

Office of the Governor
Regulatory Compliance Division

Rule Submission Memorandum Template
Updated October 9, 2020

To: Regulatory Compliance Division Director

From: Helen Kelley, General Counsel, Texas State Board of Plumbing Examiners

Date: September 28, 2021

Subject: 22 Texas Administrative code §365.5, relating to Renewal of License, Registration or Endorsement. The Legislature amended the renewal cycle for endorsements from a triennial renewal cycle to an annual renewal cycle to coincide with the renewal of the underlying license held by the license holder; this rule implements that legislative change.

Note: This memorandum, the proposed rule, and any amendments should be submitted to the Regulatory Compliance Division as a single, combined PDF.

The Texas State Board of Plumbing Examiners ("TSBPE") has proposed a repeal of existing rule 22 Tex. Admin. Code § 365.5 and new rule 22 Tex. Admin. Code § 365.5, as published in the August 6, 2021 issue of the Texas Register. The Regulatory Compliance Division of the Office of the Governor has identified this rule as possibly having an anticompetitive market effect. Accordingly, the TSBPE is submitting it to the Regulatory Compliance Division for review. The PDF version of the preamble and text of the proposed rule as published in the Texas Register, and the language of any amendments to the proposed rule that the Texas State Board of Plumbing Examiners intends to adopt, are attached to this memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Texas State Board of Plumbing Examiners provides answers to the following questions.

- 1. Briefly describe the proposed rule.** The rule describes the procedures and statutory requirements for a timely annual renewal and the consequences of a late renewal.
- 2. What is the purpose of the proposed rule?** To describes the procedures and statutory requirements for a timely annual renewal and the consequences of a late renewal.
- 3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.** Amendments to Chapter 1301 of the Texas Occupations Code passed by the 87th Legislature, Regular Session (2021), specifically Section 18 of House Bill (HB) 363, made existing board rule §365.5(c)'s language regarding triennial endorsements obsolete.
- 4. Describe the legal authority for the proposed rule.** Tex. Occ. Code § 1301.251(2), provides that the board has a general duty to "adopt and enforce rules necessary to administer" Chapter

1301 of the Texas Occupations Code.

a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s). Yes, Tex. Occ. Code § 1301.401(c) requires the board to adopt rules to allow license holders to renew their endorsement at the same time they renew their underlying license.

b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the proposed rule is within the scope, and reference the applicable state statute(s). Yes, Tex. Occ. Code § 1301.251(2), provides that the board has a general duty to "adopt and enforce rules necessary to administer" Chapter 1301 of the Texas Occupations Code. Additionally, the explicit rulemaking authority granted to the TSBPE by the legislature in Section 1301.401(c) of the Texas Occupations Code requires the board to adopt a rule to enforce the annual renewal of endorsements. Given this general and explicit statutory authority, the rule is within the board's purview to adopt.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed. Staff placed a draft of the rule on its website to solicit public comment.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm. The rule is not intended to address a harm. It is proposed merely to carry out the Legislature's specific and explicit imperative.

7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why. No. The rule doesn't affect market competition any more than the existing legislative scheme laid out by the Legislature. The rule simply carries out the legislature's intent to have licensed plumbers (Tex. Occ. Code 1301.001-.713) who renew their license, registrations and, now, endorsements annually (Tex. Occ. Code 1301.401) provided they pay the required renewal fee(s) (Tex. Occ. Code 1301.403) and complete the required continuing professional education (Tex. Occ. Code 1301.404) or training (Tex. Occ. Code 1301.405), as applicable.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code). The rule does not affect market competition any more than the existing legislative scheme laid out by the Legislature. However, it affects market competition to the extent that regulation of an occupation generally creates a barrier to market participation, which results in higher prices because of the reduced competition to perform the service.

It creates a barrier to market participation in the state.

It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

X It both creates a barrier to market participation in the state and results in higher prices

or reduced competition for a product or service provided by or to a license holder in the state.

9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute. No specific impact on market competition is expected. Streamlining renewal types should have a beneficial impact on licensees and that is consistent with state policy as established by the Legislature in state statute, namely Tex. Occ. Code § 1301.401(c).

10. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General? No and no.

11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order? No.

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule? No.

Note: In addition to this memorandum and its required attachments, the state agency must provide copies of the state agency's administrative records regarding the proposed rule, including any information or comments that the state agency received from the public regarding the proposed rule. A state agency is not required to submit any privileged or confidential information to the Regulatory Compliance Division.

Lisa G. Hill, Executive Director, has determined that for the first five years the repeal is in effect, there are no foreseeable economic implications relating to costs or revenues of the state or local governments as a result of enforcing or administering the repeal.

Public Benefits

The Executive Director has determined that for each of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing the rule will be the streamlining of the renewal process with the new rule that is replacing the repealed rule.

Probable Economic Costs to Persons Required to Comply with the Rule

The Executive Director has further determined that for the first five years the repealed rule is in effect, there are no substantial costs anticipated for persons required to comply with the new rule replacing the repealed rule.

One-for-One Rule Analysis

Given the rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the repeal is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the repealed rule is in effect, the agency has determined the following: (1) the repealed rule does not create or eliminate a government program; (2) implementation of the repealed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the repealed rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the repealed rule and new rule replacing it does not require an increase or decrease in fees paid to the agency by persons already regulated by the Board overall; specifically the fee paid by those licensees seeking to renew their endorsement(s) would be prorated annually instead of triennially; (5) the repealed rule does not create a new regulation; (6) the repealed rule does not expand or limit an existing regulation; (7) the repealed rule does not increase or decrease the number of individuals subject to the new rule replacing the repealed rule's applicability; and (8) the repealed rule does not adversely affect this state's economy.

Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

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TITLE 22. EXAMINING BOARDS
PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS
CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.5
The Texas State Board of Plumbing Examiners (Board) proposes the repeal of 22 Texas Administrative Code (TAC) §365.5, relating to Renewal of License, Registration or Endorsement.

Background and Justification
The Board proposes this repeal pursuant to amendments to Chapter 1301 of the Texas Occupations Code passed by the 87th Legislature, Regular Session (2021), specifically Section 18 of House Bill (HB) 363, which changed the three year renewal cycle for endorsements to one year to coincide with the renewal of the underlying license.

Fiscal Impact on State and Local Government

The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments

Written comments regarding the repeal may be submitted by mail to Helen Kelley at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with the subject line "365.5 Rule Repeal." All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This repeal is proposed under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce Chapter 1301 of the Occupations Code (Plumbing License Law).

This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

§365.5. *Renewal of License, Registration or Endorsement.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 26, 2021.

TRD-202102884

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: September 5, 2021

For further information, please call: (512) 936-5216



22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) proposes new 22 TAC §365.5, relating to Renewal of License, Registration or Endorsement.

Background and Justification

The Board proposes this new rule pursuant to amendments to Chapter 1301 of the Texas Occupations Code passed by the 87th Legislature, Regular Session (2021), specifically Section 18 of House Bill (HB) 363, which changed the three year renewal cycle for endorsements to one year to coincide with the renewal of the underlying license.

Fiscal Impact on State and Local Government

Lisa G. Hill, Executive Director, has determined that for the first five years the new rule is in effect, there are no foreseeable economic implications relating to costs or revenues of the state or local governments as a result of enforcing or administering the new rule.

Public Benefits

The Executive Director has determined that for each of the first five years the new rule is in effect, the public benefit anticipated as a result of rule will be the streamlining of the renewal process.

Probable Economic Costs to Persons Required to Comply with the Rule

The Executive Director has further determined that for the first five years the new rule is in effect, there are no substantial costs anticipated for persons required to comply with the rule.

One-for-One Rule Analysis

Given the rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the new rule is in effect, the agency has determined the following: (1) the new rule does not create or eliminate a government program; (2) implementation of the new rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the new rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency by persons already regulated by the Board overall; specifically the fee paid by those licensees seeking to renew their endorsement(s) would be prorated annually instead of triennially; (5) the new rule does not create a new regulation; (6) the new rule does not expand or limit an existing regulation; (7) the new rule does not increase or decrease the number of individuals subject to the new rule's applicability; and (8) the new rule does not adversely affect this state's economy.

Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board

asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments

Written comments regarding the new rule may be submitted by mail to Helen Kelley at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with the subject line "365.5 Rule Amendment." All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This new rule is proposed under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce Chapter 1301 of the Occupations Code (Plumbing License Law). This new rule is also proposed under the authority of: (1) §1301.401(a), which mandates an annual renewal for licenses, registrations and now endorsements; (2) §1301.253, which authorizes the Board to assess fees; and (3) §1301.404, which authorizes the Board to require continuing education.

This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

§365.5. Renewal of License, Registration or Endorsement.

(a) To maintain continuous licensure, registration or endorsement, a person must complete an annual renewal application form, pay the required fee(s) and submit proof of completion of the required number of continuing education hours, if a licensee or endorsement holder, or training hours, if a registrant, by the licensee, registrant or endorsement holder's annual expiration date.

(b) Renewal application forms not completed by the licensee, registrant or endorsement holder's annual expiration date are considered late and are subject to late fees.

(c) Late renewal applications will have an unlicensed period from the expiration date of the previous license, registration or endorsement to the issuance date of the renewed license, registration or endorsement. Plumbing work that requires a license, registration or endorsement issued under this chapter shall not be performed during the unlicensed period.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 26, 2021.

TRD-202102850

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: September 5, 2021

For further information, please call: (512) 936-5216

