

To: Caleb Gunnels, Regulatory Compliance Division Director, Office of the Governor

From: Lynn Latombe, General Counsel, Texas State Board of Plumbing Examiners

Date: March 1, 2023

Subject: The Texas State Board of Plumbing Examiners (Board) proposes amendments to the existing rules at 22 Texas Administrative Code, Chapter 361.

The Texas State Board of Plumbing Examiners (Board) has proposed amendments to 22 Texas Administrative Code, Chapter 361, §§ 361.1, 361.4, 361.6, 361.10, 361.12, and 361.15, all of which concern definitions and general provisions. The Board recognizes these amendments as possibly having an anticompetitive market effect. As such, the published amendments are submitted for review. The preamble for the proposed amendments as published in the Texas Register is attached to this memorandum.

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

1. Briefly describe the proposed rules.

Section 361.1 lists definitions. The definitions do not create any affirmative duty on or regulation of registrants or licensees. The definitions simply define terms for use by the rules and PLL. The following definitions have been amended as follows:

(3) Advisory Committee: The language has been updated to be more concise and eliminates an unnecessary and outdated rule reference. This allows the rules to stay current regardless of changes to referenced laws or rules.

(9) Certificate of Insurance. The language has been updated to be more concise and eliminates unnecessary and outdated rule and statutory references. This allows the rules to stay current regardless of changes to referenced laws or rules.

(14) Complaint. The language has been updated to be more concise.

(18) Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication. This rule is amended on a recommendation by the rules workgroup. The pandemic created necessary social-distancing practices for virtual supervision to ensure worker and public safety across all industries. Technology supported social distancing by providing the capability to visually stream or project the job site in real-time such as on Facetime, Zoom, etc. These practices demonstrated that such technology could be successfully utilized to provide service and supervision. As such, the definition is amended to allow a Responsible Master Plumber (RMP) the flexibility to choose how they supervise their staff aided by technology

as they see fit. This rule does not alleviate the responsibility of the RMP from adequate supervision or from ensuring that work is performed to code. It is in the RMP's discretion to utilize optional technology as they deem it appropriate given their job sites, staff, and technological capacities. Should inspection or investigation be done on the job site, any present licensee or registrant must demonstrate that real-time, visual communication is successful and effective.

(21) Field Representative. The amendment makes the rule more concise by eliminating an unnecessary reference and correcting a spelling mistake.

(23) License. The language has been updated to be more concise.

(25) Maintenance Man or Maintenance Engineer. This definition defines what work maintenance staff may perform. The definition is amended to include longstanding and inadvertently repealed language showing that work "incidental to and in connection with" maintenance duties does not include cutting into fuel gas plumbing systems and installation of gas fueled water heaters. This language was present from 2000 until July 2017 when the rule was re-organized. The Board, discovering the inadvertent deletion during the four-year rule review, believes it was repealed in error. The long-standing language is reclaimed into the definition to provide clarifying guidance for ease of use and does not expand or restrict the current industry practice of maintenance men or maintenance engineers.

(36) Petitioner. The definition is updated to eliminate unnecessary references. This allows the rules to stay current regardless of changes to referenced laws or rules.

(39) Plumbing Inspector. The definition is updated to eliminate unnecessary references. This allows the rule to stay current regardless of changes to referenced laws or rules.

(47) Responsible Master Plumber. The definition is updated to eliminate unnecessary references. This allows the rule to stay current regardless of changes to referenced laws or rules.

Section 361.1(b) states that any definition not in rule is defined by the statute. This language is unnecessary and deleted to make the rules more concise.

Section 361.4 Language requiring the Board to set forth in writing procedures for its operation is not required in statute and is deleted to make the rule more concise.

Section 361.6 Renewal fees for Med Gas, Multipurpose Residential Fire Protection Sprinkler Specialists, Water Supply Protection Specialists endorsements and the related late renewal fees for such endorsements are eliminated. The Board has not been collecting these fees. The rules simply update their current practice.

Section 361.10 Based on the recommendation of the Director of Finance, the Historically Underutilized Business (HUB) Program rule is amended to incorporate the rules of the Texas Comptroller of Public Accounts, not the Texas Facilities Commission.

Section 361.12 Rule provisions, not required by statute, for advisory boards are eliminated to make the rule more concise. The Board currently has no advisory boards.

Section 361.15 Rule language about when the Board will elect a secretary is eliminated as unnecessary and not required by Section 1301.157 of the statute.

2. What is the purpose of the proposed rules?

The proposed rules implement changes to Texas Occupations Code, Chapter 1301 of the Texas Occupations Code (Plumbing License Law or PLL) as amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021 and Board efforts to improve regulation of the industry by simplifying and modernizing the rules as part of its four-year rule review. Lastly, in the course of its four-year rule review, the Board determined that long existing language in its definition of Maintenance Man or Maintenance Engineer was inadvertently deleted in an earlier rule revision. This long-standing language is re-inserted into the definition to provide clarification to those duties.

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) significantly impacted the Board's responsibilities and operations. The Board has coupled its four-year rule review with efforts to update its rules to comply with HB 636.

As part of its four-year rule review of the existing rules at 22 Texas Administrative Code (TAC) Chapter 361, the Board initiated a rule simplification initiative to make the rules easier to use and understand by eliminating unnecessary language, adding clarifying language, restructuring regulations to make the rules more efficient, and reduce regulatory barriers. Unnecessary internal references to rule and statute have been eliminated to keep the rules current regardless of changes to statute and rule. In the course of its four-year rule review, the Board determined that long existing language in its definition of Maintenance Man or Maintenance Engineer was inadvertently deleted in an earlier rule revision. This long-standing language is re-inserted into the definition to provide clarification to those duties. Lastly, the Board has added language to modernize the use of virtual communication technology for required supervision. It is considered that virtual technology was used during the pandemic to supervise registrants and licensees when pandemic measures required social distancing to ensure the health and safety of workers and the public.

4. Describe the legal authority for the proposed rule.

a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).

No.

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.

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.

The Board established a rules workgroup which examined all the rules to update them in light of HB 636 and comply with the four-year rule review required by the Administrative Procedure Act. The Texas State Board of Plumbing Examiners reviewed these rules at its Board meeting on January 18, 2023 and recommended them for posting in the Texas Register for 30 days of public comment. The proposed amendments are currently posted in the Texas Register.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm.

The rules are not intended to address any harm. They are proposed merely to support the statutory changes made by HB 636, improve the clarity and efficiency of the rules, and modernize the rules post-pandemic.

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 definitions do not create any affirmative duty on or regulation of registrants or licensees. The definitions simply define terms for use by the rules and PLL.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).

The Board does not anticipate that the rule amendments affect market competition any more than the existing legislative scheme laid out by the legislature.

- 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.
- 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.

The rules simply support statutory change and, in instances, reduce the burden on market competition by eliminating over-proscriptive or unclear regulatory language. That is consistent with state policy as established by the Legislature in state statutes.

10. *Do the proposed rules 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.

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 February 9, 2023.

TRD-202300642

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 26, 2023

For further information, please call: (512) 475-3959



TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§361.1, 361.4, 361.6, 361.10, 361.12, 361.15

The Texas State Board of Plumbing Examiners (Board or TS-BPE) proposes amendments to the existing rules at 22 Texas Administrative Code (TAC), Chapter 361, §§361.1, 361.4, 361.6, 361.10, 361.12, and 361.15, all of which concern definitions and general provisions. The proposed amendments are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed rules implement changes to Texas Occupations Code, Chapter 1301 (Plumbing License Law or PLL) as amended by House Bill 636 (HB 636), 87th Texas Legislature, Regular Session, 2021 and Board efforts to improve regulation of the industry by simplifying the rules as part of its four-year rule review. The proposed rules simplify the existing rules by eliminating unnecessary language and internal references. This allows the rules to stay current regardless of changes to referenced laws or rules. In addition, the Board has sought to expand the definition of "Direct Supervision" to modernize the rule to address current industry practice post-pandemic.

HB 636 amended the Plumbing License Law. Statutory changes eliminated the requirement that a responsible master plumber (RMP) complete an approved training program regarding the laws and rules applicable to the operation of a plumbing business in Texas. HB 636 added a qualification path for licensure as a Tradesman-Limited Plumber upon successful examination and completion of a career and technology education program offered by a high school or institution of higher education approved by Texas Education Agency and the Board. HB 636 further amended Section 1301.404 to vest the authority for the administrative approval of continuing professional education programs and instructors in the Executive Director rather than the Board. HB 636 amended Section 1301.304 to move the responsibility to investigate violations of the PLL or rules from the Enforcement Committee to the Board, or a Board-designated employee. The proposed rules facilitate the statutory changes made by HB 636.

The Board, under its general rule-making authority in Section 1301.251 of Texas Occupations Code and part of its four-year

rule review of the existing rules at 22 Texas Administrative Code (TAC) Chapter 361, initiated a rule simplification initiative to make the rules easier to understand and enforce by eliminating unnecessary language, adding clarifying language, and restructuring regulations to make the rules more efficient. Unnecessary internal references to rule and statute have been eliminated to keep the rules current regardless of changes to statute and rule.

SECTION BY SECTION SUMMARY

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FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), has determined that for the first five-year period the proposed rules are in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rules.

PUBLIC BENEFITS

The Executive Director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be to have fewer regulatory barriers and rules that are easier to use and enforce.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

The executive director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Given that the proposed rules do not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the rules are not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the Board has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation; (6) the proposed rules do not expand, limit, or repeal an existing regulation; (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESS, AND RURAL COMMUNITIES

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

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter.

No other statutes or rules are affected by the proposal.

§361.1. Definitions.

[(a)] The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

(1) APA--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(2) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(3) Advisory Committee--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties. [~~A Board appointed committee. subject to §1301.258 of the Plumbing License Law, §361.12 of the Board Rules and Chapter 2110 of the Texas Government Code, of which the primary function is to advise the Board.~~]

(4) Appliance Connection--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.

(5) Applicant--An individual seeking to obtain a license, registration or endorsement issued by the Board.

(6) Board--The Texas State Board of Plumbing Examiners.

(7) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(8) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(9) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in [~~§1301.522 of~~] the Plumbing License Law and [~~§367.3 of the~~] Board Rules.

(10) Chief Examiner--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.

(11) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(12) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) Code-Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) Complaint--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board. [~~charge alleging a violation of state law, Board rules or orders, local codes or ordinances, or standards of competency; or the presence of fraud, false information, or error in the attempt to obtain a license, registration or endorsement.~~]

(15) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) Continuing Professional Education or CPE--Approved courses/programs required for a licensee or registrant.

(17) Director of Enforcement--An employee of the Board who meets the definition of "Field Representative" and, under the direc-

tion of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) Direct Supervision--

(A) The on-the-job oversight and direction of a registered Plumber's Apprentice or licensee performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(iii) This oversight may include virtual visual, real-time communication.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related [~~relating~~] to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate [consumer] complaints [filed under §1301.303 of the Plumbing License Law]; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board. [~~document issued by the Board to certify that the named individual fulfilled the requirements of the Plumbing License Law and of the Board Rules to hold a license issued by the Board.~~]

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and [§361.14 ~~of~~] the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the

treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in [~~§1301.255 and §1301.551 of~~] the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) municipal utility district;
- (F) levee improvement district;
- (G) drainage district;
- (H) irrigation district;
- (I) water improvement district;
- (J) water control improvement district;
- (K) water control preservation district;
- (L) freshwater supply district;
- (M) navigation district;
- (N) conservation and reclamation district;
- (O) soil conservation district;
- (P) communication district;
- (Q) public health district;
- (R) river authority; and
- (S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

(A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by [~~§1301.3576 of~~] the Plumbing License Law and [~~§363.26 of the~~] Board Rules; and

(E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

[(b) Any term not defined in this section shall have the definition set out in §1301.002 of the Plumbing License Law.]

§361.4. The Board.

The board shall hold meetings and conduct business in accordance with all applicable laws, these sections, and any procedures it may establish to discharge its functions. [The board shall set forth in writing any such procedures so established and file them with the agency as open records.]

§361.6. Fees.

(a) The Board shall waive the initial license, application and examination fees for military service members, military veterans and military spouses who substantially meet all of the requirements for licensure or examination by the Board.

(b) The Board has established the following fees:

- (1) Initial Licenses, Endorsements and Registrations.
 - (A) Responsible Master Plumber License--\$300;
 - (B) Master Plumber License--\$75;
 - (C) Journeyman Plumber License--\$40;

- (D) Medical Gas Installation Endorsement (Master)--\$55;
 - (E) Medical Gas Installation Endorsement (Journeyman)--\$14;
 - (F) Medical Gas Installation Endorsement (Inspector)--\$27.50;
 - (G) Plumbing Inspector License--\$55;
 - (H) Water Supply Protection Specialist Endorsement (Journeyman)--\$14;
 - (I) Water Supply Protection Specialist Endorsement (Master)--\$55;
 - (J) Water Supply Protection Specialist Endorsement (Inspector)--\$27.50;
 - (K) Tradesman Plumber-Limited License--\$35;
 - (L) Plumber's Apprentice Registration/Application--\$15;
 - (M) Residential Utilities Installer Registration/Application--\$18;
 - (N) Drain Cleaner Registration/Application--\$18;
 - (O) Drain Cleaner-Restricted Registration/Application--\$18;
 - (P) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master)--\$55;
 - (Q) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman)--\$14;
 - (R) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector)--\$27.50.
- (2) Examinations.
- (A) Master Plumber--\$175;
 - (B) Journeyman Plumber--\$40;
 - (C) Medical Gas Piping Installation Endorsement (Master)--\$80;
 - (D) Medical Gas Piping Installation Endorsement (Journeyman)--\$27;
 - (E) Medical Gas Piping Installation Endorsement (Inspector)--\$40;
 - (F) Plumbing Inspector--\$55;
 - (G) Water Supply Protection Specialist Endorsement (Journeyman)--\$27;
 - (H) Water Supply Protection Specialist Endorsement (Master)--\$80;
 - (I) Water Supply Protection Specialist Endorsement (Inspector)--\$40;
 - (J) Tradesman Plumber-Limited License--\$36;
 - (K) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master)--\$80;
 - (L) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman)--\$27; and
 - (M) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector)--\$40.

- (3) Renewals.
 - (A) Responsible Master Plumber License--\$300;
 - (B) Master Plumber License--\$75;
 - (C) Journeyman Plumber License--\$40;
 - ~~{(D) Medical Gas Piping Installation Endorsement (Master)--\$55;}~~
 - ~~{(E) Medical Gas Piping Installation Endorsement (Journeyman)--\$14;}~~
 - ~~{(F) Medical Gas Piping Installation Endorsement Inspector--\$27.50;}~~
 - ~~{(G) Plumbing Inspector License--\$55;}~~
 - ~~{(H) Water Supply Protection Specialist Endorsement (Journeyman)--\$14;}~~
 - ~~{(I) Water Supply Protection Specialist Endorsement (Master)--\$55;}~~
 - ~~{(J) Water Supply Protection Specialist Endorsement (Inspector)--\$27.50;}~~
 - ~~{(K) Plumbing Inspector with a Master and/or Journeyman License--\$55;}~~
 - ~~{(L) Master Plumber with Journeyman Plumber License--\$75;}~~
 - ~~{(M) Tradesman Plumber-Limited License--\$35;}~~
 - ~~{(N) Plumber's Apprentice Registration--\$15;}~~
 - ~~{(O) Residential Utilities Installer Registration--\$18;}~~
 - ~~{(P) Drain Cleaner Registration--\$18; and}~~
 - ~~{(Q) Drain Cleaner-Restricted Registration--\$18;}~~
 - ~~{(R) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master)--\$55;}~~
 - ~~{(S) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman)--\$14;}~~
 - ~~{(T) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector)--\$27.50;}~~

(4) Other Fees.

- (A) Late renewal
 - (i) Responsible Master Plumber License:
 - (I) less than 90 days--one-half renewal fee--\$150;
 - (II) more than 90 days--renewal fee--\$300;
 - (ii) Master Plumber License:
 - (I) less than 90 days--one-half renewal fee--\$37.50;
 - (II) more than 90 days--renewal fee--\$75;
 - ~~{(iii) Medical Gas Piping Installation Endorsement (Master):}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
 - ~~{(II) more than 90 days--renewal fee--\$55;}~~

- ~~{(iv) Medical Gas Piping Installation Endorsement (Journeyman):}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$7;}~~
 - ~~{(II) more than 90 days--renewal fee--\$14;}~~
- ~~{(v) Medical Gas Piping Installation Endorsement (Inspector):}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$13.75;}~~
 - ~~{(II) more than 90 days--renewal fee--\$27.50;}~~
- ~~{(iii) [(vi)] Journeyman Plumber License:}~~
 - ~~{(I) less than 90 days--one-half renewal fee--\$20;}~~
 - ~~{(II) more than 90 days--renewal fee--\$40;}~~
- ~~{(vii) Water Supply Protection Specialist Endorsement (Journeyman):}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$7;}~~
 - ~~{(II) more than 90 days--renewal fee--\$14;}~~
- ~~{(viii) Water Supply Protection Specialist Endorsement (Master):}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
 - ~~{(II) more than 90 days--renewal fee--\$55;}~~
- ~~{(ix) Water Supply Protection Specialist Endorsement (Inspector):}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$13.75;}~~
 - ~~{(II) more than 90 days--renewal fee--\$27.50;}~~
- ~~{(iv) [(x)] Plumbing Inspector License:}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
 - ~~{(II) more than 90 days--renewal fee--\$55;}~~
- ~~{(v) [(xi)] Master Plumber License with Journeyman Plumber License:}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$37.50;}~~
 - ~~{(II) more than 90 days--renewal fee--\$75;}~~
- ~~{(vi) [(xii)] Plumbing Inspector License with Master and/or Journeyman Plumber License:}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$27.50;}~~
 - ~~{(II) more than 90 days--renewal fee--\$55;}~~
- ~~{(vii) [(xiii)] Tradesman Plumber-Limited License:}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$17.50;}~~
 - ~~{(II) more than 90 days--renewal fee--\$35;}~~
- ~~{(viii) [(xiv)] Plumber's Apprentice Registration:}~~
 - ~~{(I) less than 90 days--one half renewal fee--\$7.50;}~~
 - ~~{(II) more than 90 days--renewal fee--\$15;}~~

(ix) [(xv)] Residential Utilities Installer Registration:

- (I) less than 90 days--one half renewal fee--\$9;
- (II) more than 90 days--renewal fee--\$18;

(x) [(xvi)] Drain Cleaner Registration:

- (I) less than 90 days--one half renewal fee--\$9;
- (II) more than 90 days--renewal fee--\$18;

(xi) [(xvii)] Drain Cleaner-Restricted Registration:

- (I) less than 90 days--one half renewal fee--\$9;
- (II) more than 90 days--renewal fee--\$18.

~~[(xviii)] [Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Master):]~~

~~[(I)] less than 90 days--one half renewal fee--\$27.50;]~~

~~[(II)] more than 90 days--renewal fee--\$55;]~~

~~[(xix)] Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Journeyman):]~~

~~[(I)] less than 90 days--one half renewal fee--\$7;]~~

~~[(II)] more than 90 days--renewal fee--\$14;]~~

~~[(xx)] Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement (Inspector):]~~

~~[(I)] less than 90 days--one half renewal fee--\$13.75;]~~

~~[(II)] more than 90 days--renewal fee--\$27.50;]~~

(B) Instructor Certification Training (Per Day)--\$150.

(C) Duplicate Pocket Card--\$25.

(D) Returned check--\$25.

(E) Fees for a provisional license issued under §1301.358 of the Plumbing License Law are equal to the initial license fees established in paragraph (1) of this subsection.

(F) Fees for a provisional registration issued under §53.0211(c) of the Texas Occupations Code are equal to the initial registration fees established in paragraph (1) of this subsection.

(G) Transfer of License--\$500.

(H) License Verification--\$15.

(c) Methods of payment

(1) Fees paid electronically through the Texas Online website, which may be accessed from the Texas State Board of Plumbing Examiners' website, may be made in the form of credit card or check.

(2) Fees paid by mail or in person may be made in the form of money order, cashier's check, personal check, business check, or the exact amount of cash (cash payments by mail are not recommended).

(3) An individual shall pay the appropriate examination fee prior to the time of examination, or, the appropriate initial licensure or renewal fee prior to issuance of a license, registration, endorsement or renewal.

(4) The Board, under any special circumstances it finds appropriate, may:

(A) waive any requirements concerning the method or timing of payment of any fee;

(B) refund any fee; or

(C) waive payment of any fee not required by statute.

(5) Any fee paid for a license, endorsement or registration, which has been denied or revoked due to a criminal conviction under §363.15 of the Board Rules or any violation of the Plumbing License Law or Board Rules shall not be refunded.

§361.10. *Historically Underutilized Business (HUB) Program.*

The Board adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program). These rules were promulgated by the Texas Comptroller of Public Accounts under Government Code §2161.002. [The Texas State Board of Plumbing Examiners adopts the rules of the Texas Facilities Commission relating to the Historically Underutilized Business (HUB) Program and codified at 1 Texas Administrative Code §§111.20-111.33.]

§361.12. *Advisory Committees.*

[(a)] The Board may appoint Advisory Committees as it considers necessary for the primary function of advising the Board.

[(b)] Advisory Committees are subject to §1301.258 of the Plumbing License Law and Chapter 2110 of the Texas Government Code and shall:

[(1)] be composed of a reasonable number of members not to exceed twenty-four (24) members who provide a balanced representation between:

[(A)] individuals regulated or directed affected by the Board; and]

[(B)] consumers of services provided by the Board or the plumbing industry; and]

[(2)] select from among its members a presiding officer who shall preside over the advisory committee and report to the Board; and]

[(3)] serve without compensation or reimbursement;]

[(e)] If the board appoints an advisory committee, it shall adopt rules that:]

[(1)] state the purpose of the committee;]

[(2)] describe the task of the committee and the manner in which the committee will report to the Board; and]

[(3)] the date on which the committee will automatically be abolished (not to exceed four years from its creation) unless the Board votes to continue the committee in existence;]

[(d)] If the Board appoints an advisory committee it shall evaluate annually:]

[(1)] the committee's work;]

[(2)] the committee's usefulness; and]

[(3)] the costs related to the committee's existence, including the cost of Board staff time spent in support of the committee's activities;]

[(e)] The Board shall report to the Legislative Budget Board the information developed in the evaluation required in subsection (d) of this section. The Board shall file the report biennially in connection with the agency's request for appropriations;]

§361.15. *Election of Board Officers.*

(a) The governor shall designate a member of the board as the presiding officer of the Board to serve in that capacity at the pleasure of the governor.

(b) The Board shall elect a secretary from its membership.

~~[(1) The election may be held every two years during the July Board meeting.]~~

~~[(2) The elected Board Secretary shall take office on the first day of September following the election held at the July Board meeting.]~~

~~[(3) If the office becomes vacant for any reason, a special election shall be held at the next regularly scheduled Board meeting to fill the office for the unexpired term.]~~

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 February 8, 2023.

TRD-202300597

Lynn Latombe

General Counsel

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: March 26, 2023

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



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.26

The Texas Board of Veterinary Medical Examiners (Board) proposes this new rule §575.26, deferred disciplinary action for minor violations to first time offenders.

The purpose of the new proposed rule is to offer to first time Class C offenders the ability to fulfill a condition that demonstrates they understand and see how their act or omission violated the Board's rule, but that it will not appear on their disciplinary record.

Fiscal Note

John Hargis, General Counsel, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Hargis has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Hargis has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice in the veterinary medicine profession. There is no anticipated economic cost to persons who are required to comply with the rule.

Local Employment Impact Statement

Mr. Hargis has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Hargis has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Hargis has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to John Hargis, Texas Board of Veterinary Medical Examiners, 1801 Congress, Ste. 8.800, Austin, Texas 78701, by e-mail to John.Hargis@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of Occupations Code, §801.151(a), (b), and (c) Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession, and that the Board may adopt rules to protect the public. Cross-reference to Statute: Occupations Code, §801.408; Occupations Code §801.205.

No other statutes, articles, or codes are affected by the proposal.

§575.26. Deferred Disciplinary Action.

(a) For Class C Violations, the Board may offer respondents deferred disciplinary action in lieu of disciplinary action. If the respondent successfully completes the terms of the deferred disciplinary action within 60 days, the complaint will be recommended for dismissal at a subsequent public Board meeting.