

**From:** [Sunset Advisory Commission](#)  
**To:** [Trisha Linebarger](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Monday, December 17, 2018 8:00:33 AM

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-----Original Message-----

From: sunset@sunset.texas.gov <sunset@sunset.texas.gov> On Behalf Of Texas Sunset Commission  
Sent: Sunday, December 16, 2018 11:27 PM  
To: Sunset Advisory Commission <Sunset@sunset.texas.gov>  
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS STATE BOARD PLUMBING EXAMINERS

First Name: Russell

Last Name: Wyman

Title:

Organization you are affiliated with: Representing myself

Email:

City: Dallas

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or  
Opposed:  
Members of the Sunset Commission:

It is my understanding that public comment will be accepted and considered through Monday, December 17, 2018. If a final decision has not been reached by the members of this Commission, please consider these additional comments when formulating the final decision.

1. The members of this industry truly embrace our responsibility to the citizens of this State and are willing to put in the effort and work necessary to save this agency.
2. If you listened to the testimony given, the majority testifying expressed our wishes that we be given the chance to salvage the existing agency.

I realize the Commission believes this industry has already been given in excess of twelve (12) years to address deficiencies previously addressed.

3. Speaking as an individual that has attended and participated in Plumbing Board meetings for years, we were never made aware of the previous recommendations the Commission provided to the Plumbing Board or of their significance and potential impact on our industry.

The majority of us are not and were not members of this Board and of course not members of our State Legislature. Any information we are afforded, is in the form of an agenda item. Agenda items are vague and do not include any of the supporting information Board members are provided.

4. Trying to address our lack of participation in addressing these

deficiencies, please understand this information was not something that was readily available to us – nor did we have the sense to understand that we should be looking for information that could ultimately be so detrimental to our industry.

While I understand our industry, our current Board and our current Executive Director own the deficiencies outlined in the Commission Report – any deficiencies addressed in the previous report were not shared with our industry, by the previous Executive Director or the previous chairperson of the Board. It was never addressed in a Board meeting and I for one was not smart enough to realize something was being hid from our industry.

5. Please do not let any anger you may have towards me and my comments, any anger you may have for our current Executive Director or our current chairman and Board members – be the basis for an action that could be so detrimental to our industry as a whole.

I for one welcome this task and I know there are many others in this industry welcoming that opportunity as well. We know what is expected – please let us tackle this. Give us a chance to salvage this Agency and turn it into an Agency that exceeds each of your expectations.

Any Alternative or New Recommendations on This Agency: Noted in previous correspondence.

My Comment Will Be Made Public: I agree

# Russell W. Wyman

November 26, 2018

Sunset Advisory Commission  
P.O. Box 13066  
Austin, Texas 78711

## Members of the Sunset Commission:

I made this request in a previous correspondence to the Sunset Commission, but just in case your recommendation is merely based on the number of responses received in support of or against the Plumbing Board – I would like to express my support for the continued funding of the Texas State Board of Plumbing Examiners and their associated activities. Now that this declaration has been made, if your true intent is to evaluate and assess the merits of this agency – please keep reading.

I hope my belief that the fate of this agency was predetermined prior to the start of the review process, is wrong. It is hard for anyone to believe otherwise, considering the shallow but rather damaging position that has been taken by the author in the November 2018 Sunset Commission Report. While my statement may anger or alienate some members of this Commission, please understand this is the impression most of us were given once we were afforded the opportunity to read the report.

This report is not just an attack on our Agency, but the condemnation of an industry that many of us have tried to improve over the years through the contribution of our time and efforts. When someone's personal opinion is presented as fact - stating the value we have placed on training and testing of our industry members, to ensure basic health and safety standards have been met to protect our citizens – I feel they are using this process to argue that we are of a class of people that do not deserve your consideration and that our efforts have no merit. The characterization of our efforts is hurtful and is considered by most to be a personal attack on our industry and us as individuals.

When considering my comment that the outcome of this report was predetermined - I think any reasonable person would acknowledge that it takes far more effort to address the pros and cons of a situation, than it does to focus on a few negative items and use those as the basis of the report. It is quite possible the individual compiling the report was not afforded the time or resources to perform a fair evaluation or that they just did not want to put forth the effort to do so. However, the worst possibility is that the author performing this review was directed to focus their efforts on policies and processes that could be manipulated to support a negative conclusion.

The biggest hurdle we must overcome in the plumbing industry, is getting people to understand that if we do everything right – nothing happens. People continue to take their family members to hospitals, without worry of deficient piping for their medical gases. Access to adequate potable water supplies and sanitary collection systems to meet life's



basic needs - is not given a second thought. Our citizens can go to school, work and randomly select restaurants with an expectation that their health and safety has been and will continue to be protected through the good plumbing practices we have worked to achieve and maintain.

We wake up every day with these expectations, because we have accepted and grown to expect a society that takes the necessary steps to address any health and safety concerns or deficiencies within our communities. The value and effectiveness of many other industries and professions is typically based on the increase or decrease in the loss of property or life. Most people do not give the plumbing industry a second thought, until they have a plumbing problem. One could easily argue that this is a true demonstration of our effectiveness as a profession, as an industry and of the leadership and direction provided by the Texas State Board of Plumbing Examiners.

Issue 1 blindly declares that the responsibilities of the Plumbing Board need to be transferred to the TDLR, without justifying why they ignored previous recommendations of the Sunset Commission – for both agencies. Additionally, they ignored the huge obstacles that were placed upon this agency by our own legislators and a previous chairperson, that has since been removed by our Governor.

The February 2002 Staff Report of the TDLR paints the picture of an agency that was peppered throughout with deficiencies and short comings. However, the recommendations provided only called for a few Rule changes and a transfer of the enforcement / regulatory responsibility for plugging water wells to the TNRCC.

The Sunset Commission recognized the inability of the TDLR to fulfill the enforcement responsibilities of one of their own Advisory Boards. But instead of calling them to task and requiring them to correct the deficiency, it was deemed more appropriate to transfer that burden to another agency.

The number of unplugged water wells in the State of Texas is miniscule when compared to the thousands upon thousands of private water distribution systems within our State. But according to this 2018 report for the Plumbing Board, the TDLR is now deemed as being the most appropriate agency to regulate and enforce deficient private water systems on public and private properties. This makes no sense, what-so-ever.

#### Issue 1 continued

The declaration within this report that the Plumbing Board is struggling and that the Plumbing Board and Board leadership have not responded effectively to problems within their control to fix – is baffling at best and a clear indication that the person compiling this report, merely shopped for comments from someone that did not get their way.

There is no one within this industry that is more outspoken than me. There is a process established by Rule to initiate change. I personally follow those guidelines to a tee when requesting change. I win some and I lose some, but I have been afforded the opportunity to voice my concerns. We did have a past chairperson that attempted to impede my and others ability to speak, but that is the person that was removed by the Governor. I do not think anyone should question the caliber of leadership we are now afforded on our agency Board and their willingness to seek and gather public input to address our concerns.

Unfortunately, we spent this past year addressing Rule changes that were recommended by an Assistant Attorney General. The changes were intended to remove language within the Rules that mirrored any language within our Licensing Law. These changes were compiled by the Assistant AG and portrayed as the same necessary tasks that were being required of all agencies. Soon after the Rule changes were pushed through, this particular Assistant AG left the agency.

I do believe our time and those resources could have been better spent. But I know how it was presented to our Board and I do not believe any blame should be placed on them or the leadership of this agency. Our Board and Board staff look to the Assistant AG's for guidance. If there is any blame to be placed on this matter, it needs to be placed at the feet of the Assistant AG's serving this agency.

As far as any other complaints about this Board's actions - if these complaints exist, they must be from someone that is just too lazy to compile a Rules change request. People of this mindset will be just as unhappy, no matter which agency is chosen to regulate plumbing within our State. They are using this opportunity to complain to the Sunset Commission and act like they have tried to express their concerns in accordance with the Rules in place. They have not.

#### Issue 1 continued

To insinuate this Board is struggling financially due to their own actions, is an inappropriate characterization. It also further supports my position that the individual compiling this report was either directed to arrive at a negative conclusion or they took the easiest path possible, without reading previous Sunset Reports and even a few entries in the current report.

In the February 2002 Staff Report of the TDLR, it is stated that they had an annual operating budget of \$ 6.9 million – with 99% of those costs coming from licensing fees paid to the General Fund. In other words, the TDLR has been allowed to spend 100% of the monies they have collected through licensing fees (\$ 6.831 million in 2001) with the remainder of their operating budget coming from some other source.

In the November 2018 Staff Report of the Plumbing Board, it clearly states the Board generated \$ 5.2 million in revenue. Those monies were of course deposited into the General Fund, but only a little over \$ 2.6 million was appropriated back to



this agency. This meant the Plumbing Board transferred (left) more than \$ 2.5 million of the monies they collected (which was deemed excess) into the General Fund.

The TDLR was allowed to spend 100% of the monies they collected, but the Plumbing Board has only been allowed to spend 50% of the monies they collect. In an attempt to mask how fiducially responsible the Plumbing Board has been, with the pittance they have been afforded from our State leadership / while continually dealing with hiring freezes and budget cuts – a declaration was made in the Fiscal Implication Summary that the transfer of the Plumbing Board to the TDLR would result in an estimated savings of \$ 768,000 in general revenue, over the next five (5) years. Not each year - but spread out over five (5) years.

How does this compare to the more than \$ 2.5 million in revenues collected by the Plumbing Board, which were declared as excess – so they could be left in the General Fund? It appears an apples-to-apples comparison, that included a five (5) years sampling of the “excess” monies transferred to the General Fund was intentionally avoided – because it did not support the predetermined conclusion the author of this report was seeking.

Another financial issue that was not addressed in this report – was the intended purpose of the \$ 2.5 million in additional monies collected by the Plumbing Board. Privileged as we may be to live in this State, privilege comes at a cost. A cost that is supposed to be shared equitably across the State. We are aware that State expenses must be covered through fees collected and taxes that must be levied. However, in this situation – the misappropriated fees collected from the licensees of the Texas State Board of Plumbing Examiners were essentially converted to an additional \$ 2.5 million taxes, that no other citizen in this State was required to pay. Please afford us at this time, the representation we were inappropriately taxed for.

My recommendation – let the Texas State Board of Plumbing Examiners remain as an independent agency and allow them to use the monies that were misappropriated to build an effective staff that is proportionate to the demands that are placed upon them and make the necessary improvements to be more effective in the execution of their duties.

Issue 2 is no more than an exercise in throwing spaghetti against the wall to see what sticks. Essentially, they want to argue both sides of the fence. In the first issue presented in this report, the author wants to assert that this agency is deficient in their ability to regulate the plumbing industry. But they immediately contradict themselves in the second issue presented, by stating this agency over regulates the plumbing industry.

The idea that the licensing process within this agency creates unnecessary barriers, could not be further from the truth. I obtained my apprentice registration from this agency in 1976, when it was a voluntary process. I became fully licensed as a

journeyman by 1979. So, for the better part of forty-two (42) years I have maintained some form of registration or licensure with this agency.

During those years I have seen licensing requirements modified to meet the demands of the market place and industry associations wanting change licensing requirements to meet their personal needs. The amount of experience required when I obtained my journeyman license was three (3) years. That was later modified to eight thousand (8,000) hours. When we went through a housing boom, the hours required were lowered to six thousand (6,000) hours, to address the concerns of an industry association that suddenly realized they needed to get more members of their workforce licensed as journeyman plumbers.

What was not address by this industry and / or some members of this agency at the time, was that many plumbers and plumbing contractors had not and would not do anything to develop their workforce and train their laborers and helpers to a point where they could become licensed. They just wanted this agency to change the requirements according to their needs, instead of accepting their responsibility to develop the workforce they had utilized for years.

I would be willing to bet - even to this day there are individuals who have worked within this industry for over ten (10) years that are no closer to obtaining a license, because the plumber and / or plumbing company they work for refuses to develop the skill sets of the lower level employees within their workforce.

Unfortunately, this could be because of their ethnicity or the simple fact that they are not a member of their family. On the other side of that coin, I believe most of the plumbing contractors and plumbers now embrace the responsibility to develop their workforce – and do so from day one by registering their new hires as apprentices.

The reality is - when an apprentice improves his skill sets and / or becomes licensed, they become more marketable and quite possibly could be hired away by a competitor. The refusal early on to develop these individuals, to become licensed was in fact the barrier or glass ceiling holding them back, not an apprentice registration requirement implemented by the Plumbing Board.

If anything, the requirement to register as an apprentice has established a clear path for individuals to become licensed – within a reasonable amount of time. Removal of this requirement is the first step backwards and will ensure many individuals entering this industry will never advance above that entry level position. The circumstances outlined in the report, could not be further from the truth.

## Issue 2 continued

There is no argument that wait times for licensing exams are excessive, which of course is proportionate to the backlog that is in place. I do not believe it is too much to ask the leadership of this State to acknowledge that it has been their actions that



have created the conditions outlined in this report. It is the leadership of this State that has withheld the funds this agency collected. It is the leadership of this State that has subjected them to hiring freezes, when they have staff retiring and transferring to other agencies because they see no support from our legislators. It is the leadership of this State that constantly puts them in a position where they must neglect any thoughts of improving the agency or their processes, because they are asked over and over to reduce their operating costs.

How could anyone justify blaming this Board or staff for these deficiencies, under the conditions and circumstances they have been subjected to?

In years past this agency was afforded a shop hand, to perform non-essential tasks within the exam center and they were adequately staffed with examiners to ensure the appropriate environment and support for our examinees was provided. Under present conditions, only one examiner may be available. If an examiner or their family member is sick, if they must visit the doctor or if they even think they have the right to use a vacation day they have been afforded - a field representative must be brought in to fill the vacancy. This now impacts the enforcement capabilities this agency is charged with fulfilling.

## Issue 2 continued

Elimination of the Responsible Master Plumber License and subsequent creation of a plumbing contractor license - does nothing to improve or eliminate any deficiencies alleged by the author of this report. Under this proposal, an individual that is licensed as a Master Plumber would now be required to obtain an additional plumbing contractors license as well. It is plausible to believe that the hidden intent is to eliminate any plumbing licensing and experience requirements to become a plumbing contractor within the State of Texas.

We are of a profession that requires us to be students of the national codes, code changes that are implemented periodically and of the amendments utilized within each city or jurisdiction that we work. As we utilize these provisions, we should also verify the appropriateness of a system design by calculating (at a minimum) friction loss, velocity and losses or gains created from head pressure. While these tasks can be learned and mastered in the classroom – our real knowledge is gained through shared experiences. It is through these supervised activities that we have gained the most knowledge.

An apprentice that is fortunate enough to work with a knowledgeable plumber / true craftsman is afforded the opportunity to develop skill sets that will help them in the advancement of their careers for years to come. The assertion that being afforded this supervision and those shared experiences is a needless barrier – is ridiculous.

When needed, the citizens of this State depend on the availability of a pool of qualified individuals to perform installations and necessary repairs. The objective of



the plumber and the desire of the customer is that those tasks will be performed in the most efficient manner possible – to minimize any unnecessary costs to the customer and contractor. It is highly unlikely that a phone call to your local plumbing contractor, will result in the arrival of the most experienced and knowledgeable plumber within your city. As such, we understand that a company's workforce will be comprised of individuals with varying degrees of experience.

Individuals with the lesser levels of experience need guidance. They need varying degrees of supervision. Removing any requirement for oversight, increases the possibility of compromising the health and safety of our citizens. Compromising the health and safety of even one family, is not worth the trade-off.

#### Issue 2 continued

Individuals that have completed the written and practical portions of the exams for licensing as a Tradesman, Journeyman, Master and / or Inspector – realize the significance and importance of structuring this type of exam. They may not have liked it and they may not have passed it the first time. But the intent of these structured exams is to ensure the pool of individuals that are serving our citizens, possess a set of skills that at least meet a basic level for their licensing category. It would be nice if certain portions of the exam were updated and the facilities modernized. But those activities come at a cost and you are already aware of what has become of the monies that were taken from the licensees of this agency.

I as well as everyone else am aware of the advancements that have occurred within our industry. Acknowledgement of these advancements merely reinforces the need to upgrade portions of the exam. However, the advancements that have occurred do not change the fact that the installation and removal of piping, water heaters and plumbing fixtures are still physical tasks that must be performed by licensees of this agency. The practical portion of the exam still fulfills a need and the use of licensed personnel to administer those exams is still important.

Outsourcing the creation and administration of any portion of this exam to testing centers that do not use licensees of this agency will not ensure the ongoing improvement of the testing process. It will however ensure the reduction of fees collected by the agency and it will most likely increase the cost to the examinees over time. This review process appears to place more importance on transferring the responsibility of administering an exam to someone else, than it does to ensure a quality exam is administered by this agency. The health and safety of the citizens of Texas will always be our priority, no matter where you place us.

#### Issue 3

As previously stated, the author of this report has recommended that the functions performed by this agency and the enforcement responsibilities that go with it should be transferred to the TDLR. May I remind you of the February 2002 Sunset Report,

that acknowledged the TDLR was incapable of sending a letter of demand to property owners that failed to plug abandoned water wells. Instead of requiring them to fulfill that obligation, they transferred that responsibility to the TNRCC. In the sixteen (16) years following that recommendation, I hope someone has followed up to identify just how many abandoned wells were involved in that original assessment and how much of a burden this would have placed upon the TDLR, if they had retained that responsibility. If this has not occurred, I believe any reasonable person would question the concern and real intent of the agency making that recommendation.

I will always question the enforcement capabilities of the TDLR, based on my personal experience. I had filed a complaint with the TDLR because someone was using my Air-Conditioning license to conduct their business. After providing them with all the required information and waiting months for a determination to be rendered, I received a letter from the investigator stating they were closing the case. They provided me with the number the individual was using to conduct their business and stated that it was not necessary for them to further investigate my complaint. While this may seem reasonable enough for some – the number they stated the individual was using, was my Air-Conditioning License number.

I can only shake my head in disbelief when I think about the TDLR taking over the enforcement activities of the Plumbing Board. Another issue that should make you question this recommendation – start reading the expiration date on the certificates issued for an elevator inspection. I would hope the ones in Austin are current, so please look at the ones within the districts you represent. Again, transferring the responsibilities of the Plumbing Board to the TDLR, is a huge mistake.

### Issue 3 continued

The items outlined in this section are not the responsibility of the plumbing industry. The methods of navigating the enforcement process at the Plumbing Board were put in place with the guidance and direction of the Assistant AG's and / or attorneys serving this agency. Any discrepancies identified appear to be petty differences between attorneys – arguing how one believes their recommendations for the best practices to bring enforcement cases to conclusion is better than what is in place.

I would only ask that the Assistant AG's and / or attorneys that offer direction to our Plumbing Board and Board staff – put forth the effort to provide the best advice, direction and guidance possible. If their recommendations prove to be flawed, admit it and let's take the necessary steps to repair those actions. But do not blame those errors and any resulting deficiencies on the Plumbing Board or Board staff.

There is no justification to transfer the Plumbing Board to the TDLR, when the TDLR is up for review within the next two (2) years. The Plumbing Board has fulfilled their responsibilities to this State, despite the obstacles they were required to endure.



If the transfer does take place, it just validates my assertion that the outcome of these reviews are predetermined - and that there was and has never been any intention of performing fair reviews and evaluations. Additionally, if fair reviews and evaluations of State Agencies are not going to be performed, we must now question the necessity of the Sunset Commission. This is speculation on my part - but I would venture to say the operating budget of the Sunset Commission, is close to and / or most likely exceeding the operating budget the Texas State Board of Plumbing Examiners is afforded.

It is odd that an agency that has no visible means to generate revenue, would consider killing historically successful agencies such as the Plumbing Board as a solution to providing better service to the citizens of this State. Any effort to avoid performing fair evaluations for agencies such as the Plumbing Board, could eventually lead to the elimination of excess funds to support non-revenue generating agencies such as the Sunset Commission.

The mission that has been charted to place all agencies under one or two super agencies is a catastrophe waiting to happen. Once the leadership of our State realizes the advice they have been given is flawed, they will struggle to find the millions upon millions of dollars needed to reestablish these smaller agencies. Pursuing this path will ensure the State will be required to continue funding these super agencies, regardless of their ability to fulfill the responsibilities they have been charged with. This entire State will be held hostage by these super agencies, because they will be deemed too large and too important for the leadership of this State to let them fail.

This will be no different than the banking system collapse we endured in 2008.

Before accepting leadership roles at the State level, many may relate to the challenges they encounter at the municipal level. Cities are constantly lobbied by companies to outsource their trash collection services and school districts lobbied to outsource their bus services. The man in a nice suit outlines the millions of dollars that will be saved through the outsourcing of those services. The municipalities and school districts accept the proposals with the best of intentions to serve their citizens.

Once the contracts are in place, these political subdivisions start selling off their equipment at bargain prices and move forward with the belief that their best interests are being served. When these contracts expire, they find out that no company will provide those same services for any price that is close to the original proposals they accepted. They now have to choose whether they are going to pay an inflated price for the same or a lower level of service - or if they are going to incur millions of dollars in debt to reestablish the services they previously managed themselves.

The application and enforcement of the most basic plumbing standards throughout this State is inconsistent at best and continues to vary from city to city because of the poor wording of our laws and the lack of support for this Agency from our legislators. I believe the Plumbing License Law needs to be rewritten to ensure the consistent application of quality plumbing standards throughout the State of Texas.

It would also be to our benefit to quit referencing national plumbing codes within our laws and Board Rules. We have minimal representation as a State within these national code bodies and these documents do not reflect our specific needs throughout the State. If our legislators believe it is best to maintain these references - amendments to these documents should be made at the State level, to ensure consistent application and enforcement by all political subdivisions throughout the State.

This may seem unrealistic to any individual that does not work within this industry – but the primary complaint of every plumbing contractor within this State, is that every city enforces the plumbing codes differently. This affects their material and labor costs, which ultimately drives the cost of doing business up and effects their profitability. This is not a business-friendly position for the State of Texas to take.

We have the industry experience and mental capacity within our own State to write our own codes. The benefit of writing our own plumbing code is that it would also give us the ability to approve the type and quality of plumbing products we would allow to be utilized in our State. These national code bodies make millions of dollars each year, just through the approval of plumbing products. These are dollars (at least a portion of them) that should be and could be directed to our State fund. The idea of continually allowing other states to dictate the products that can be used within our State is not in our best interest.

I thank you for the time you have afforded me, to review my comments and I hope you will look favorably upon our industry and the Texas State Board of Plumbing Examiners.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell Wyman", with a stylized, flowing script.

Russell Wyman