

HOUSE BILL REPORT

ESSB 5831

As Passed House - Amended:

March 7, 2008

Title: An act relating to certification of heating, ventilation, air conditioning, and refrigeration contractors and mechanics.

Brief Description: Creating the joint legislative task force on heating, ventilation, air conditioning, and refrigeration.

Sponsors: By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles, Franklin, Keiser and Murray).

Brief History:

Committee Activity:

Commerce & Labor: 2/22/08, 2/26/08 [DPA];

Appropriations: 3/1/08 [DPA(APP w/o CL)].

Floor Activity:

Passed House - Amended: 3/7/08, 58-35.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Establishes a joint legislative task force on heating, ventilating, air conditioning, and refrigeration (HVAC/R) to review issues related to contractor registration and licensing and mechanic certification.
- Establishes requirements for registration of HVAC/R contractors, and for certification of HVAC/R mechanics and various specialty mechanics.
- Directs the Department of Labor and Industries to administer and enforce HVAC/R-related registration and certification requirements.

HOUSE COMMITTEE ON COMMERCE & LABOR

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member.

Staff: Jill Reinmuth (786-7134).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Commerce & Labor. Signed by 19 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Green, Haigh, Hunt, Hunter, Kagi, Kenney, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 15 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Grant, Hinkle, Kessler, Kretz, Linville, McDonald, Priest, Ross, Schmick and Walsh.

Staff: Owen Rowe (786-7391).

Background:

State laws require registration or licensure for construction, electrical, and plumbing contractors, and certification for electrical administrators, electricians, and plumbers. These laws are administered and enforced by the Department of Labor and Industries (Department).

Depending on the type of heating, ventilating, air conditioning, and refrigeration (HVAC/R) work that a contractor performs, state law may require that the contractor be registered as a general or specialty construction contractor or licensed as an electrical contractor or both. If the contractor performs electrical work, the contractor must be licensed as an electrical contractor, and employ a certified electrical administrator and certified electricians. The electricians may be certified as journeyman electricians or as HVAC/R specialty electricians.

Local ordinances in a number of cities require persons performing HVAC/R work to obtain additional certification. Some require certification for mechanical work and gas fitting work. Others require certification for heating oil and air conditioning/refrigeration work.

In 2005 the Joint Legislative Audit and Review Committee (JLARC) completed a study of the state's rules relating to the licensing and testing requirements for HVAC/R contractors and installers. The study said that ". . . certifying other aspects of HVAC/R work may be an

option for the state to consider" and that "[the Department] should provide fiscal and public safety estimates of scenarios that would certify other aspects of HVAC/R work."

In 2006 the Department organized the HVAC/R Task Force. A regulatory alternatives subcommittee considered various options for regulation of the HVAC/R industry, but was not able to reach consensus on a single option.

Summary of Amended Bill:

Provisions governing the heating, ventilating, air conditioning, and refrigeration (HVAC/R) industry are enacted. A joint legislative task force on HVAC/R is established. Requirements for registration of HVAC/R contractors and certification of HVAC/R mechanics and various specialty mechanics are established. These requirements are to be administered by the Department of Labor and Industries (Department).

Task Force

The 12-member task force consists of: four legislative members that are the chairs and the ranking members of the Senate Labor, Commerce, Research and Development Committee and the House Commerce and Labor Committee; four members representing the HVAC/R industry; and four members representing labor. The Department of Labor and Industries must maintain a nonvoting liaison representative to the task force. The task force is required to choose its chair from among its membership.

The task force is required to review the following:

- requirements for registering, certifying, and licensing mechanics;
- methods of registering or licensing contractors who qualify for two or more registrations or licenses;
- levels of mechanic certification and types of mechanic specialties;
- experience requirements for levels of mechanic certification;
- methods of obtaining trainee certificates;
- exemptions to registration, certification, and licensing requirements; implementation of contractor registration and mechanic certification requirements; and
- other factors the task force deems necessary.

The task force must report its findings and recommendations to the Legislature by January 1, 2009. The provision creating the task force expires July 1, 2009.

Definitions

Numerous terms are defined including HVAC/R work, HVAC work, refrigeration work, and gas piping work.

"HVAC/R work" means all HVAC work, refrigeration work, and gas piping work that is not exempt from regulation.

"HVAC work" means to install, replace, service, test, or adjust and balance HVAC equipment and systems. "HVAC equipment and systems" do not include solid fuel burning devices (e.g., wood stoves and coal stoves), gas company service piping, gas piping other than that necessary to deliver fuel, or boilers.

"Refrigeration work" means to install, replace, or service refrigeration systems.

"Gas piping work" means to replace, or service gas piping and venting related to gas piping. "Gas piping" does not include gas company service piping or any gas piping used directly in the generation of electricity by an electric utility or a commercial-scale non-utility generator of electricity.

These types of work also mean to design, fabricate, and construct certain types of systems, but only for accruing hours of work.

HVAC/R Board

A 13-member HVAC/R Board (Board) is established. Members of the Board consist of: four mechanics, four contractors, one public member familiar with HVAC/R work, one building operator representing the commercial property management industry, one member from the stationary operating engineers, one member from a technical college or an apprenticeship training program, and one building official familiar with enforcement of HVAC/R work.

The Board must conduct proceedings for denying applications, suspending or revoking certificates, and imposing penalties. The Board also must approve expenditures, and advise the Department on HVAC/R matters.

Contractor Registration

On and after July 1, 2009, persons may not engage in business as HVAC/R contractors without being registered as contractors under the Contractor Registration Act and as HVAC/R contractors. On and after July 1, 2010, persons may not employ persons to perform HVAC/R work who are not certified to do so.

There are three exemptions from the HVAC/R contractor registration requirement. This requirement does not apply to: (1) persons contracting for HVAC/R work on their own residences; (2) persons whose employees perform only HVAC/R work that is exempt from the mechanic certification requirement; and (3) persons who are exempt from contractor registration under the Contractor Registration Act.

Mechanic Certification

On and after July 1, 2010, persons may not perform HVAC/R work without being issued a HVAC/R mechanic certificate, a specialty certificate, a temporary certificate, or a trainee certificate by the Department. The types of certificates and their scopes of work are as follows:

- HVAC/R Mechanics. A Mechanic I may perform gas piping, refrigeration, and HVAC work performed by a specialty Mechanic I. A Mechanic II may perform gas piping work performed by a specialty Mechanic I, and refrigeration and HVAC work performed by a specialty Mechanic II. A Mechanic III may perform gas piping, refrigeration, and HVAC work performed by a specialty Mechanic III.
- Gas Piping Specialty Mechanics. A Mechanic I/II may perform gas piping work on fuel burning appliances and systems with a maximum capacity of 500,000 British thermal units per hour (BTUH). A Mechanic III may perform all gas piping work on any fuel burning appliances and systems.
- Refrigeration Specialty Mechanics. A Mechanic I may perform refrigeration work on refrigeration systems that contain less than 30 pounds of class A1 refrigerants. A Mechanic II may perform refrigeration work performed by a Mechanic I, and refrigeration work on refrigeration systems that contain less than 70 pounds of class A1 refrigerants. A Mechanic III may perform refrigeration work on any refrigeration systems using any refrigerants.
- HVAC Specialty Mechanics. A Mechanic I may perform HVAC work on HVAC equipment and systems of 7.5 tons or less or 3,375 cubic feet per minute (CFM) or less. A Mechanic II may perform HVAC work performed by a Mechanic I, and HVAC work on HVAC equipment and systems of 20 tons or less or 9,000 CFM or less. A Mechanic III may perform all HVAC work on HVAC equipment and systems.

There are 15 exemptions from the HVAC/R mechanic certification requirement. This requirement does not apply to persons who are: (1) cleaning or performing certain routine maintenance work on HVAC/R equipment and systems; (2) performing HVAC/R work on HVAC/R equipment or systems that contain small amounts of refrigerant and are actuated by small motors or engines, or that are absorption systems with low ratings of refrigeration effect; (3) setting oil tanks and related piping to furnaces; (4) setting propane tanks and related piping outside of buildings; (5) performing gas piping work on certain fuel burning appliances and systems pursuant to valid plumbing certificates; (6) performing HVAC/R work on their own property, but not if they are working on new buildings intended for rent, sale, or lease, or performing HVAC/R operator work in the City of Seattle; (7) performing HVAC/R work on their own property or regularly employed persons working on their employers'

premises, unless on new buildings intended for rent, sale, or lease; (8) performing work for gas companies that is incidental to natural gas deliveries or pursuant to a tariff on file with the Utilities and Transportation Commission; (9) licensed architects, engineers, and land surveyor who are designing HVAC/R equipment or systems; (10) replacing household appliances; (11) installing wood or pellet stoves, including directly related venting; (12) performing minor flexible ducting repairs in single family, residential structures; (13) performing cleaning, repair, or replacement of fuel oil filters and nozzles of an oil heat burner assembly; (14) making like-in-kind replacements of oil heat furnaces in single family residential structures; and (15) installing, replacing, and servicing hearth products.

There is a temporary exemption from the HVAC/R mechanic certification requirement for persons performing refrigeration work on certain refrigeration systems used primarily for food products in food and beverage stores, except for persons performing such work in a city with a population of 500,000 or more. This exemption expires June 30, 2013.

Operator Certification

The HVAC/R operating engineers may apply for and take examinations to obtain HVAC/R operator certificates. The scope of work is cleaning or performing certain routine maintenance work on HVAC/R equipment and systems, and performing minor repairs on HVAC/R equipment and systems and HVAC/R work on sealed HVAC/R equipment and systems. Persons licensed by the City of Seattle as refrigeration operating engineers are not required to meet additional requirements to be issued HVAC/R operator certificates.

Certification With Examination

Examinations for HVAC/R mechanic certificates must contain distinct portions that assess competency in gas piping, refrigeration, and HVAC work. Applicants who pass all portions are entitled to be issued HVAC/R mechanic certificates. Those who pass some portions are entitled to be issued specialty mechanic certificates for those portions. The qualifications required to take examinations are as follows:

- HVAC/R Mechanic I. A person must have: (1) performed 1,000 hours of HVAC/R work, all of which must be supervised; (2) performed 2,000 hours of HVAC/R work, 75 percent of which must be supervised; or (3) completed an appropriate apprenticeship program.
- HVAC/R Mechanic II. A person must have: (1) performed 4,000 hours of HVAC/R work, 75 percent of which must be supervised; or (2) completed an appropriate apprenticeship program.
- HVAC/R Mechanic III. A person must have: (1) performed 4,000 hours of HVAC/R work, 75 percent of which must be supervised, plus an additional 2,000 hours, all of

which must be supervised; (2) performed 8,000 hours of HVAC/R work, 75 percent of which must be supervised; or (3) completed an appropriate apprenticeship program.

Persons who have an equivalent certification from the National Propane Gas Association are entitled to be certified as a Gas Piping Specialty Mechanic I/II.

Hours of a technical college program may be substituted for hours of work experience. Similarly, hours of armed forces work experience may be substituted for hours of work experience.

Examinations for HVAC/R operators must be comparable to the City of Seattle's test to obtain refrigeration operating engineer licenses.

Certification Without Examination; "Grandfather" Clause

From July 1, 2009 to June 30, 2010, persons who have performed HVAC/R work may apply for HVAC/R mechanic certificates without examination. Applications must include evidence of hours of HVAC/R work performed since January 1, 1988. The qualifications required to become certified without examination are as follows:

- HVAC/R Mechanics. For Mechanic I, a person must have performed at least 2,000 hours of HVAC/R work. For Mechanic II, a person must have performed at least 4,000 hours of HVAC/R work. For Mechanic III, a person must have performed at least 8,000 hours of HVAC/R work, or completed an appropriate apprenticeship program.
- Gas Piping Specialty Mechanics. For Mechanic I/II, a person must have performed at least 1,000 hours of gas piping work or hold a local license to perform gas piping work on fuel burning appliances and systems with a maximum capacity of 500,000 BTUH. For Mechanic III, a person must hold a local license to perform all gas piping work on any fuel burning appliances and systems.
- Refrigeration Specialty Mechanics. For Mechanic III, a person must hold a City of Seattle journey refrigeration mechanic license.
- HVAC Specialty Mechanics. For Mechanic III, a person must hold a City of Seattle journey refrigeration mechanic license.

Certification Without Examination; Reciprocity Provision

The Department may enter into reciprocity agreements with other states whose certification requirements are equal to Washington's standards. The agreements must provide for acceptance of Washington and the other state's certification program by Washington and the

other states.

Supervision Requirements

Mechanics may supervise two trainees not in a technical college program or four trainees in a technical college program. When the ratio of mechanics to trainees on a job site is one mechanic to one or two trainees, mechanics must be on the same job site as trainees at least 75 percent of each working day. When the ratio is one mechanic to three or four trainees, mechanics must directly supervise and instruct trainees and may not directly make or engage in HVAC/R work. They also must be on the same job site as trainees all of each working day.

There are exceptions to the supervision requirements for persons who have performed certain hours of work and passed certain portions of examinations. These persons may perform, unsupervised, the remaining hours required for certification.

Other

Various provisions address enforcement activities, including investigations, notices of infraction, and civil and criminal penalties.

Other provisions require mechanics to complete 24 hours of continuing education and trainees to complete 60 hours of related supplemental instruction or equivalent training.

The Department is required to charge fees for certificates and examinations, and to set a fee schedule by rule. Fees must cover program costs. The Department is also required to set a civil penalty schedule by rule. Moneys received from certificates, examinations, penalties, and other sources must be deposited in the Plumbing and HVAC/R Certificate Fund. This fund retains its share of interest earnings.

With certain exceptions, nothing in state HVAC/R laws shall be construed to: (1) modify state plumbing or electrical laws; (2) prohibit or restrict certified plumbers or electricians from engaging in their trades; or (3) regulate or include electrical or plumbing work. These exceptions include provisions relating to concurrent registration and certification, as well as concurrent work experience, examination, and continuing education.

The bill is null and void unless funded in the operating budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 2008. However, the bill is

null and void unless funded in the budget.

Staff Summary of Public Testimony: (Commerce & Labor)

(In support of engrossed bill) A task force with legislative involvement is key to resolving this issue. The task force will give us the opportunity to address concerns.

The list of concerns is long, and the core issues have not been addressed in the striking amendment. It proposes the highest level of regulation and state law says that regulation should be minimal.

It is not clear whether this is about protecting consumers. According to the Better Business Bureau, there are not significant complaints about the heating, ventilating, air conditioning, and refrigeration (HVAC/R) industry. In 25 years as a food retailer, there have been no safety concerns.

The stakeholders have reached impasse. A solution is a long way off.

Efforts to address the concerns of particular industries in the striking amendment are appreciated. However, the striking amendment is problematic.

The food refrigeration industry is concerned about the change from British thermal units (BTUs) to pounds. Food retailers, which have razor thin margins, are concerned about increased costs.

The propane gas industry appreciates the efforts to improve the language, but is not comfortable with the wording.

The hearth industry is concerned about the wording of the exemption and would prefer that it say "according to manufacturer specifications."

(In support of striking amendment) This issue has been before the Legislature since 1987 and has been the subject of numerous meetings in recent years. It is a matter of consumer protection and public safety. It is time to move forward. There has been much discussion and much compromise. This industry is regulated in 36 other states. A broad coalition of business and labor supports the striking amendment that is before the committee. It provides flexibility and simplifies regulation, and should be adopted.

The proponents have made significant changes to respond to the concerns of small business. In particular, there have been changes made to provisions related to food refrigeration, propane gas, fuel oil, and the hearth industry. These changes demonstrate both a willingness to listen and to accommodate concerns.

In Washington, all sorts of local licenses are required. In contrast, in Idaho, a statewide license is required. The statewide license allows contractors to focus continuing education units on the work of HVAC/R mechanics, which enables contractors to save money. It would also be a strong tool for employers to use to hire experienced people.

Important provisions include those dealing with grandfathering, reciprocity, and local preemption. There is also a board composed of people in the industry.

Certification will not put contractors out of business or strand workers. Most contractors are already meeting these requirements. Current workers are grandfathered. Basic services (e.g., maintenance work) are exempt from certification.

The on-the-job training requirements in the striking amendment are not arbitrary. They are intended to mirror the requirements in the electrical statute. The striking amendment is crafted to have concurrent hours, supervision, and ratios.

The fuel oil industry believes that the changes in the striking amendment will work for the industry.

(Information only) Pursuant to the Joint Legislative Audit and Review Committee (JLARC) study, the Department of Labor and Industries (Department) reviewed options for regulation. The Department focused on five principles, and ultimately, five options. There was not consensus as to which option to pursue.

There was a proposal for a new specialty submitted to the Electrical Board and reviewed by a policy review subcommittee. The subcommittee unanimously recommended that there not be a new specialty. The Electrical Board adopted the subcommittee's recommendation with one dissenting vote.

(Opposed) None.

Staff Summary of Public Testimony: (Appropriations)

(In support) This certification eliminates the need for multiple licenses; this bill would create one fee for HVAC technicians and mechanics, and the certification would be valid for three years. The fees that will be assessed for this certification will be pennies on the amount of hours a mechanic would work. A certification program would lead to fewer warranty returns, and jobs done right the first time. This bill will enhance safety for consumers and technicians, as well as to save consumers money on energy bills and repair calls. When workers are not trained adequately you see errors which lead to early replacement of systems. Consumers are invested in having protection that a certification program would provide. This new certification will provide for consistency in licensing throughout the state. This bill is supported by both union and non-union contractors. There is no benefit to be gained by

additional studies; the industry needs to move forward.

(Opposed) This bill will cost customers, contractors and local governments more money on construction and repair projects. There will be a significant impact on people on fixed and lower incomes. Consumers are not asking for this legislation; there is no perceivable problem. This legislation will not reduce existing fees; this is a new fee. Hearth fire installers, barbecue installers, and refrigeration mechanics need to be exempted from this legislation.

Persons Testifying: (Commerce & Labor) (In support of engrossed bill) Carolyn Logue, Washington Food Industry and Northwest Hearth Patio & Barbecue Association; Gary Smith, Independent Business Association; Jim King, Washington State HVAC/R Association; Mark Johnson, Washington Retail Association; Robin Pavlish, 7-Eleven; and James Curry, Associated Builders and Contractors, and Northwest Propane.

(In support of striking amendment) Senator Kohl-Welles, prime sponsor; Mark Gjurasic; Kathleen Collins, Sheet Metal and Air Conditioning Contractors of North America; Helen Blyton, Northwest HVAC Association; Greg Nolan, Nolan HVAC; Rod Kauffman, Building Owners and Managers Association; Kevin Wilder, Miller Sheet Metal; Christian Dube, International Union of Operating Engineers Local 286; Tonia Neal, Sheet Metal and Air Conditioning Contractors of North America; Charlie Brown, Northwest Oil and Gas; Pete Crow, Washington State Association of Plumbers and Pipe Fitters; Tracy Prezeau, International Brotherhood of Electrical Workers Local 76; Richard King, International Brotherhood of Electrical Workers; Lance Deyette, Sheet Metal Workers Local 66; and Dale Wentworth, Seattle Area Pipefitters.

(Information only) Patrick Woods, Ron Fuller, Pete Schmidt, and Trista Zugel, Department of Labor and Industries.

Persons Testifying: (Appropriations) (In support) Tena Risley, Northwest HVAC/R Association; Kathleen Collins, Sheet Metal and Air Conditioning Contractors; Pete Crow, Washington State Association of Plumbers and Pipefitters; Dale Wentworth, Seattle Area Pipe Trades; and Cody Arledge, Sheet Metal Workers Local 66.

(Opposed) James Curry, Associated Builders and Contractors and Northwest Propane Gas Association; Gary Smith, Independent Business Association; Jim King, Washington HVAC/R Association; and Carolyn Logue, Washington Food Industry and Northwest Patio and BBQ Association.

Persons Signed In To Testify But Not Testifying: (Commerce & Labor) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.