



TEXAS STATE BOARD OF PLUMBING EXAMINERS



Sunset Advisory Commission
TSBPE Staff Supplemental Response to Sunset Staff Report &
Agency Action Summary Since 2002 Sunset Review

December 20, 2018

TSBPE Supplemental Response & Agency Action Summary

Introduction:

On December 12, 2018, the Sunset Advisory Commission held its public hearing concerning TSBPE's current review. Several Commission Members asserted their belief and impression, after having reviewed Sunset Staff's Report, that the agency has done little to address concerns noted by Sunset staff in its 2002 report, and that problems continue to persist long after such review.

Board staff would like to explore and address these issues more closely, and offers this supplemental response regarding its actions in the wake of the Sunset Commissions' 2002 review.

Following that supplemental response, Board staff provides a brief summary of notable agency actions taken since 2002 to address and boost agency operations amid what it would contend has been a chronic shortage of resources to fulfill its responsibilities.

Potential Carryover Issues:

A review and comparison of the 2002 Sunset staff report and the current 2018 Sunset staff report reveal the following potential "carryover" issues:

1. Industry staffing concerns. The 2002 Board Staff Report, at Issue 3, pg. 17, asserted that the Board "was not well positioned to address the shortage of Licensed Plumbers in the State." However, Board staff takes the position that the issue of industry staffing shortages is not the statutory charge of the Board, and should not be considered a carryover issue concerning the Board's current operational deficiencies.

Specifically, the 2002 Sunset staff report's recommendations for change to address industry staffing shortages called for: (i) conferring additional authority on the Board to impose training requirements on Plumber's Apprentices; and (ii) coordinating in some unspecified fashion with the Texas Workforce Commission to promote industry recruitment.¹

Implementation of the second such recommendation by the Legislature was accomplished by S.B. 282 (78th Legislature, Regular Session), which added Sections 1301.651 and 1301.652 to the Plumbing License Law, whereby the Board was to assist Texas Workforce Commission ("TWC") in its efforts to drive up industry recruitment. Specifically, the Board's website was to link to TWC's website and the Board "may, during public and industry awareness seminars, raise awareness of the career ladder in the plumbing industry and the opportunities that plumbing apprenticeships offer" (Tex. Occ. Code § 1301.652; emphasis added).

¹ 2002 *Sunset Staff Report*, Issue 3 at pg. 17.

While these statutory provisions clearly contemplate the Board playing some role in industry recruitment through public education including joint efforts with TWC, Chapter 1301 does not impose a duty for the Board to be responsible for shortages in industry staffing. Instead, it appears TWC was intended to do the “heavy lifting” with respect to issues of industry staffing and recruitment.

Did industry staffing issues exist both in 2002 and now? Yes, and examinations output must be increased to eliminate examination wait times contributing to these issues. However, total elimination of wait times for examination will not by itself cure industry staffing concerns. While in 2002 Sunset staff perceived industry staffing issues as a lack of recruitment, the present review focuses largely on examination wait times, and does not address recruitment.

Sunset staff, in 2002, expressly noted that the Board “[lacked] the resources for a sustained recruitment effort.”² Meanwhile, Board staff contends the agency, due to a critical shortage of financial and human resources, has been required to drastically pull back from its public education and industry recruitment efforts since 2002 in order to focus on its primary statutory charge to examine and license plumbers.

Ironically, the current 2018 Sunset staff report goes so far as to chide the agency for asking the Legislature for additional resources to create a dedicated department that would be able to handle a focused and sustained recruitment effort to address industry staffing concerns.³

The 2002 Staff report is wholly silent on the issue of examination wait times, despite the fact that wait times of around three months existed at the time of the 2002 review, versus current wait times of around five months which exist as of the time of this writing (currently, the examinations calendar for ongoing examinations extends to May 22, 2019, excluding certain dates set for a later date at the preference of the examinee). The words “wait times” or “backlog” do not appear in the 2002 Sunset staff report. Indeed, even with such a three-month wait time Sunset staff, in 2002, concluded that “[t]he Board has no specific problems that justify the transfer of its functions to another state agency, such as [TDLR].”⁴

Board staff would assert that the overarching statutory duty of the Board is to ensure that qualified individuals, with proven knowledge and trade expertise, are licensed and fulfilling industry staffing needs in the field. Charging the Board with directly and comprehensively addressing industry staffing needs would entail adjusting qualifications down to ensure staffing needs are met. This would defeat the entire purpose of licensure, which to ensure that only qualified individuals are licensed to perform plumbing work in the field.

Board staff would posit that issues of industry staffing touch each of the construction trades, and are not unique to plumbing; nor are they unique to Texas. This dynamic highlights a systemic issue that is greater than the operations of the Board, and is a complex multi-faceted issue with many potential causes. Some point to potential systemic failures in our educational system,

² 2002 *Sunset Staff Report*, Issue 3 at pg. 19.

³ 2018 *Sunset Staff Report*, Issue 1 at pg. 10.

⁴ 2002 *Sunset Staff Report*, Issue 1 at pg. 8.

which may have placed too much emphasis on pushing all individuals to higher education, and minimized the utility and prosperity of careers in the construction trades. Others, meanwhile, point to potential influences from our nation's immigration laws and policies.

Is industry staffing important and part of our strategic plan? Absolutely, and Board staff believes it is an inherent goal of licensure to promote a safe and vibrant industry. Additionally, the Legislature clearly wanted industry staffing to be a part of the regulatory "calculus" when it set Board composition to include two contractors as members, who would have such concerns in mind, in addition to the licensees on the Board.

However, the clear statutory aim of the Board's role in addressing industry staffing issues is by public education and recruitment, as aptly concluded by Sunset staff in 2002, not by eliminating examinations or reducing the minimum qualifications of individuals seeking to be licensed.

Taking the foregoing into consideration, Board staff asserts that industry staffing concerns are not a primary statutory charge of the Board to administer, and should not be a carryover issue for which the Board should be negatively judged on during this review, other than the limited impact of examination delays, which it freely admits require remedial action.

2. Prioritization of Complaints. This issue is one of two potential carryover items that is both expressly cited by Sunset staff in its present review, and directly attributable to agency operations.

As related in its previous response to the Sunset staff report, Board staff ultimately agrees with Recommendation 3.4 to adopt a more detailed rule addressing prioritization of complaints. However, while Board rule Section 367.15, adopted in the wake of the 2002, is admittedly not sufficiently detailed and does not impose, Board staff would assert that it felt the issue was addressed at that time, and would certainly not characterize the failure to adopt a more robust rule concerning prioritization as somehow willfully ignoring a Legislative mandate as intimated by the 2018 Sunset staff report.⁵

Specifically, in the wake of the 2002 Sunset review, the Board configured its then licensing database system, RAES, to track complaints by region, and to accommodate a numerical priority level from 1-3. This structure was transferred to the Board's new licensing system, Versa, when it came online in 2011.

Board staff would note that the 2018 Sunset staff report did not identify any particular instance where harm occurred as a result of the Board's current processes for complaint prioritization.

Board staff would further note that, with respect to the issue of prioritization of complaints, Sunset staff concludes that the Board's enforcement efforts involving jobsite compliance checks are of questionable value and should be a low priority in any formal prioritization scheme adopted

⁵ 2018 Sunset Staff Report, Issue 1 at pg. 12.

by the Board.⁶ Ironically, it was the 2002 Sunset staff report which concluded that such checks should be stepped up as part of a larger joint effort with TDLR to capitalize on our combined presence in the field, and refer enforcement matters to one another.⁷ In 2001, such compliance checks were established by the Legislative Budget Board as a key performance measure that must be continually tracked.

As related in its original response to the Sunset staff report, the Board currently does prioritize complaints, both through its Director of Enforcement and its professional Field Investigators, all of whom are plumbers and qualified to review and prioritize complaints, even without rigid parameters governing such prioritization. Often a complaint which would be a priority in such a formal policy is resolved or is de-escalated before a complaint file has been opened, and a complaint number assigned.

A recent example of this “live” prioritization occurred when an individual filed a complaint alleging a serious violation deserving of expedited investigation but which failed to specifically identify the alleged violator, and was furthermore filed anonymously, without disclosing the complainant’s contact information. In this particular matter, the Board’s Director of Enforcement immediately contacted the Sheriff’s office in the area where the violation was alleged to have occurred and was able to successfully identify the alleged violator, and the complainant, allowing for investigation to immediately proceed. Field Investigators also monitor local news and establish contacts with county and local officials, and local first responders, concerning incidents such fires, explosions, or other serious incidents involving plumbing, often initiating their own investigation before a formal complaint is ever filed by a member of the public.

Board staff further notes that a more detailed prioritization rule, with rigid parameters, as recommended by Sunset staff would rightfully become more important to the extent Sunset staff’s recommendation to remove professional licensure requirements for Field Investigators comes to fruition, which Board staff asserts would eventually result in the elimination of the valuable professional judgment and trade expertise of the agency’s Field Investigators.

3. Public Disclosure of Disciplinary Actions. This is the second potential carryover item that is both expressly cited by Sunset staff in its present review, and is directly attributable to agency operations.

In February, 2003, in the wake of the 2002 review, Board staff began compiling lists of recent offenders receiving disciplinary action pertaining to contracting for plumbing work without a license, which were published on the Board’s website and distributed to Continuing Education providers to disclose and serve as somewhat of a public industry reprimand to deter unlawful practices.

In April of 2004, this process evolved into the compilation and formal adoption by the Board at each Board meeting, of a schedule listing and summarizing disciplinary actions taken by

⁶ 2018 Sunset Staff Report, Issue 3 at pgs. 31, 35.

⁷ 2002 Sunset Staff Report, Issue 1 at pgs. 9, 11.

the Board, which is then posted to the Board's website for review and to download, along with a copy of the agenda for the meeting, and the meeting minutes.

In July of 2018, this process was further expanded to include an additional schedule of disciplinary actions imposed by default, and arising from implementation of S.B. 2065, 85th Legislature, Regular Session, which amended Section 1301.704 of the Plumbing License Law to allow for waiver of an adjudicative hearing by default.

Since release of the current Sunset staff's report, the Board has worked diligently to implement interim measures short of complete disclosure of all disciplinary actions online with direct access to copies of documents establishing the violation and penalty. Specifically, the Board has activated certain functions within its current licensing system to make basic information about violations of a licensee visible on its public-facing licensing portal, which lists instances when a fine has been imposed against a licensee, including the date they were imposed, and allowing for a consumer to factor in such disciplinary history when shopping for plumbing services.

The publication of more robust information concerning disciplinary history, including direct access to documents establishing the violation and penalty, will require the design and implementation of an additional program to import data from the licensing database system and publish it online. However, Board staff has reservations about the potential costs involved with any such additional actions, given its asserted lack of appropriate resources to fulfill its responsibilities, and also the uncertainties of the Board's continued existence, and that of its licensing system.

Agency Action Summary:

1. Examinations.

a. Previous actions:

i. Online applications

1. May, 2011 – utilized newly implemented Versa licensing system to move applications process to an online environment.
2. January, 2012 – fine-tuned the online application process for Plumber's Apprentices to allow for same-day issuance of an apprentice registration.

ii. Electronic file-keeping – utilized newly implemented Versa licensing system to implement electronic record-keeping, increasing efficiency across all departments.

1. Including retention of supporting documents for subsequent examination applications, streamlining the processing of applications for examination, and reducing unnecessary burdens on applicants.
2. This process also allowed for licensees/registrants to periodically transmit documentation of their work hours for purposes of meeting minimum training hours requirements to take an examination for the

Board to maintain electronically, to make the application process less burdensome and to encourage periodic reporting of hours, rather than the applicant attempting to “reverse engineer” and document their hours after-the-fact when they become ready to make the application.

- iii. Saturday examinations – the Board performed examinations on three Saturdays in FY2018, in order to reduce the examination queue, and to accommodate examinees whose work schedules may not allow them to test during the week.
 - iv. Spanish accessibility
 - 1. In September of 2002, the Board began its initiative to develop Spanish language examinations, beginning with the Journeyman Examination.
 - 2. The Board partnered with experts at the University of Texas Spanish language department to develop the examination, specifically targeting language at an 8th grade reading level.
 - 3. By 2005, all examinations and study guides had been translated into Spanish, and again designed at an 8th grade reading level.
 - 4. All such examinations were presented opposite the English language examination in a “mirrored” format, to assist a test taker who had limited experience in both languages in better understanding the text.
- b. Recent actions:
- i. Proposed rule change for one-part retakes (“Take it, Make it”)
 - 1. Presently, if two parts of an examination are failed, the entire examination has to be taken over again. The rule change would allow for only those parts that have been failed to be retaken.
 - 2. The rule was published for proposal in the December 14th issue of the of the *Texas Register*.
 - ii. Streamlined provision of the practical examination for Tradesman Plumbers taking the Journeyman examination.
 - 1. Starting November 1, 2018, holders of a current Tradesman Plumber – Limited License take only a written examination, and do not take a practical examination, since they have already demonstrated their knowledge when taking the Tradesman examination.
 - iii. Additional Saturday exams – Board staff plans to conduct another Saturday examination date on February 16, 2019, and another date tentatively scheduled in March.
 - iv. Administration of one-part written examinations in locations outside of Austin.
 - 1. Board staff has identified approximately 150 candidates in the Dallas/Fort Worth Metropolitan Area merely needing to pass the written examination to qualify for licensure.

2. The written examination is more easily capable of being administered outside of Austin, as compared to the practical examination.
3. The Board has secured a facility to administer the examination, which is presently scheduled for January 31, 2018.
4. The Board has tentatively identified approximately 500 individuals similarly in need of that one-part written examination, and is developing plans to administer the written examination in other cities to eliminate demand on the examinations center, and allow it to be occupied by individuals needing a full day examination schedule.

2. Customer Service.

a. Previous actions:

i. Online licensing transactions

1. As related above, after implementation of the Board's licensing database system in 2011, many licensing functions can be performed by the applicant or licensee through their online account, eliminating substantial workload from Board staff, including frequent requests such as changes to their address or other contact information .
2. In particular, in 2017, the Board pushed its licensees towards the online platform for application renewals as well as updating their insurance information for purposes of Section 1301.552 of the Plumbing License Law. This has resulted in all-time high usage of the Board's online platform, currently at 82% as of November 30, 2018 (up significantly from 49% at the end of FY2017). These efforts resulted in a spike of customer service demand, which Board staff feels was partly the cause for some of the customer service deficiencies observed by Sunset staff in the current review. However, Board staff believes it will pay dividends long-term and will reduce demands on Board staff to process renewals and other ancillary licensing applications.

ii. Public computer kiosks to streamline "walk-ins"

1. While the Board is proud that it remains accessible to the public and accommodates nearly 650 walk-in customer service requests each month, these requests further burden the agency's limited customer service "bandwidth". In order to streamline these walk-in demands, the Board, in April of 2014, added a dedicated computer kiosk to its lobby, available to the public during normal business hours, with access to all such online functions, including payments by credit card.

iii. Contact by email

1. The Board developed dedicated email accounts for customer service questions (info@, for general inquiries, and guideme@, for assistance with the online licensing portal), decreasing demand from more burdensome phone calls.

iv. Website

1. In October, 2016, the Board redeveloped its website to make it more navigable and which has valuable licensing information online, including applications and forms, eliminating many calls.
2. The website specifically includes an FAQ page in order to resolve such questions without contacting customer service.

v. Forms

1. Applications and other forms distributed by the Board are through and have a “checklist” walk-through feel to them, simultaneously educating individuals on license and application requirements, further eliminating communications with Board staff.

vi. Temporary workers

1. The Board has utilized temporary workers continuously since 2011 to plug deficiencies, particularly customer service functions.
2. Temporary workers are useful but not as useful as full time employees who develop institutional knowledge of agency operations. However, the Board makes the best use of these individuals by training them to handle customer service call-backs involving basic licensing questions, allowing them to pre-screen the question and have a prepared answer ready, as opposed to taking live phone calls which are inherently more difficult and require more comprehensive knowledge of agency operations and licensure requirements.

3. Continuing Education.

a. Previous actions:

i. Electronic proof of completion and integration with licensing database.

1. In 2012, the Board created an electronic process and database for receiving certificates of completion from Continuing Education providers, and configured the licensing database system to import the data, allowing for automated license renewals, without burdensome work for agency staff and unnecessary communications with Continuing Education providers.
2. In August, 2015, this same process was leveraged to additionally handle evidence of completion of pre-requisite training courses as a part of the examinations process, in order to take an examination for licensure

ii. Waiver of late fees.

1. In early 2012, a grace period was also instituted allowing an applicant who timely mails paper documents, but does so just prior to the renewal deadline, to avoid late fees while the agency has an opportunity to receive and process the paperwork.
2. In 2013, Board staff configured the Board’s licensing database system to allow an applicant to initiate an application as a “place holder” prior to their renewal deadline even where the requirement

and evidence of having attended Continuing Education classes was not yet received, allowing the applicant to avoid late fees.

iii. Correspondence courses.

1. By rule change effective September 1, 2017, the Board opened the door for all licensees/registrants to perform correspondence courses, regardless of their place of residence, when this option was previously only available to individuals who lived in rural areas and did not have classroom opportunities available.