

# SENATE BILL REPORT

## SB 5831

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As Reported By Senate Committee On:  
Labor, Commerce, Research & Development, February 04, 2008  
Ways & Means, February 12, 2008

**Title:** An act relating to certification of mechanics performing heating, ventilating, air conditioning, refrigeration, and gas piping work.

**Brief Description:** Providing for the certification of mechanics performing heating, ventilating, air conditioning, refrigeration, and gas piping work.

**Sponsors:** Senators Kohl-Welles, Franklin, Keiser and Murray.

**Brief History:**

**Committee Activity:** Labor, Commerce, Research & Development: 2/12/07, 1/21/08, 2/04/08 [DPS-WM, DNP].

Ways & Means: 2/11/08, 2/12/08 [DPS(LCRD), DNP, w/oRec].

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### SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5831 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

**Minority Report:** Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; Hewitt and King.

**Staff:** Mac Nicholson (786-7445)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5831 as recommended by Committee on Labor, Commerce, Research & Development be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Rasmussen, Regala and Rockefeller.

**Minority Report:** Do not pass.

Signed by Senator Honeyford.

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*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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Parlette, Roach, Schoesler and Tom.

**Staff:** Maria Hovde (786-7710)

**Background:** Heating, ventilation, air conditioning and refrigeration (HVAC/R) systems control the temperature and humidity of air in a building. An HVAC/R technician works on equipment such as boilers, heat pumps, air conditioning units, and furnaces. Generally, the work of an HVAC/R technician involves work in several trades including sheet metal, plumbing, and electrical.

Six Washington cities require licenses for gas and mechanical work, refrigeration, and oil work; however, the state only regulates the electrical work of HVAC/R. The Department of Labor & Industries (L&I) licenses the electrical work. L&I is advised on electrical regulation by the Electrical Board, a 15-member advisory body whose membership is set in statute. Specialty electricians, such as HVAC/R, account for about 40 percent of regulated electricians but are not formally represented on the board.

A person currently engaged in the HVAC/R business can be required to obtain licensure or certification in four regulatory areas: a general or specialty contractor under Chapter 18.27 RCW; an electrical contractor; and electrical administrator; or a journeyman electrician or licensure in one of the two HVAC/R specialties. All of these license or certifications are fee based.

In 2005, the Joint Legislative Audit and Review Committee conducted a study of the HVAC/R licensing and testing requirements in Washington. In their report published in September of 2005, they made several recommendations including that L&I should examine scenarios that would certify aspects of HVAC/R work. In this regard, they suggested three options: 1) create a separate, comprehensive HVAC/R certificate; 2) administer an HVAC/R certificate through the Electrical Board or create a sub-board of the Electrical Board that certifies that a trainee performing both electrical and mechanical work has HVAC/R knowledge and skills in both electrical and non-electrical aspects; and 3) create a model where the state administers an exam that is acceptable to cities that require additional certification for skills beyond the specialty electrical license.

**Summary of Bill (Recommended Substitute):** A registration and certification program for HVAC/R technicians is created.

Requirements for Certification and Registration: After July 1, 2010, any person, firm, partnership, corporation or other entity may not perform or offer to perform HVAC/R work without having a valid HVAC/R mechanic certificate, speciality certificate, temporary certificate, or trainee certificate.

It is unlawful for any person, including companies and corporations, to engage in business on or after July 1, 2009, as an HVAC/R contractor without registering as either a general or specialty contractor, and as an HVAC/R contractor with L&I. People specifically exempted from contractor registration requirements under existing law are exempted from registering as HVAC/R contractors.

No political subdivision may require additional licensing or certification or the payment of a fee from any person holding a proper certificate issued by L&I.

L&I, with approval of the HVAC/R board, may adopt rules to establish specific criteria for recognizing a national certification for propane gas in place of an appropriate or equivalent level of certification.

Exemptions: This bill does not apply to a person: 1) cleaning or replacing air filters, lubricating bearings, replacing fan belts, cleaning evaporators or condensers, cleaning cooling towers, or equipment logging on any HVAC/R equipment or systems; 2) performing HVAC/R work on HVAC/R equipment or systems that either contain six pounds or less of any refrigerant and is actuated by a motor or engine having a standard rating of one-quarter horsepower or less or an absorption system that has a rating of one-quarter ton or less refrigeration effect; 3) setting oil tanks and related piping to a furnace; 4) performing gas piping work on fuel burning appliances with a maximum capacity of 500,000 BTUH pursuant to a valid journeyman or specialty plumbers certificate; 5) performing HVAC/R work at his or her residence, farm, business, or other property he or she owns unless the work is on construction of a new building intended for rent, lease, or sale; 6) performing HVAC/R work on his or her own property or to regularly employed employees working on the premises of their employer unless the work is on construction of a new building intended for rent, sale, or lease; 7) performing HVAC/R work for a gas company when the HVAC/R work is incidental to the business delivering natural gas to the premises or performed pursuant to any tariff on file with the state Utilities and Transportation Commission; 8) licensed in architecture or engineering who is designing HVAC/R equipment or systems; 9) making like-in-kind replacement of a household appliance; or 10) installing wood or pellet stoves, including directly related venting such as a chimney or flue.

Solid fuel burning devices, including wood and coal stoves, gas piping other than that necessary to deliver fuel, and boilers are not considered HVAC equipment and systems.

HVAC/R Board: The board is established and consists of 13 members to be appointed by the Governor with advice of the Director of L&I. Four members must be certified HVAC/R mechanics, one or two of which must be performing work in eastern Washington. Four members must be HVAC/R contractors, one or two of which must be doing business in eastern Washington. The remainder of the board is composed of a member from the general public familiar with HVAC/R work; a member from the stationary operating engineers; a member from a technical college or an approved apprenticeship training program; a building official familiar with enforcement of HVAC/R work; and a building operator representing the commercial property management industry.

The term of each member is three years. The Chair must be elected from within its membership. The board is to meet quarterly and must conduct proceedings for denying applications, suspending or revoking certificates, and imposing civil penalties or other remedies; review and make recommendations to adopt, amend or repeal any rules; establish an alternative method for persons to attest for hours of HVAC/R work when applying for certificates; approve expenditures from the fund; and advise L&I on all other relevant matters. The board members will receive travel reimbursement.

HVAC/R Mechanic and Speciality Certificate: Three levels of HVAC/R mechanic certificates are established, each with a successively broader scope of work. L&I can also issue the following specialty certificates, each of which has three different levels allowing a successively broader scope of work: 1) gas piping specialty mechanic; 2) refrigeration specialty mechanic; and 3) HVAC specialty mechanic.

HVAC/R and specialty certificates are valid for up to three years, expiring on the holder's birthdate. Certified mechanics must have possession of their certificates while performing any HVAC/R work and must show the certificate to any authorized representative of L&I upon request. L&I must renew the certificate if the mechanic applies for renewal not more than 90 days after the expiration date and the mechanic has complied with the continuing education requirements.

The fee for a certificate will be determined in rule by L&I. Fees collected must cover the full costs of issuing the registrations and the certificates, devising and administering the examinations, and enforcing this act. All money received by L&I must be placed in the plumbing and HVAC/R certificate fund. L&I has until 2011 to develop a single document for a person who holds multiple certificates or specialty certificates.

Application/Eligibility for Examination: L&I is required to prepare three separate examinations for the assessment of each level of HVAC/R certification. The exams must be constructed to determine whether the applicant possess general knowledge of the appropriate technical information, practical procedures, and applicable laws and rules. L&I may contract with a professional testing agency to administer the exams, and the exams must be offered at least four times per year.

To be eligible to take an HVAC/R certification exam, an applicant must have worked the requisite number of hours or completed an appropriately related apprenticeship program meeting the requirements of the appropriate level of certification. For HVAC/R mechanic I certification, the applicant must have 1,000 supervised hours of HVAC/R work or 2,000 hours of HVAC/R work, of which 75 percent were supervised. For HVAC/R mechanic II certification, the applicant must have 4,000 hours of HVAC/R work, of which 75 percent were supervised. For HVAC/R mechanic III certification, the applicant must have 2,000 hours of supervised work and 4,000 hours of work, of which 75 percent were supervised; or 8,000 hours of work, of which 75 percent were supervised.

An applicant who has successfully completed a board-approved program at a technical college, or who received training in the United States armed forces, may substitute program or training hours for HVAC/R work experience hours.

Certification Without Examination: From July 1, 2009 until June 30, 2010, a person who has performed HVAC/R work may apply for a mechanic certificate without examination. The application must contain evidence of the person's HVAC/R work hours and other information as required by L&I. If the applicant has at least 2,000 hours of HVAC/R work or completed an approved apprenticeship program since 1988, L&I must issue an HVAC/R mechanic certificate at the appropriate level.

Similarly, a person may apply for a specialty certificate without examination during the same period. The appropriate specialty certificate will be issued by L&I based on the work experience of the applicant and whether the applicant is licensed by any local jurisdiction.

Temporary and Trainee HVAC/R Certificates: After July 1, 2010, a person who has performed HVAC/R work outside Washington may apply for a temporary mechanic certificate. L&I must review the application and issue a temporary HVAC/R certificate at the appropriate certification level, provided the applicant has accrued at least 2,000 hours of HVAC/R work. Temporary HVAC/R mechanic certificates are valid for 90 days.

A trainee certificate to perform HVAC/R work may be issued by L&I. The trainee certificate is valid for up to two years. HVAC/R work performed under a trainee certificate must be within the scope of work authorized by the certificate, be on the same job site and under the direction of an appropriately certified HVAC/R or specialty mechanic, and be under the applicable supervision ratios.

HVAC/R Operator Certification: Upon passage of an exam developed by L&I, HVAC/R operator certificates may be issued to appropriately qualified HVAC/R operating engineers. A HVAC/R operating engineer is a full time employee who spends a substantial portion of time in the maintenance and operation of HVAC/R equipment and systems. A certified HVAC/R operator may clean and replace air filters and belts; lubricate bearings; clean evaporators, condensers, and cooling towers; perform minor repair; and work on sealed equipment and systems.

Any person issued a valid refrigeration operating engineer license by the city of Seattle must be issued an operator certificate. Operator certificates are valid for three years.

Supervision Ratios: Ratios of trainees to certified HVAC/R or specialty mechanics are specified. The ratio for trainees in a technical college program is four to one. For all other trainees, the ration is two to one. The certified mechanic must be on the same job site for a minimum of 75 percent of each working day.

Contractor Reporting: Every person who employs a trainee performing HVAC/R work must report the names, certificate numbers, and hours worked by each trainee as well as the names and certificate numbers of the certified mechanics who supervised the trainees. Information obtained by L&I under this reporting requirement is exempt from public disclosure.

Continuing Education: To renew a certificate, the mechanic must show that he or she completed 24 hours of continuing education prior to the renewal date on their certificate. A trainee must show completion of 60 hours of related supplemental instruction or training prior to the renewal date. L&I, with advice from the board, must determine the contents of continuing education courses and must accept out-of-state courses if comparable to courses offered in-state.

Reciprocity: L&I may enter into a reciprocity agreement with other states whose certification requirements are equal to Washington standards.

Suspension/Revocation/Penalties: L&I may revoke a certificate if the mechanic obtained his or her certificate through error or fraud, is incompetent to perform HVAC/R work, or committed a violation of this act such that it presents an imminent danger to the public. L&I

must immediately suspend the certification of any person who is not in compliance with a child support order as reported by the Department of Social and Health Services. The Administrative Procedures Act applies to any action taken by L&I to suspend or revoke a certificate.

Any person violating the provisions of the act will be assessed a penalty not to exceed 5,000 dollars. Each day a person violates this act is a separate violation. Penalties collected by L&I will be deposited into the plumbing and HVAC/R certificate fund.

Compliance Agents and Infractions: L&I must appoint compliance agents to investigate violations of this act. Compliance agents may inspect and investigate job sites to determine whether the HVAC/R contractor is registered and whether the employees are properly certified. Employees of unregistered HVAC/R contractors are cited as agents of the employer and are not liable unless the cited employee is also the unregistered contractor or the employee is performing HVAC/R work without proper proof of certification.

L&I may issue a notice of infraction if the department reasonably believes a person has committed an infraction. The notice must include a statement that the notice is final unless contested, that the infraction is a noncriminal offense, and provide options for responding to the notice. A person who is issued a notice of infraction has 20 days to respond. Infractions will be heard and determined by an administrative law judge. A person who fails to pay a monetary penalty within 30 days after exhausting all administrative remedies is guilty of a misdemeanor.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended Substitute as Passed Committee):** The recommended substitute excludes gas company service piping from the definition of "HVAC equipment and systems;" excludes gas piping used directly in the generation of electricity by an electric utility from the definition of "gas piping;" and defines "point of contact" for the purposes of gas company service piping.

The substitute changes the effective date from July 1, 2009, to July 1, 2008. People who are exempt from contractor registration under existing law are exempted from registering as an HVAC/R contractor. The substitute adds language regarding the scope of work exempted from HVAC/R requirements for gas companies and individuals holding valid journeyman or specialty plumber certificates. L&I has until 2011 to develop a single document for a person who holds multiple certificates or specialty certificates.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Proposed Substitute as Heard in Committee):** The proposed substitute bill is significantly different than the original bill. The original bill is not being considered this year.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on July 1, 2008.

**Staff Summary of Public Testimony on Proposed Substitute Bill as Heard in Committee (Labor, Commerce, Research & Development):** PRO: The bill raises the bar in the state. Regulation of the HVAC/R industry is best for employees and the consumer. Contractors seeking to do business in different parts of the state currently have to carry multiple local licenses, and this bill allows them to just have one license. The bill will also help eliminate some of the underground economy in the state. The hours required run concurrently with the electrical license requirements. The license allows a tremendous amount of flexibility, with different endorsements. The bill provides benefits to small businesses and will ensure safe installations and servicing for consumers and employees. There are complaints from throughout the state about HVAC/R work, and consumers believed HVAC/R were or should be regulated, demonstrating a need for regulation. HVAC/R work is not currently regulated by the state even though improper installations of their products can cause harm to consumers. Consumers currently have no way of knowing whether the person doing their HVAC/R work is properly trained and up-to-date. Poorly trained workers can cost the consumer money by replacing rather than repairing systems, and by taking more time than is necessary. The bill will not cause legitimate businesses to go out of business.

CON: The proponents of the legislation have refused to engage in discussions with opponents who have issues with the bill. The bill before the committee has the same faults as last year's bill. There are unworkable provisions and problems. The bill will limit the number of individuals entering the HVAC/R field. The exemption of boilers threatens public safety. This legislation does not represent good public policy. Most states do not regulate HVAC/R work, and this bill is an extreme version of regulation. The bill doesn't reflect the reality of today's HVAC industry. Hearth products should be exempt, as there are very few complaints relating to hearth products. Hearth products are inspected by local building inspectors. The bill doesn't recognize existing training programs in the propane industry, and those programs shouldn't be preempted. This bill will increase costs to consumers and decrease competition. Food product refrigeration should be exempted out of the bill, as it is a different application than heating and air conditioning. The grocery industry has built in systems monitoring their refrigeration systems, ensuring consumer safety. The proposed regulation will make the HVAC/R industry less hospitable and throws up barriers to those seeking to enter the industry.

OTHER: Penalties in the HVAC/R program are similar to other penalties assessed in the plumbing and electrical programs. L&I will do outreach to newly regulated community. The proposal meets the five principals L&I brought up previously; public safety, consumer protection, level playing field, no stranded capital, and no unnecessary regulation.

**Persons Testifying (Labor, Commerce, Research & Development):** PRO: Helen Blyton, Northwest HVAC Association & Clines Conditioning; Tonya Neil, Sheet Metal & Air Conditioning Contractor's National Association; Pete Crowe, Washington State Association of Plumbers and Pipe Fitters; Tracy Preaseau, International Brotherhood of Electrical Workers # 76; Larry Stevens, Mechanical & Electrical Contractors; Joe Malaspino, Building Owners & Managers Association.

CON: Jim King, Mike Frickberg, Washington State HVAC/R Association; Carolyn Logue, NW Hearth, Patio & BBQ Association; James Curry, NW Propane Gas Association,

Associated Builders & Contractors; Jan Gee, Washington Food Industry; Curt Anderson, Tim Farrell, Air Systems Engineering, Inc.; Gary Smith, Independent Business Association.

OTHER: Patrick Woods, Ron Fuller, Pete Schmidt, L&I.

**Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):**

PRO: This bill is needed for consumer protection and public safety. This bill provides statewide uniformity and establishes a reasonable level of experience and education for the safe and professional installation of HVAC/R systems. This bill will save energy as these systems will be running to their utmost efficiency. The costs will be paid for with certification fees and are estimated to be \$66 per year. HVAC/R contractors already comply with electrical licensing laws so the transition into this program should be smooth.

CON: As consumers, we have not seen a problem in the industry. This bill takes a Seattle standard and applies it statewide, which will impact the rural areas. The grocery industry has particular concerns because these individuals are already subject to an overhaul of their refrigeration systems by 2010 in order to bring the food cold holding temperatures down from 45 degrees to 41 degrees. An amendment is needed to exempt the installation, service, and maintenance of hearth appliances that have a visible presence in the home. These appliances are not HVAC/R systems and are not tied into HVAC systems. The fiscal note on this bill anticipates \$2 million to start the program, which will be paid for with fees. These costs will be transferred to the consumer which will greatly impact low and middle income families on top of increasing energy costs. Costs will also increase for local governments, schools, hospitals, and any other entities that operate a HVAC/R system. In rural areas, where gas piping work is not as frequent, obtaining the necessary number of supervised hours and on the job training will be extremely costly. This bill works against affordable housing, green construction, energy efficiency, and reduction of wood smoke.

**Persons Testifying (Ways & Means):** PRO: Senator Kohl-Welles, prime sponsor; Pete Crow, Washington Association of Plumbers and Pipefitters; Kathleen Collins, Sheet Metal and Air Conditioning Contractors; Tracey Prezeau, IBW Local 76; Dale Wentworth, Seattle Area Pipe Trades, UA Local 32.

CON: Carolyn Logue, Washington Food Industry, Northwest Hearth and Patio BBQ Association; Gary Smith, Independent Business Association; James Curry, Associated Builders and Contractors, NW Propane Gas Association; Jim King, Washington State HVAC/R Association.