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# Texas State Board of Plumbing Examiners

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## Agency at a Glance

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The Texas State Board of Plumbing Examiners (the Board) 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.

## Key Facts

- **Funding.** The Board operates on a \$1.5 million annual budget from collections of about \$2.4 million each year from industry fees.
- **Staffing.** The Board had 24 full time employees in fiscal year 2002, working 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 2002, the Board issued a total of 22,901 licenses, including 8,842 master plumber, 12,803 journeyman plumber, 204 tradesman plumber-limited, and 1,052 plumbing inspector licenses. That year, about 1,617 plumbers held an endorsement for medical gas piping installations, and 298 for water supply protection specialists.
- **Enforcement.** The Board received 722 jurisdictional complaints in fiscal year 2002, for which it conducted 420 field investigations and issued 433 citations in local justice of the peace courts. In 2002, field representatives also monitored 9,225 job sites.

**Board Members (9)**

Walter I. Borgfeld, Jr., Chair (Lufkin)  
Michael Thamm, Vice Chair (Cuero)  
Lawrence Lemon, Jr. (Slaton)  
Al Tarver (Nederland)  
John Hatchel (Woodway)

Art Cuevas (Lubbock)  
Min Chu, P.E (Houston)  
Carol McLemore (La Marque)  
Terry Wayne Moore (Sachse)

**Agency Head**

Robert L. Maxwell, Administrator  
(512) 458-2145

**Recommendations**

1. Continue the Board for 12 Years, and Increase Collaboration Between the Board and the Texas Department of Licensing and Regulation.
2. Specify That the Board's Committees Be Composed of Board Members Only.
3. Enable the Board to Provide for the Training of Apprentices and Address the Need for Licensed Plumbers.
4. Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.
5. Direct the Board to Investigate and Eliminate, as Appropriate, Potential Barriers to Licensure.

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

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**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.

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. No specific problems exist with the agency's core functions of licensing and enforcement that justify consolidating the Board under a larger agency, such as the Texas Department of Licensing and Regulation (TDLR) or the Texas Commission on Environmental Quality. 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.

**Recommendations****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 enter into an inter-agency agreement under which the two agencies would share resources, enhance coordination, and improve services, when needed. Specifically, the two agencies should share information technology to support the regulation and enforcement of occupational licenses, and 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 reciprocal agreement under which enforcement officers from both agencies would, in the performance of their respective 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 also conduct joint investigations as circumstances dictate. 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.

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

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**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.

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's 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.

**Recommendation**

**Change in Statute**

**2.1 Require the Board's committees to be composed of Board members only.**

This recommendation would specify that each of the Board's committees be composed solely of Board members, appointed by the Chair. This change would not apply to the Board's current enforcement committee which reviews complaints and applicants with criminal convictions. Issue 4 would leave these functions entirely to staff with final approval from the Board. Leaving committee responsibilities to the Board would ensure accountability to the Governor, and prevent staff from making decisions on matters in which it has a direct interest.

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

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**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.

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.

**Recommendations****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. This would position the Board so it can help ensure that plumber's apprentices receive the training and expertise needed to become licensed plumbers, and thus help the State meet the demand for licensed plumbers.

**3.2 Require the Board and the Texas Workforce Commission on coordinate on addressing the shortage of licensed plumbers in Texas.**

The Plumbing Board and the Texas Workforce Commission (TWC) would coordinate to raise awareness of the plumbing profession to the public, and of resources available to employers to recruit plumbers. TWC's local workforce development boards would provide the bulk of this effort. The Board and TWC would supplement this effort by providing needed information, such as licensing requirements or statistical data, and developing brochures. The two agencies should also provide links to each other's Web site and to those of local workforce boards.

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

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### **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.

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 Sunset reviews of occupational licensing agencies 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. Comparing the Board's programs and statute to these licensing standards identified unwarranted variations and to needed changes to bring them in line with the model standards.

### **Recommendations**

#### **Licensing**

##### **Change in Statute**

#### **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 reference Chapter 53 of the Occupations Code in the Plumbing License Law to clarify the Board's authority to adopt rules for dealing with criminal convictions that follow the general guidelines in the Chapter. In addition, it 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. 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 also 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. 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. 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**

#### **Change in Statute**

#### **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.

#### **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 those 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**

### **Change in Statute**

#### **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**

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

Under this recommendation, the Board would 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.

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**Issue 5 | The Board Does Not Do All It Can to Eliminate Potential Barriers to Licensure.**

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Failure by the majority of applicants to pass the Tradesman license exam indicate that many apprentices are not adequately prepared for the exam. In addition, Spanish-speaking plumbers may encounter language barriers, including difficulty finding training in their native language, and concerns with the Spanish translation used on the Plumbing Board's examination forms. Greater action by the Board could help applicants better prepare for the exams, and help eliminate potential barriers to licensure among Spanish-speaking plumbers.

**Recommendations****Change in Statute****5.1 Require the Board to establish a standardized review course to prepare for the plumbing license exams.**

This recommendation would require the Board to develop a standard review course, in English and Spanish, for each of the Board's licensing exams. The Board would not be required to teach the course itself, but would use third party providers to help plumbers prepare for exams. This recommendation would authorize the Board to charge a fee for dispensing the course, and for allowing third party providers to use the review course.

**Management Action****5.2 The Board should explore whether plumbing-related training is available in Spanish to help Spanish-speaking plumbers prepare for licensing exams.**

Under this recommendation, the Board would study the availability of plumbing-related training in Spanish in Texas.

**5.3 The Board should revisit language used on the current Spanish translation of the plumbing license exam.**

Under this recommendation, the Board would investigate the appropriateness and accuracy of the Spanish translations used on the Board's examination forms. The Board would be required to make adequate modifications to the examination forms based on its findings. The Board has taken steps to comply with this recommendation by internally reviewing the exams and contracting with a third party to provide input on needed changes to the exam forms provided in Spanish.

**5.4 The Board should explore the possibility of offering the plumbing license exam in an oral format.**

Under this recommendation, the Board would study the appropriateness of changing the written portion of the exam into an oral examination. The Board would change the exam format, based on its findings.

## Fiscal Implication Summary

Two recommendations would have a fiscal impact to the State resulting in an overall net gain to General Revenue of \$82,500 in fiscal year 2004, and \$85,500 each year thereafter. The 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. The initial set up cost of an online system for consumers to check disciplinary orders against licensees may cost approximately \$3,000.

Fiscal Year	Gains 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