



TEXAS DEPARTMENT OF LICENSING AND REGULATION

Executive Office

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November 26, 2018

Jennifer Jones, Acting Director
Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711-3066

Dear Ms. Jones,

I appreciate the opportunity to provide our feedback to the Sunset Advisory Commission regarding recommendations from the Sunset Advisory Commission Staff Report on the Texas State Board of Plumbing Examiners (TSBPE).

We have carefully reviewed the findings and recommendations and evaluated them in conjunction with TDLR's current resources and responsibilities. Based on our evaluation, we have identified reasons why the recommendations can be fully implemented by TDLR as well as key challenges regarding the recommendations.

KEY POINTS SUPPORTING SUNSET STAFF RECOMMENDATIONS

Sunset Recommendation 1.1 to transfer regulation of plumbers to TDLR and reconstitute the independent plumbing board as an advisory board.

Alignment with TDLR's Mission. TDLR's mission is to earn the trust of Texans every day by providing innovative regulatory solutions for our licensees and those they serve. We understand that a need exists to continue the state-level regulation of the plumbing profession in Texas and strive to protect the public from any potential harm while still ensuring Texans are served by qualified professionals.

Our expertise is in managing and improving a wide range of programs and making them work within our functionally-aligned business model. The recommendation fits with our current responsibility for managing other building and trade professional programs, including Air Conditioning and Refrigeration Contractors, Electricians, and Elevators.

If the Legislature determines that the plumbing program should be transferred to TDLR, candidates, licensees, and Texas consumers will find that TDLR will pay close attention to their needs and offer them the experience, expertise, and services to make the program more efficient and effective.

Experience with Other Program Transfers. TDLR is constantly evaluating and refining our business model to ensure the proper allocation of our resources and continued implementation of our mission and vision. Most recently, we successfully implemented the transfer of 14 diverse regulatory programs through Senate Bill 202 (84R) and House Bill 3078 (85R), both Sunset bills.

TDLR's functional alignment allows for staff development and retention, cross-training to meet changing needs, and continuous improvement. Specifically, TDLR staff participation in cross-functional teams avoids the creation of silos and supports open and free communication that drives effective regulation and

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fosters innovation. TDLR uses a straightforward approach to identifying inefficient practices and rules, engaging stakeholders, and ultimately developing clear processes that are effective to administer, ensure fairness for licensees, and achieve the goals of regulatory programs.

Recruitment of Committed and Talented Public Servants. A major factor in TDLR's success in improving programs transferred to us from other agencies by welcoming and incorporating committed and talented employees from those agencies so they can continue working with the program, transferring their valuable knowledge and established industry relationships.

Cooperation with Industry Experts and Professionals. TDLR's success in consolidating programs is a direct result of the communication and cooperation between industry subject matter experts and our program professionals to create robust regulatory program management, regardless of the industry or profession. We listen to the people we regulate, and we count on them to share industry best practices, so we can have a better-informed regulatory structure. We involve industry experts and professionals in the beginning of any new process or transfer so that lines of communication are established early and relationships can grow over time.

Experienced Education and Examination Division. We feel that TDLR's existing education and examination model will provide a solution to the ongoing examination and continuing education challenges facing Plumbing applicants. TDLR's Education and Examination Division is responsible for developing continuing education and pre-license education requirements for a wide variety of TDLR programs. Our Education and Examination staff ensures that schools and continuing education providers comply with the laws and rules by evaluating and approving schools, providers and courses, and providing technical support and assistance to applicants. The Division uses reporting software for its Air Conditioning and Refrigeration and Electricians programs to simplify how licensees and providers report completed pre-licensing components, certification requirements, and licensing continuing education courses.

TDLR contracts with a third-party examination administrator, PSI, to bring efficiency and convenience to candidates who need to take exams. Candidates for licensing do not need to travel to one central location for testing because PSI offers the opportunity for testing nationwide and currently has 24 testing locations across Texas. Additionally, candidates can schedule their exam with PSI, by phone or online, and in most cases are able to sit for an exam within days. If there are conflicts for scheduling, TDLR works directly with PSI's Lead Exam Coordinator to ensure that candidates can sit for exams in a timely manner.

TDLR also has extensive experience in transforming programs that historically required candidates to travel to Austin and take their licensing exams. Most recently, TDLR made it easier for Podiatrists to become licensed by making the jurisprudence exam conveniently available through PSI locations around the state. The former Podiatry board required test takers to travel to Austin, and only offered the exam a few times a year.

TDLR makes extensive use of PSI Exam Review Committees comprised of licensed industry subject matter experts to ensure that exam content and materials are up-to-date and relevant. Due to the large volume of exam takers, key TDLR staff meet with these experts as many as three times per year for programs such as Air Conditioning and Refrigeration, Barbering, Cosmetology, and Electricians. This provides us with reliable data to determine how exam items are performing and the ability to be flexible and adjust if necessary.

Additionally, for some of our exams, PSI offers translated exams. The Air Conditioning and Refrigeration Contractor, Barbering, Cosmetology, and Electricians exams are all translated into Spanish. Barbering and

Cosmetology exams are also translated into Vietnamese. When a candidate calls in, the candidate specifies if they need an exam in Spanish or Vietnamese.

Always Puts the Customer First. TDLR strives to always be fair, transparent, and efficient. We value our customers and work to cultivate employees who provide an exceptional customer service experience. The Customer Service Division is our primary point of contact, responding to calls, emails, and social media interactions. We make extensive use of Microsoft Dynamics to analyze customer trends and needs. In Fiscal Year 2018, our customer service representatives responded to over 470,276 customer contacts, including 346,853 calls, 121,554 emails, and 1,869 faxes; monitored and engaged through social media; assisted walk-in customers at TDLR headquarters in downtown Austin; and provided Spanish, Vietnamese, and Mandarin language assistance to customers. The agency engages with and fosters an interactive community through all our social media channels.

Agency Leadership Practices Active Supervision Over Internal Operations and Makes Use of Independent Advisory Boards. The Texas Commission of Licensing and Regulation (Commission) is TDLR's governing board and policymaking body. TDLR's Commission provides active oversight of the agency's operations, and Commissioners frequently attend advisory board meetings and workgroups. The Commission thoughtfully considers the impact of its decisions on applicants and licensees and the impact for consumers and the regulated industries.

TDLR's 31 advisory boards play a key role in reviewing rules affecting their industry and advising the Commission and Department on how to eliminate unnecessary, outdated, or burdensome regulation. Additionally, advisory boards provide input for the development of the agency's criminal conviction guidelines and enforcement plan – identifying crimes that relate to the licensed professions and recommending appropriate penalties for violations of laws and rules.

Review of license applications and consumer complaints by TDLR is independent of the advisory board structure, ensuring independence in judgment and removing any specter of industry conflict of interest or favoritism. At the same time, our advisory board members work closely with TDLR leadership and staff to provide industry perspective and establish examination, education, ethics, and practice standards.

The advisory board process at TDLR is inclusive; we listen closely to the advice and opinions of our board members. TDLR's advisory board model also reinforces Sunset's preferred model of "advisory committees." While we understand there may be some concerns about moving away from an independent board governance structure, it has been our experience that the advisory board model has been successful in promoting fairness, effectiveness, transparency, and independence.

TDLR Can Successfully Regulate Plumbing. TDLR has worked closely with Sunset Commission staff in previous transfers and we are confident that should the plumbing program come to TDLR, it will receive the careful attention it deserves and requires. Speed is not the goal; the objective is the successful integration of the program into TDLR's business model.

Sunset Recommendation 1.2 to require fingerprint background checks for all applicants and licensees.

Commitment to Protecting the Health and Safety of Texans. TDLR is committed to protecting the health and safety of Texas consumers by performing criminal background checks each year on the more than 600,000 licensees who apply and renew each year and offer services to the public. If the Plumbing program is transferred to TDLR, public safety and consumer protection would be improved through 100 percent criminal background checks on all applicants and renewals. TDLR's robust Enforcement Division investigates and resolves complaints received from consumers, industry, municipalities, inspections, and

TDLR staff for our 39 programs. The Division's structure, operations, and processes are aligned to ensure fair and efficient complaint resolution. The Prosecution section of this Division also screens applicants' criminal history information from the Department of Public Safety to identify crimes that may necessitate license denials or revocation.

KEY CHALLENGES FACING TDLR WITH RECOMMENDATIONS 1.1 and 1.2.

Suggested Modification to Sunset Staff Recommendation 1.1. Reconstituting the Plumbing Board as an advisory board is in line with TDLR's prevailing model where the Commission's presiding officer appoints advisory board members, with approval of the Commission. Given the Plumbing program's examination issues, we will need the expertise of licensees as we work to revise the examination process. TDLR frequently includes advisory board members as subject matter experts when PSI convenes Examination Review Committees. In addition, the experience requirements for membership are too prescriptive – removing these fixed requirements would provide TDLR with more discretion in setting the advisory board's composition. We recommend changing the composition of the new advisory board by replacing one public member with another master plumber.

Suggested Modification to Sunset Staff Recommendation 1.2. TDLR understands and appreciates the focus on improving consumer protection by conducting background checks on licensees. However, requiring fingerprint background checks for plumbing applicants would be out of alignment with the other TDLR building and trade professional programs, including Air Conditioning and Refrigeration Contractors, Electricians, and Elevators. Additionally, the one-time fee of about \$37 is more than double the fee for the Plumber Apprentice Registration application. This could create a barrier to entry for those applicants with low to moderate incomes considering plumbing as a profession.

Currently, only seven percent of plumbing license applicants undergo background checks. TDLR's implementation of 100 percent checks of plumbing applicants through use of the name and DOB-based method would dramatically increase public safety. As a suggested modification, the fingerprinting requirement for TDLR's building and trade professional programs could be considered separately during TDLR's upcoming Sunset review.

What TDLR Will Need to Succeed. Recent transfers have challenged TDLR's staff and operational resources and have significantly reduced our ability to absorb additional responsibilities without commensurate resources. To implement these changes, TDLR will need:

- **Coordination** with the Texas Legislature, the Governor's office, and the Legislative Budget Board to ensure necessary resources and staffing, including timely appropriations for services such as accounting, purchasing, human resources, network and information technology services, general counsel, and customer service.
- **The talent and experience of key TSBPE employees** currently supporting and serving this program joining TDLR's team.
- **Authority for enough FTEs to successfully manage the program.** The transfer would require not only direct services FTEs such as Licensing, Enforcement, Customer Service, Regulatory Program Management, and Education and Examination, but also FTEs for indirect services such as General Counsel, Financial Services, Human Resources, and Information/Web Services.
- **New appropriations for the conversion of plumbing data** into TDLR's version of Versa, with its associated costs such as server and software conversion and equipment, license fees and

maintenance, as well as Software Development staff augmentation to oversee the transfer, conversion, and continued maintenance of the program in Versa.

- **Support, involvement, and cooperation** from impacted professionals, associations, organizations, and other interested parties to develop, plan, and implement the ongoing program operation.
- **Ongoing communication and collaboration** with state colleagues at TSBPE, the Department of Information Resources, Texas.gov, the Office of the Comptroller, and the Texas Facilities Commission.
- **Continued support from the Texas Legislature** to streamline and standardize the program statute to better fit TDLR's regulatory business model.

We are honored by the confidence that you and your staff have shown in us. We look forward to working with you, your staff, and TSBPE Board and staff to implement all decisions of the Sunset Advisory Commission and the Legislature.

Yours in Service,

A handwritten signature in blue ink, appearing to read "Brian Francis", with a stylized flourish at the end.

Brian Francis
Executive Director

Attachment

- Agency Overview