master or journeyman plumber, a professional engineer, an architect, or have 500 hours specified training or experience in plumbing industry</li> <li>● Pass plumbing inspector examination</li> </ul>	1,028	\$50	\$50
Tradesman Plumber	<ul style="list-style-type: none"> <li>● Be registered as a plumber's apprentice with 4,000 hours work under supervision of a master or journeyman plumber</li> <li>● Pass tradesman examination</li> </ul>	N/A	\$25	\$25
<b>Endorsements</b>				
Medical Gas Piping Installation	<ul style="list-style-type: none"> <li>● Be a master or a journeyman plumber</li> <li>● Pass medical gas piping examination</li> <li>● Complete Board-approved training program</li> </ul>		\$75 (master) \$25 (journeyman)	\$55 (master) \$14 (journeyman)
Water Supply Protection Specialist	<ul style="list-style-type: none"> <li>● Be a master or journeyman plumber</li> <li>● Pass water supply protection examination</li> <li>● Complete Board-approved training in backflow prevention and various water quality and water conservation requirements</li> </ul>		\$75 (master) \$25 (journeyman)	\$55 (master) \$14 (journeyman)
<b>Registrations</b>				
Apprentice	<ul style="list-style-type: none"> <li>● Complete registration form and send to the Board</li> </ul>	N/A <sup>1</sup>	N/A	\$10
Residential Utilities Installer	<ul style="list-style-type: none"> <li>● Be registered as plumber's apprentice with 2,000 hours experience under supervision of a master plumber</li> <li>● Complete Board-approved training program</li> </ul>	N/A	N/A	\$10
Drain Cleaner	<ul style="list-style-type: none"> <li>● Be registered as a plumber's apprentice with 4,000 hours experience under supervision of a master plumber</li> <li>● Complete Board-approved training program</li> </ul>	N/A	N/A	\$10
Drain Cleaner-Restricted Registrant	<ul style="list-style-type: none"> <li>● Be registered as plumber's apprentice under the supervision of a master plumber</li> <li>● Complete Board-approved training program</li> </ul>	N/A	N/A	\$10

<sup>1</sup> The Board had 974 voluntary registrations in FY 2001.



## Appendix D

### Results of Sunset Survey of Out-of-State Agencies Regulating Plumbing

As part of the Sunset review of the State Board of Plumbing Examiners, Sunset staff designed a survey to gather information on how other states regulate plumbing. In May 2002, Sunset staff sent this survey to 49 states, excluding Texas, and received a total of 31 responses, or 62 percent of all states. To supplement information from the survey, Sunset staff also conducted Web-based research in some areas to provide an overall picture of all 50 states. The chart below summarizes results from staff research and survey responses.

Survey Responses	
Question	Response
Does your state regulate plumbing?	All 50 states regulate plumbing either at the state or local level. Forty-two states, including Texas, regulate plumbing at the state level. Eight states, Kansas, Mississippi, Missouri, Nebraska, New York, Pennsylvania, Tennessee and Wyoming regulate plumbing at the local level.
If your state regulates plumbing, what agency has this responsibility? Does this agency regulate plumbing only, or does it regulate other occupations as well?	Thirty-three states regulate plumbing within an umbrella agency. The two major type of organizational set up consist of an agency regulating industrial trades - 13 states - and an agency overseeing general occupations - 12 states. Six states place plumbing under a Department of Health and two under a Commerce Department. At least 11 state umbrella agencies that regulate plumbing use advisory committees that report to the agency. It should also be noted that although some states oversee plumbing under an umbrella agency, a few have maintained an independent plumbing or construction board under the agency. Only nine states, including Texas, have a stand-alone State Plumbing Board. Out of these nine plumbing boards, some have additional jurisdiction over Air Conditioning or pipefitting.
What are the requirements for the plumbing licenses/registrations by your agency?	<p>Most respondents indicated having license categories for master and journeyman plumbers and registering plumber's apprentices. A majority of respondents also license plumbing inspectors. Three states, Arizona, California, and Mississippi license plumbing contractors only. Eighteen respondents do not register apprentices whereas 11 states require apprentices to enroll in an apprenticeship programs, including classroom training or continuing professional education.</p> <p>Two states, Colorado and Washington, have a license category for residential plumbers. Colorado requires residential plumbers to have a minimum of two years of experience and to pass a written and practical examination. On the other hand, Washington requires residential plumbers to have a minimum of 6,000 hours of experience and pass a written test.</p> <p>No respondents license or register drain cleaners, and only Louisiana has a special license category for water supply protection specialists. In addition, Idaho holds a special license category in appliance speciality requiring one and a half year of experience and a written and practical test. Oregon also has a plumbing solar license requiring two years of experience, a written exam, and 8 hours of CPE per year.</p>

## Appendix D

<b>Survey Responses</b>	
<b>Question</b>	<b>Response</b>
What are the requirements for the plumbing licenses/registrations by your agency? (cont.)	Five states indicated having CPE requirements for master plumbers and three respondents have CPE requirements for journeyman. A majority of respondents require a written exam for licensure, but fewer have a practical component for examination. Most states that license master plumbers require them to have at least 4 years of experience.
Are certain persons or practitioners exempt from licensure?	Twenty one respondents indicated that their state exempts homeowners from regulation. Nine respondents exempt maintenance staff, and eight states exempt landscape irrigators from licensure. One state, California, does not require a plumber to hold a license for contract work under \$500.
Are certain individuals, such as convicted violent offenders, automatically barred from licensure?	Most respondents do not have provisions to automatically bar certain applicants from licensure. Delaware is the only state that automatically bars felons from licensure. South Carolina also bars felons from holding a plumbing license if the crime is determined to be related to the type of license the offender is seeking. Michigan bars offenders from licensure, but grants them a recourse for appeal and interview.
What type of enforcement tools does your statute have regarding plumbers?	Most states that responded to the survey have the authority to use at least four different enforcement tools to sanction plumbers. Fourteen of the respondents have the authority to issue cease and desist orders, 21 have revocation authority, eight may seek injunctions, 10 can seek criminal penalties, another 10 may order restitution, 15 may issue administrative fines, and 23 states may suspend licenses although not all may use probated license suspension. Additionally, two states, Indiana and Oregon, can seek civil penalties, and Virginia may require remedial education.
What regulatory scheme regarding the use of Plumbing Codes does your state have?	Seventeen states responded that they have one statewide code for commercial and residential plumbing. Eight of these 17 states authorize local jurisdictions to amend the code, including four states that require amendments to be approved by the state - Arkansas, Colorado, Idaho, and South Dakota - and four states that do not require amendments to be approved at the state level - Alaska, Georgia, Louisiana, and Washington. In addition, California reported having one statewide code that can be amended with state approval for commercial plumbing, and a mix of codes for residential plumbing. Nine states - Indiana, Kentucky, Maine, Michigan, North Dakota, Oregon, Utah, Vermont, Wisconsin - do not allow local amendments to the uniform statewide code. Twenty respondents use one uniform code for state-owned buildings. Four states, Alabama, Hawaii, Kansas and Mississippi, responded not having a statewide code.



## Appendix E

### Results of Sunset Survey of the Texas Plumbing Industry and Complainants

As part of the Sunset review of the State Board of Plumbing Examiners, Sunset staff surveyed more than 200 plumbing professionals; including professionals from each of the Board's license and registration categories, complainants and respondents, and interest groups; to receive feedback about the Board and its operations. Sunset staff mailed this survey in May 2002, and made it available on its Website for further downloads. Staff received a total of 38 responses, or about 19 percent of those surveyed. The chart below summarizes survey responses.

<b>Survey Responses</b>	
<b>Question</b>	<b>Response</b>
Should the Texas State Board of Plumbing Examiners be continued in its current form?	<p>A large majority of survey responses indicated that the Board should be continued in its current form. A few responses indicating that the Board should not be continued in its current form suggested more staff for enforcement.</p> <ul style="list-style-type: none"> <li>– “The Plumbing Board needs to stand alone.”</li> <li>– “You can make a new law every day, but it won't do any good if you cannot or will not enforce them. The cities are not enforcing the laws and the state board is under staffed and under funded. Eight state inspectors cannot cover the whole State of Texas.”</li> </ul>
Is another agency or group better equipped to perform the Board's duties?	<p>All survey responses were of the opinion that no other agency is better equipped to perform the Plumbing Board's duties.</p> <ul style="list-style-type: none"> <li>– “TNRCC would have to take the job over. TNRCC needs to be reviewed itself. It has done a poor job of licensing and enforcing rules for on-site sewage facilities in our community. Please re-shape the plumbing board and give it proper funding and personnel to do the job it needs to do.”</li> <li>– “The Board in its current form does a great job for our industry.”</li> </ul>
Should other closely related trades be included under the agency's jurisdiction?	<p>A large majority of survey responses suggested that other closely related trades should be included under the agency's jurisdiction, notably landscape irrigators, backflow assembly testers and on-site sewage facility installers.</p> <ul style="list-style-type: none"> <li>– “The on-site [sewage facility] rules should have remained under the Plumbing Board. All installers should have to be plumbers or at least be working for a master plumber or an apprentice.”</li> </ul>
Should the Board be better coordinating its efforts with another entity(ies)?	<p>The majority of survey respondents, especially plumbing inspectors, suggested that coordination could be improved, mostly with TNRCC and, to a lesser extent, TDLR. Several respondents also indicated that the Board should work closer with county and city officials.</p> <ul style="list-style-type: none"> <li>– “Current overlapping jurisdiction creates confusion.”</li> </ul>
Should any changes be made to the Board's governing structure?	<p>The majority of survey respondents with an opinion on this question indicated that no changes should be made to the Board's structure. Ten responses indicated a need to change the Board structure with suggestions such as combining the two builders positions to allow for more public membership, or providing for one-third membership of building officials.</p>

## Appendix E

<b>Survey Responses</b>	
<b>Question</b>	<b>Response</b>
Overall, how effective is the Board at regulating the plumbing industry?	<p>Survey respondents were almost equally split. Twenty responses indicated that the Board was either effective or very effective at regulating the plumbing industry, compared with 19 responses that suggested that the Board is either not effective or needs improvements. A large number of responses indicated that the Board needs more staff, especially in enforcement.</p> <ul style="list-style-type: none"> <li>- "The Board is not funded or staffed properly for it to be effective. Some plumbers say licensing laws are causing a plumber shortage. However, it has been law for 20 years that a licensed plumber must be on each job. Only the honest people do it. I can hire unlicensed people for \$12.00 to \$15.00/hour. I can hire licensed people for \$18.00 to \$22.00/hour. This puts the honest man out of business and keeps the dishonest man in business."</li> <li>- "No where near enough state investigators."</li> <li>- "If handled like my complaint, it cannot be effective."</li> <li>- "Auditing of [the cities] plumbing inspectors inspections and code enforcement would be helpful."</li> <li>- "If I filled out a complaint form every time I saw a code violation or unauthorized/qualified installation, I would not be able to work seven days a week trying to serve the public."</li> </ul>
How effectively does the Board process license/registration applications?	<p>A large majority of responses indicated that the Board is either effective or very effective at processing license and registration applications.</p> <ul style="list-style-type: none"> <li>- "Need more [examination] sites available."</li> </ul>
Is the current examination process a fair and sound screening device for licensure?	<p>The majority of responses indicated that the current examination process is fair and sound.</p> <ul style="list-style-type: none"> <li>- "We believe that it is very important for applicants to demonstrate skills in the practical exam."</li> <li>- "From my job-site experience, unqualified people are given licenses everyday putting the general public at risk."</li> <li>- "Incompetent people are still being licensed. Some plumbers are lying about the length of service time applicants with licensed plumbers. Evidently the test is not sufficient to weed out the incompetent ones. Licensed plumbers keep showing up at my business saying they can rough-in, top-out and set fixtures. 80% of the time, the licensed individuals are not able to do the work they claim to be able to do."</li> </ul>
Are there any improvements that the Board could make to its licensing/registration and examination process?	<p>A slim majority of responses indicated that no improvements were needed in the Board's licensing/registration and examination process. Many responses, however, representing a cross-section of licensees, indicated that some improvements could be made to the requirements for licensure and registrations.</p> <ul style="list-style-type: none"> <li>- "Proof of employment [required by the Board] should be the submitting of the W-2 form. Plumbers are lying about the length of employment in order to get their people licensed."</li> <li>- "Do not discriminate against people with no high school diploma. A man should be tested on his knowledge of the trade. It should not matter how well he did in school."</li> </ul>

## Appendix E

<b>Survey Responses</b>	
<b>Question</b>	<b>Response</b>
Overall, how effectively does the Board address and deter unprofessional behavior?	<p>Responses were equally split between statements that the Board is effective or very effective in deterring unprofessional behavior, and those indicating that the Board is not effective or needs some improvement. Several responses indicated that the Board needs more enforcement staff.</p> <ul style="list-style-type: none"> <li>– “Needs more proactive efforts to identify [unprofessional behavior]”</li> <li>– “Not enough state inspectors. Takes weeks and months for complaints to be handled. They don’t have enough time to check jobs on an unannounced basis, which is critical for enforcement.”</li> <li>– “Dead-beat dads should have their license taken away. Plumbing companies should be required to perform drug and background tests on all employees. I estimate that 50% of these workers are on drugs.”</li> </ul>
Does the Board sufficiently address and enforce the unauthorized practice of plumbing?	<p>The majority responded that the Board sufficiently addresses and enforces the unauthorized practice of plumbing. However, many responses stated that the Board does not sufficiently address and enforce the unauthorized practice of plumbing and that it needs more staff to do so.</p> <ul style="list-style-type: none"> <li>– “Not enough man power.”</li> <li>– “A couple of years ago there were more ads in the phone book for unlicensed plumbers than licensed plumbers. The home repair companies and large retailers do as much plumbing as we do and they are unlicensed.”</li> <li>– “Too many non-licensed plumbers perform plumbing trade.”</li> </ul>
How effectively do the Board's penalties sanction and deter the unauthorized practice of plumbing and unprofessional behavior?	<p>The majority of responses indicated that the Board is not effective or needs some improvement in its ability to sanction violators.</p> <ul style="list-style-type: none"> <li>– “Those caught should be available on a database, thus all prosecutors, JPs etc. [would have] knowledge of repeat offenders.”</li> <li>– “I have seen every illegal stunt pulled, wife beaters, dead-beat dads, DWIs, you name it, but have never seen a license pulled.”</li> </ul>
Does the Board handle complaints in a timely manner?	<p>The large majority of respondents with an opinion on this question, indicated that the Board handles complaints in a timely manner.</p> <ul style="list-style-type: none"> <li>– One complainant wrote that the Board’s field investigator “helped immediately.”</li> </ul>
How thoroughly does the Board investigate complaints?	<p>A large majority of responses indicated that the Board investigates complaints either thoroughly or very thoroughly.</p> <ul style="list-style-type: none"> <li>– One complainant wrote, “No action was taken, only the exchange of letters.”</li> </ul>
Does the Board keep complainants and respondents well-informed of their case status?	<p>A large majority of respondents with an opinion on this question, including all complainants and respondents to complaints who completed the survey, said that the Board keeps them well-informed of their case status.</p>
Are there any improvements that the Board could make to its complaint process?	<p>Responses were almost equally split.</p> <ul style="list-style-type: none"> <li>– “Greatly speed it up.”</li> <li>– “Change the complaint registration form.”</li> <li>– “Notify parties of ruling given, if ever given.”</li> </ul>

## Appendix E

<b>Survey Responses</b>	
<b>Question</b>	<b>Response</b>
Does the Board make information about the profession or operation of the agency easily accessible and easy to understand?	Three quarters of survey responses stated that the Board makes information about the profession or the agency easily accessible and easy to understand. However, many complainants responded that the Board does not make information easily accessible or easy to understand.
Are yearly Continuing Professional Education requirements adequate and appropriate?	<p>A large majority of responses stated that CPE requirements are adequate and appropriate. Several survey respondents that indicated that the CPE requirements are not adequate or appropriate commented specifically on the content of CPE courses.</p> <ul style="list-style-type: none"> <li>- "Needs new material, same stuff every year"</li> <li>- "I feel there should be more efforts toward 'continuing education' rather than 're-education.'"</li> <li>- "The Board needs to be more consistent in approving continuing education books."</li> <li>- "Introduce new technology, products of installation."</li> <li>- "Six hours is to much, very boring."</li> </ul>
Are there other specific functions that the Board should perform?	<p>A large majority of survey respondents with an opinion on this question, did not identify any other function that the Board should perform.</p> <ul style="list-style-type: none"> <li>- "Inspection of septic systems. TNRCC requirements allow health hazards."</li> </ul>
Does the current level of regulation sufficiently protect the health and safety of the public?	<p>A sizeable majority answered that the current level of regulation is sufficient. However, 15 responses, representing a cross-section of licensees and including two complainants, stated that the current level of regulation is not sufficient to protect the health and safety of the public.</p> <ul style="list-style-type: none"> <li>- "There are too many loopholes in the law that allow unlicensed people to practice plumbing."</li> <li>- "[I] see too many violations."</li> <li>- [The current level of regulation is sufficient] "only in some cities."</li> </ul>
Should the Plumbing License Law extend to plumbing work performed in unincorporated areas not connected to a public water system?	<p>Almost all responses indicated that the Plumbing license Law should extend to plumbing work in unincorporated areas not connected to a public water system.</p> <ul style="list-style-type: none"> <li>- "Rural plumbing tends to be installed by individuals ignorant of sanitary plumbing practices and techniques and therefore is in need of oversight like all other plumbing."</li> <li>- "If it is a public building."</li> </ul>
Should hotel or apartment complex maintenance personnel continue to be exempted from the Plumbing License Law?	<p>Survey respondents were almost all unanimous that hotel and apartment complex maintenance personnel should not be exempt from the Plumbing License Law.</p> <ul style="list-style-type: none"> <li>- "There is nothing more dangerous than a maintenance man."</li> <li>- "It is ludicrous to exempt some of the most poorly trained personnel that can endanger the lives of so many."</li> <li>- "At least make them take a short course on plumbing."</li> <li>- "The newly created [tradesman] license and endorsements with minimum changes should apply to them."</li> </ul>

## Appendix E

<b>Survey Responses</b>	
<b>Question</b>	<b>Response</b>
<p>Which regulatory schemes do you favor for plumbing codes?</p>	<p>For commercial &amp; multifamily structures, a large majority of survey respondents indicated favoring a single statewide mandatory code that locals can amend either with or without state approval. In addition, several respondents indicated favoring a statewide mandatory code with no local amendment. Only three respondents indicated favoring the current situation, with the State adopting two codes between which municipalities of more than 5,000 must choose. Only two respondents favored no state-adopted code.</p>
	<p>For one-and two-family dwellings, a large majority of survey respondents indicated favoring a single statewide mandatory code that locals can amend either with or without state approval. Respondents were almost equally split between favoring a statewide mandatory code with no local amendment and the current situation in Texas.* Only one survey respondent indicated favoring no state-adopted code.</p>

\*Sunset staff made an error in defining the current situation in Texas for one and two family dwellings, by stating that the state adopts two codes between which municipalities must choose. In fact, all cities in the state must adopt a single code, the International Residential Code, for one- and two-family dwellings. Local governments can amend this code without state approval.



## Appendix F

### Staff Review Activities

Sunset staff engaged in the following activities during the review of the Texas State Board of Plumbing Examiners.

- Worked extensively with agency staff, and attended Board and Committee meetings. Reviewed Board statutes, rules, minutes, files, documents, reports, videos, and publications.
- Conducted meetings and phone interviews with licensees of the agency, and state and local groups interested in the regulation of plumbing.
- Met in person, or interviewed over the phone, staff from the US. Department of Labor - Bureau of Apprenticeship program, Texas Department of Licensing and Regulation, Texas Natural Resource Conservation Commission, Texas Workforce Commission, and Legislative Budget Board.
- Witnessed the agency's field investigation of complaints, observed joint inspections by the Board's field representatives and local plumbing inspectors, and attended a hearing of the State Office of Administrative Hearings.
- Conducted a written survey of interest groups in Texas, individual licensees and registrants, and complainants and respondents involved in the Board's complaint process. See Appendix E for survey results.
- Conducted a written survey of out-of-state regulation of plumbing sent to 49 states. See Appendix D for survey results.
- Attended the Board's continuing education instructor training, and demonstrations of cross-connected plumbing systems using see-through models. Visited the Board's examination room including the Board's practical shop components.
- Reviewed previous legislation, literature on plumbing and code issues, and performed background and comparative research using the Internet.





**SUNSET REVIEW OF THE  
TEXAS STATE BOARD OF PLUMBING EXAMINERS**

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