

NON-GOVERNMENTAL ORGANIZATIONS (NGOS) AND THEIR EFFECT ON REGULATORY POLICY

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Government agencies at all levels adopt and implement thousands of regulations covering a multitude of industries and professions, from banking and insurance to architecture and medicine to plumbers and electricians. In Texas, there are over 43,000 rules covering more than 263,000 regulatory restrictions currently in force ([Texas Administrative Code, n.d.](#); [Broughel & McLaughlin, 2020, para. 3](#)). But where do all these regulations come from?

While private citizens may petition the Legislature or a regulatory agency for change, in many cases, these proposed laws and rules are derived from models and standards developed by regulated industries through associations and organizations outside of government. Often referred to as non-governmental organizations (NGOs), these entities exert great influence on government decision-makers, largely because of their expertise in the relevant subject matter of the proposed rules and statutes. While reliance on such expertise is understandable and perhaps necessary, government decision-makers should likewise exercise extra caution and deliberation when adopting proposals from NGOs to ensure that the recommended regulations aren't just furthering the interests of the NGO, but are essential to protecting the health and safety of the public.

According to the U.S. State Department, there are over 1.5 million NGOs in the U.S. ([U.S. Department of State, 2021, para. 5](#)). While many of these are charitable and social organizations, such as United Way, Salvation Army, and Catholic Relief Services, others are formed

to support a specific industry or profession and to promote the adoption of regulations and industry standards that have the force of law.

Texas law is clear that prior to the adoption of any regulation, the public must be provided a full and adequate notice of the proposal and be given opportunities for public comment ([Texas Government Code, 1993, Section 2001.023](#)). Likewise, the state Legislature prescribes its own rules to require public notice and opportunity for input prior to adoption of new laws. These procedures ensure the public's right to know what their elected and appointed officials are doing, and offer the public the chance to provide input on the decision-making process. For instance, agencies must publish a copy of the proposed rule in the Texas Register and a plain language summary on its website at least 30 days prior to adoption. Interested persons are provided an opportunity to comment and, in some cases, to request a hearing on the proposal ([Texas Government Code, 1993, Section 2001.029](#)).

Even within government, many regulated industries have significant influence. Some government regulatory agencies are overseen by a board or commission comprised in whole or in part by members of the regulated industry. The Supreme Court ruled in [North Carolina State Board of Dental Examiners v. Federal Trade Commission, 574 U.S. 494 \(2015\)](#) that government boards and commissions that adopt or enforce regulations in an industry or profession in which the majority of the board or

commission is employed is problematic without some active supervision by the executive and/or legislative branch of government. As a result, many states adopted additional oversight protections to ensure the public interest was protected. The State of Texas created the Division of Regulatory Compliance within the Governor's Office to review and adopt or reject rules adopted by many of these industry-run boards and commissions. In addition, the Legislature has consolidated many of these boards into the Texas Department of Licensing and Regulation (TDLR).

The Texas Legislature has recognized the importance of the public's right to know and participate in the adoption of laws and regulations. Texas and governments at all levels should always exercise caution and deliberation to ensure that in the adoption and enforcement of regulations, industry participants, including NGOs, have no greater influence than the public at large.

Here are three examples of regulated industries with NGO standards adopted by states such as Texas: insurance, electrical, and plumbing.

INSURANCE

The insurance industry and related licensees in Texas are regulated by the Department of Insurance (TDI), which is run and overseen by the Commissioner of Insurance, who is appointed by the Governor. TDI adopts and utilizes rules and standards that regulate the business of insurance, many of which are developed by the National Association of Insurance Commissioners (NAIC), a not-for-profit organization founded to facilitate cooperation on insurance regulation among the various states ([National Association of Insurance Commissioners, n.d.-c](#)). Staff of the NAIC are employees of the not-for-profit, rather than state employees.

Insurance is largely regulated by each state, and the NAIC provides an opportunity for the regulators in each state to consider similar or harmonious regulation, particularly regarding financial solvency protections. Under the "accreditation system," many rules developed and passed by the NAIC are auto-

matically implemented in the states, without ever being considered by politically accountable officials ([National Association of Insurance Commissioners, 2023a](#)). It is important to note that model regulations adopted by the NAIC do not automatically become law under this system, but are considered and often adopted by state administrative agencies as regulations with the force of law. While each state is free to decide whether to adopt NAIC standards, they often become the industry norm, because as more states adopt them, the regulated industry operating in multiple states is effectively forced to adopt the standard for use in all states. The NAIC also provides accreditation and valuation services, which provide regulators a standard for valuing the risk of securities and other capital required to be held by insurance companies.

Although the NAIC is somewhat unique among other NGOs because its board of directors and members are comprised entirely of state government-appointed or elected insurance commissioners or directors, most of the policy proposals adopted by the NAIC are drafted with the assistance of NAIC staff ([National Association of Insurance Commissioners, n.d.-b](#)). Additionally, the organization is largely funded through insurance industry fees and contributions ([National Association of Insurance Commissioners, 2023b](#)).

While the NAIC helps to provide consistent regulatory standards, such as those related to capital and surplus requirements, the organization, as an independent not-for-profit, is not subject to government transparency, or "sunshine," laws ([SNL Securities, L.C. v. National Assn. of Ins. Commissioners, 2000, p. 738](#)). It should be noted that the NAIC (like many other NGOs) generally welcomes public input and undertakes some effort to gather information from non-industry parties. However, the public is not provided with the same level of notice and opportunity for comment as is with government agencies. For instance, the NAIC has a consumer liaison committee, made up of appointees who provide input to other NAIC committees. However, the 37 consumer representatives on the committee largely represent organizations that advocate for

specific consumer-related issues, and not the public at large ([National Association of Insurance Commissioners, n.d.-a](#)). The committees do their work throughout the year and vote on proposals during regularly scheduled meetings held in rotating locations throughout the country. Some of these meetings are held in private, closed-door meetings, known as “regulator only sessions” that are not open to the public. Major decisions are routinely made in these sessions, which are later communicated in a public forum. Even if an individual was interested in a proposal, he would have great difficulty attending all the meetings that are open to the public and may lack the technical expertise necessary to adequately comment on specific proposals. As a result, the insurance industry, and incumbent insurers in particular, who have the expertise and regular participation in the NAIC, exert a great deal of influence on any proposals and action. Before taking any final action on an industry proposal, the NAIC should recognize the influence of the proposing industry party as well as NAIC staff and be sure to weigh all options provided by proponents and opponents equally. State legislative and executive branch officials should also conduct appropriate oversight of any new regulations coming out of the NAIC that are proposed for adoption by the state regulatory agency.

ELECTRICAL

Electrical trades in Texas are licensed and regulated by the Texas Department of Licensing and Regulation, or TDLR ([Texas Department of Licensing & Regulation, n.d.-c](#)). TDLR is overseen by a seven-member board appointed by the governor. All appointees are public members and cannot engage in any of the trades or activities regulated by the agency. This structure limits any undue influence by the regulated industry. However, to ensure adequate expertise and industry input, the board appoints advisory boards made up of licensees to advise the board and staff in the development of regulations and standards. For instance, the Electrical Safety and Licensing Advisory Board is the advisory board charged with recommending changes to regulations related to electrical licenses ([Texas Department of Licensing](#)

[& Regulation, n.d.-b](#)). This nine-member advisory board is comprised of seven electrical licensees and two public members.

The Texas Legislature has directed TDLR to adopt the National Electrical Code (NEC) as the minimum standard to be used by all electrical licensees in Texas ([Texas Department of Licensing & Regulation, n.d.-a](#)). The NEC is developed and published by the National Fire Protection Association (NFPA), whose Board of Directors are from government organizations and industry leaders ([National Fire Protection Association, n.d.-b](#)). Executive leaders and members include individuals from the electrical industry, but the NFPA is not directly run or funded by the electrical industry. The organization reports that its primary funding is from the sale of its codes and related products and services ([National Fire Protection Association, n.d.-a](#)). Nevertheless, as major purchasers of the codes, and as recognized experts, it is reasonable to expect that the electrical industry has some influence on the development of these codes. This is not to imply the influence is inappropriate, and no doubt the industry expertise is needed and welcome, but care should be taken in any adoption of these standards by state legislatures and regulators.

PLUMBING

Plumbing trades also require a license to operate in Texas, which is issued and regulated by the Texas State Board of Plumbing Examiners, or TSBPE ([Texas State Board of Plumbing Examiners, n.d.](#)). Unlike the TDLR oversight board, the TSBPE is overseen by a board that includes licensees regulated by the board. The nine-member board has four plumbing licensees, three members of the building and contracting industry, and two public members, each appointed by the governor. The current chairman is a public member.

The Texas Occupations Code directs the TSBPE to adopt the International Plumbing Code and the Uniform Plumbing Code for use in Texas, with each code having been developed and published by a separate NGO ([Texas Occupations Code, 2001/2007, Section 1301.255](#)). The Uniform Plumbing Code (UPC)

is developed and published by the International Association of Plumbing and Mechanical Officials, or IAPMO, whose board of directors is comprised of licensed plumbers, contractors, and government officials ([International Association of Plumbing and Mechanical Officials, n.d.](#)). The International Plumbing Code is created and published by the International Code Council (ICC), whose board of directors is comprised of government officials, inspectors, and building officials ([International Code Council, n.d.](#)). The ICC is also approved by the TSBPE as a training and testing vendor for all licensed plumbers in the state.

Given their adopted standards and expertise, these NGOs enjoy influence in the government decision-making process beyond that of public individuals and businesses. As such, it is incumbent upon the TSBPE and the Legislature to carefully consider any proposed standards developed by these NGOs.

CONCLUSION

Like any private organization, NGOs are largely free to operate without governmental approval or interference. Yet many of these NGOs, because of their valuable expertise and insight in matters related to their industry or profession, exert great

influence on the government decision-making process. Many NGOs develop standards to be used by private industry for consistent and safe conduct. Then, the NGOs propose the standards be adopted by legislatures or governmental agencies as a regulation requiring their use by all who practice in that field. As such, legislatures and government agencies should use extra caution and deliberation in adopting proposals from NGOs whose members and industry have an interest in the proposals. NGOs should also use extra caution in developing the standards by ensuring the consideration of a wide range of competing viewpoints and the public at large.

Government regulation should always be focused on what is necessary to protect the health and safety of the public, not just to what will ensure market practices developed by those regulated. ■

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