

SHB 1876 - S AMD to S AMD(S-3440.1/07) 506
By Senator Clements

1 Beginning on page 1, line 3 of the amendment, after "**Sec. 1.**"
2 strike all material through "2009." on page 32, line 14 and insert the
3 following:

4 "(1) The purpose of this chapter is to establish guidelines for the
5 regulation of heating, ventilating, air conditioning, and refrigeration
6 construction industry by the department of labor and industries. This
7 chapter does not:

8 (a) Apply to any regulatory entity created before January 1, 2007,
9 except as provided in this chapter;

10 (b) Affect the powers and responsibilities of the superintendent of
11 public instruction or the Washington professional educator standards
12 board under RCW 28A.410.210 and 28A.410.010; and

13 (c) Apply to proposals relating solely to continuing education.

14 (2) The legislature declares that all individuals should be
15 permitted to enter into a profession unless there is an overwhelming
16 need for the state to protect the interests of the public by
17 restricting entry into the profession. When such a need is identified,
18 the regulation adopted by the state should be set at the least
19 restrictive level consistent with the public interest to be protected.

20 (3) The legislature intends that no regulation shall be imposed
21 upon the heating, ventilating, air conditioning, and refrigeration
22 construction industry except for the exclusive purpose of protecting
23 the public interest. All bills introduced in the legislature to
24 regulate the heating, ventilating, air conditioning, and refrigeration
25 construction industry for the first time must first be reviewed by the
26 department according to the following criteria. The heating,
27 ventilating, air conditioning, and refrigeration construction industry
28 should be regulated by the state only when:

29 (a) Unregulated practice can clearly harm or endanger the health,
30 safety, or welfare of the public, and the potential for the harm is
31 easily recognizable and not remote or dependent upon tenuous argument;

32 (b) The public needs and can reasonably be expected to benefit from
33 an assurance of initial and continuing professional ability; and

1 (c) The public cannot be effectively protected by other means in a
2 more cost-beneficial manner.

3 (4) After evaluating the criteria in subsection (3) of this section
4 and considering governmental and societal costs and benefits, if the
5 department determines that it is necessary to regulate the heating,
6 ventilating, air conditioning, and refrigeration construction industry,
7 the least restrictive method of regulation should be recommended,
8 consistent with the public interest and this section:

9 (a) When existing common law and statutory civil actions and
10 criminal prohibitions are not sufficient to eradicate existing harm,
11 the regulation should provide for stricter civil actions and criminal
12 prosecutions;

13 (b) When a service is being performed for individuals involving a
14 hazard to the public health, safety, or welfare, the regulation should
15 impose inspection requirements and enable the department to enforce
16 violations by injunctive relief in court, including, but not limited
17 to, regulation of the heating, ventilating, air conditioning, and
18 refrigeration construction activity providing the service rather than
19 the employees of the business;

20 (c) When the threat to the public health, safety, or economic well-
21 being is relatively small as a result of the operation of the heating,
22 ventilating, air conditioning, and refrigeration construction industry,
23 the regulation should implement a system of registration;

24 (d) When the consumer may have a substantial basis for relying on
25 the services of a practitioner, the regulation should implement a
26 system of certification; or

27 (e) When it is apparent that adequate regulation cannot be achieved
28 by means other than licensing, the regulation should implement a system
29 of licensing.

30 NEW SECTION. **Sec. 2.** The definitions in this section apply
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Applicant group" includes any trade professional group or
33 organization, any individual, or any other interested party that
34 proposes that the heating, ventilating, air conditioning, and
35 refrigeration construction industry be further regulated or that
36 proposes legislation to substantially increase the scope of practice or
37 the level of regulation of the heating, ventilating, air conditioning,
38 and refrigeration construction industry.

1 (2) "Certification" means a voluntary process by which a statutory
2 regulatory entity grants recognition to an individual who: (a) Has met
3 certain prerequisite qualifications specified by that regulatory
4 entity; and (b) may use "certified" in the title or designation to
5 perform prescribed professional tasks.

6 (3) "Department" means the department of labor and industries.

7 (4) "Inspection" means the periodic examination of practitioners by
8 a state agency in order to ascertain whether the practitioners'
9 occupation is being carried out in a fashion consistent with the public
10 health, safety, and welfare.

11 (5) "Legislative committees of reference" means the standing
12 legislative committees designated by the respective rules committees of
13 the senate and house of representatives to consider proposed
14 legislation to regulate the heating, ventilating, air conditioning, and
15 refrigeration construction industry.

16 (6) "License," "licensing," and "licensure" mean permission to
17 engage in a trade which would otherwise be unlawful in the state in the
18 absence of the permission. A license is granted to those individuals
19 who meet prerequisite qualifications to perform prescribed professional
20 tasks and for the use of a particular title.

21 (7) "Practitioner" means an individual who: (a) Has achieved
22 knowledge and skill by practice; and (b) is actively engaged in the
23 heating, ventilating, air conditioning, and refrigeration construction
24 industry.

25 (8) "Public member" means an individual who is not, and never was,
26 a member of the heating, ventilating, air conditioning, and
27 refrigeration construction industry being regulated or the spouse of a
28 member, or an individual who does not have and never has had a material
29 financial interest in either the rendering of the heating, ventilating,
30 air conditioning, and refrigeration construction industry or an
31 activity directly related to the heating, ventilating, air
32 conditioning, and refrigeration construction industry.

33 (9) "Registration" means the formal notification which, before
34 rendering services, a practitioner shall submit to a state agency
35 setting forth: The name and address of the practitioner; the location,
36 nature, and operation of the trade activity to be practiced; and, if
37 required by the regulatory entity, a description of the service to be
38 provided.

39 (10) "Regulatory entity" means any board, commission, agency,

1 division, or other unit or subunit of state government which regulates
2 one or more professions, occupations, industries, trades, businesses,
3 or other endeavors in this state.

4 (11) "State agency" includes every state office, department, board,
5 commission, regulatory entity, and agency of the state, and, where
6 provided by law, programs and activities involving less than the full
7 responsibility of a state agency.

8 (12) "Trade" means activities related to heating, ventilating, air
9 conditioning, and refrigeration construction industry.

10 NEW SECTION. **Sec. 3.** The department shall determine, by
11 interviewing members of applicant groups, discussions with the general
12 public, information received in public hearings as provided in section
13 4 of this act, and the department's own internal information, if the
14 heating, ventilating, air conditioning, and refrigeration construction
15 industry should be regulated or further regulated. The department shall
16 make this determination by reviewing at least the following factors:

17 (1) A definition of the problem and why regulation is necessary:

18 (a) The nature of the potential harm to the public if the heating,
19 ventilating, air conditioning, and refrigeration construction industry
20 is not regulated, and the extent to which there is a threat to public
21 health and safety;

22 (b) The extent to which consumers need and will benefit from a
23 method of regulation identifying competent practitioners, indicating
24 typical employers, if any, of practitioners in the heating,
25 ventilating, air conditioning, and refrigeration construction industry;
26 and

27 (c) The extent of autonomy a practitioner has, as indicated by:

28 (i) The extent to which the profession calls for independent
29 judgment and the extent of skill or experience required in making the
30 independent judgment; and

31 (ii) The extent to which practitioners are supervised;

32 (2) The efforts made to address the problem:

33 (a) Voluntary efforts, if any, by members of the heating,
34 ventilating, air conditioning, and refrigeration construction industry
35 to:

36 (i) Establish a code of ethics or standards of practice; or

37 (ii) Help resolve disputes between practitioners and consumers; and

38 (b) Recourse to and the extent of use of applicable law and whether

1 it could be strengthened to control the problem;

2 (3) The alternatives considered including:

3 (a) Regulation of heating, ventilating, air conditioning, and
4 refrigeration construction industry employers or practitioners rather
5 than employee practitioners;

6 (b) Regulation of the program or service rather than the individual
7 practitioners;

8 (c) Registration of all practitioners;

9 (d) Certification of all practitioners;

10 (e) Why the use of the alternatives specified in this subsection
11 are not adequate to protect the public interest; and

12 (f) Why licensing would serve to protect the public interest;

13 (4) The benefit to the public if regulation is granted including:

14 (a) The extent to which the incidence of specific problems present
15 in the unregulated trade can reasonably be expected to be reduced by
16 regulation;

17 (b) Whether the public can identify qualified practitioners;

18 (c) The extent to which the public can be confident that qualified
19 practitioners are competent including:

20 (i) Whether the proposed regulatory entity would be a board
21 composed of members of the profession and public members, or a state
22 agency, or both, and, if appropriate, their respective responsibilities
23 in administering the system of registration, certification, or
24 licensure, including the composition of the board and the number of
25 public members, if any;

26 (ii) The powers and duties of the board or state agency regarding
27 examinations and for cause revocation, suspension, and
28 nonrenewal of registrations, certificates, or licenses;

29 (iii) The adoption of rules and canons of ethics; the conduct of
30 inspections;

31 (iv) The receipt of complaints and disciplinary action taken against
32 practitioners;

33 (v) How fees would be levied and collected to cover the expenses of
34 administering and operating the regulatory system;

35 (vi) If there is a grandfather clause, whether such practitioners
36 will be required to meet the prerequisite qualifications established by
37 the regulatory entity at a later date;

1 (vii) The nature of the standards proposed for registration,
2 certification, or licensure as compared with the standards of other
3 jurisdictions;

4 (viii) Whether the regulatory entity would be authorized to enter
5 into reciprocity agreements with other jurisdictions;

6 (ix) The nature and duration of any training including, but not
7 limited to, whether the training includes a substantial amount of
8 supervised field experience;

9 (x) Whether training programs exist in this state;

10 (xi) If there will be an experience requirement and whether the
11 experience must be acquired under a registered, certificated, or
12 licensed practitioner;

13 (xii) Whether there are alternative routes of entry or methods of
14 meeting the prerequisite qualifications; and

15 (xiii) Whether all applicants will be required to pass an
16 examination and, if an examination is required, by whom it will be
17 developed and how the costs of development will be met; and

18 (d) Assurance to the public that practitioners have maintained
19 their competence including whether:

20 (i) The registration, certification, or licensure will
21 carry an expiration date; and

22 (ii) Renewal will be based only upon payment of a fee, or whether
23 renewal will involve reexamination, peer review, or other enforcement;

24 (5) The extent to which regulation might harm the public including:

25 (a) The extent to which regulation will restrict entry into the
26 profession and whether the proposed regulation:

27 (i) Is more restrictive than necessary to ensure safe and effective
28 performance; and

29 (ii) Requires registered, certificated, or licensed practitioners
30 in other jurisdictions who migrate to this state to qualify in the same
31 manner as state applicants for registration, certification, and
32 licensure when the other jurisdiction has substantially equivalent
33 requirements for registration, certification, or licensure as those in
34 this state; and

35 (b) Whether there are similar trades to that of the heating,
36 ventilating, air conditioning, and refrigeration construction industry
37 which should be included in, or portions of the applicant group which
38 should be excluded from, the proposed legislation;

39 (6) The maintenance of standards including:

1 (a) Whether effective quality assurance standards exist in the
2 profession, such as legal requirements associated with specific
3 programs that define or enforce standards, or a code of ethics; and

4 (b) How the proposed legislation will assure quality including:

5 (i) The extent to which a code of ethics or standards of practice,
6 if any, will be adopted; and

7 (ii) The grounds for suspension or revocation of the registration,
8 certification, or license;

9 (7) A description of the group proposed for regulation, including
10 a list of associations, organizations, and other groups representing
11 the practitioners in this state, an estimate of the number of
12 practitioners in each group, and whether the groups represent different
13 levels of practice; and

14 (8) The expected costs of regulation including:

15 (a) The impact registration, certification, or licensure will have
16 on the costs of the services to the public; and

17 (b) The cost to the state and to the general public of implementing
18 the proposed legislation.

19 NEW SECTION. Sec. 4. (1) The department shall hold a public
20 hearing during which the department will receive public comment on
21 whether the heating, ventilating, air conditioning, and refrigeration
22 construction industry should be regulated by the state. At least twenty
23 days before the public hearing, the department shall file a notice of
24 hearing with the code reviser for publication in the Washington State
25 Register. The notice must include:

26 (a) The trades for which information is sought;

27 (b) The information requested under section 3 of this act; and

28 (c) When, where, and how members of the general public may present
29 information about the heating, ventilating, air conditioning, and
30 refrigeration construction industry.

31 (2) The department shall request names of individuals and
32 organizations that may have information needed for the review from
33 legislators and other identified interested parties. The department
34 must send these individuals and organizations the notice under this
35 section.

36 NEW SECTION. Sec. 5. After the department has conducted its review
37 under this chapter, it shall submit a report with the details of its

1 review as well as its recommendations about regulating the heating,
2 ventilating, air conditioning, and refrigeration construction industry
3 to the legislative committees of reference. It shall also post the
4 report on its web site.

5 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
6 a new chapter in Title 18 RCW."

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8 By Senator Clements

9 On page 32, line 16 of the title amendment, after "insert" strike
10 the remainder of the title amendment and insert "and adding a new
11 chapter to Title 18 RCW."

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EFFECT: Directs the Department of Labor and Industries to
consider the need for regulating the heating, ventilation, air
conditioning and refrigeration industry and if regulation is
needed, what level of regulation is needed.