

To: Regulatory Compliance Division Director

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

Date: Nov 17, 2022

Subject: The Texas State Board of Plumbing Examiners (Board) proposes amendments to the existing rules at 22 Texas Administrative Code (TAC), Chapter 363, §§363.24 and 363.25, and a repeal of §363.26.

The Texas State Board of Plumbing Examiners (Board) has proposed amendments to 22 Texas Administrative Code (TAC), Chapter 363, §§ 363.24 and 363.25, and the repeal of § 363.26 as published in the October 28, 2022 issue of the Texas Register. The Regulatory Compliance Division identified 22 TAC §§363.24, 363.25, and 363.26 as possibly having an anticompetitive market effect. As such, the published amendments and repeal are submitted for review. The preambles for the proposed amendments and repeal as published in the Texas Register 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 rules.

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. HB 636 amended the PLL to vest the authority for the administrative approval of education programs and instructors in the Executive Director rather than the Board. HB 636 also eliminated the responsible master plumber (RMP) training program earlier required.

The amendments at §363.24 shows outdated and unnecessary rule references are eliminated, and the rule was restructured to simplify it. HB 636 passed the administrative approval of education providers and instructors from the Board to the Executive Director. As such, references the term "Board-approval" is reformed to reflect that the approval is no longer the responsibility of the Board, but the Executive Director. It also adds "plumbing inspector" to the list of qualified licensees that may teach a continuing professional education course. It allows endorsement education providers to maintain records of course completion for two years.

Section 363.25 eliminates outdated and unnecessary rule references. The rule was restructured to simplify it and make it easier to read.

Section 363.26 is repealed as HB 636 eliminated the RMP training program.

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 the rules as part of its four-year rule review.

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 continuing education and training programs. The amendments to the rules are proposed to support statutory changes and to do away with overly prescriptive requirements per the Sunset Commission's recommendations.

As part of its four-year rule review of the existing rules at 22 Texas Administrative Code (TAC) Chapter 363, 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.

4. *Describe the legal authority for the proposed rule.*

Tex. Occ. Code § 1301.251(2), provides that the Board has a general rule-making authority to "adopt and enforce rules necessary to administer" Chapter 1301 of the Texas Occupations Code. Additionally, specific statutory change initiated by HB 636 amended §1301.404 and impacted §1301.405 to vest the authority for the administrative approval of continuing professional education programs and instructors in the Executive Director rather than the Board.

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

Yes, Texas Occupations Code §1301.404 and §1301.405 requires the Executive Director to perform the administrative task to approve a program, course, and education provider that meets the standards established by the Board.

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 Texas State Board of Plumbing Examiners reviewed these rules at its Board meeting on October 5, 2022 and recommended them for posting in the Texas Register for 30 days of public comment.

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 and improve the efficiency of the rules by making them more streamlined.

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.

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 regulation. 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.

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §§363.2, 363.4 - 363.6, 363.8, 363.10 - 363.19, 363.24, 363.25, 363.27

The Texas State Board of Plumbing Examiners (Board or TS-BPE) proposes amendment to the existing rules at 22 Texas Administrative Code (TAC), Chapter 363, §§363.2, 363.4 - 363.6, 363.8, 363.10 - 363.19, 363.24, 363.25, and 363.27 which concern examination and registration. 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.

HB 636

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 State Board of Education and the Board. Instructors for the new career and technology program are required to be licensed by the Board as a master plumber, journeyman plumber, or plumbing inspector. Instructors providing meaningful instruction are allowed to complete hours of continuing professional education every three years under Section 1301.404 as amended by HB 636. 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. HB 636 removed the ability of field representatives to issue citations, and created a non-renewable, 30-day temporary license for applicants meeting the qualifications for such licensure established in rule. The proposed rules facilitate the statutory changes made by HB 636.

Rule Review Changes

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, initiated a rule simplification initiative to make the rules easier to use and understand by eliminating unnecessary language, adding clarifying language, and restructuring regulations for ease of use. 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

Section 363.2 simply adds that applicants for renewal (as well as original licensure, registration, or endorsement) must qualify by

meeting the applicable requirements, paying the fee, submitting fingerprint and exam passage as is applicable. It adds that master plumbers must submit fingerprints and it further adds that fingerprints are subject to background check using records of the Federal Bureau of Investigations which is provided by Section 1301.3515 of the PLL.

Section 363.3 on qualifications for applicants with military experience is repealed as it was expanded upon and replaced by the adoption of §365.22 which provides provisions for military veterans, spouses, and active military.

Section 363.4 the provision in (b) is stricken as redundant as out-of-state applicants are already considered in subsection (a).

Section 363.5 simplifies the rule by eliminating an unnecessary reference to (a)(2) which no longer exists. Other unnecessary rule references are eliminated to update the rule and simplify it. References to "Board-approval" for education instructors and providers are updated to reflect the approval process for education initiated by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change.

Section 363.6 simplifies the rule by eliminating an unnecessary rule reference and restructuring the rule to make it easier to read. References to "Board-approval" for courses and educational instructors and providers are updated to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change. Lastly, successful completion in a high school career and technology education program as provided by 1301.3542, as implemented by HB 636, is added to exempt those applicants from requirements for earlier licensure, work experience, or instruction.

Section 363.8 eliminates references to Board-approval for courses and educational instructors and providers to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change.

Section 363.10 eliminates a reference to Board-approved for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change.

Section 363.11 eliminates a reference to Board-approved for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change.

Section 363.12 eliminates a reference to Board-approved for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change.

Section 363.13 eliminates a reference to Board-approved for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change.

Section 363.14 eliminates a reference to Board-approved for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers

and instructors is now passed to the executive director under that statutory change.

Section 363.15 eliminates references to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

Section 363.16 updates and simplifies examination by stating that the board will not process incomplete applications and applicants shall receive notification of written or practical exam with the date, time, and place of exam.

Section 363.17 replaces the term "Chief Examiner" with the term "agency" to reflect the operations of agency staff to service the needs of applicants reporting for examination.

Section 363.18 simplifies the rule by eliminating an unnecessary rule reference. This allows the rules to stay current regardless of changes to the rules.

Section 363.19 replaces the term "Chief Examiner" with the term "agency" to reflect the operations of agency staff to service the needs of applicants reporting for examination.

Section 363.24 shows outdated and unnecessary rule references are eliminated, and the rule was restructured to simplify it. References to Board-approved for a training program to reflect the approval process for education implemented by HB 636. The administrative approval of providers and instructors is now passed to the executive director under that statutory change. It also adds "plumbing inspector" to the list of qualified licensees that may teach a CPE course. It allows endorsement education providers to maintain records of course completion for two years.

Section 363.25 eliminates outdated and unnecessary rule references. The rule was restructured to simplify it and make it easier to read.

Section 363.26 is repealed as HB 636 eliminated the RMP training program.

Section 363.27 eliminates references to the Enforcement Committee. The change recognizes that HB 636 amended Section 1301.304 of the PLL to eliminate the Enforcement Committee.

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 to licensure and greater opportunity to expand the population of medical gas piping endorsees by allowing licensees to obtain a medical gas piping installation training by an additional training provider.

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 Patricia 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 which 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.

(3) If a denied applicant fails to submit a timely request for a hearing under paragraph (2) of this subsection, the agency [Enforcement Committee's] decision is rendered final. A denied applicant may not apply for a new registration, license or endorsement before the first anniversary of the date the denial becomes final.

(4) If a denied applicant requests a hearing under paragraph (2) of this subsection, the Board shall determine the applicant's eligibility after reviewing the Proposal for Decision issued by the administrative law judge, and provide the denied applicant a written statement containing:

(A) the reason for the suspension, revocation, denial, or disqualification;

(B) the judicial review procedure provided by §53.052 of the Texas Occupations Code; and

(C) the earliest date the applicant may appeal the action of the licensing authority.

(5) An applicant who is denied after a hearing held under paragraph (2) of this subsection may not apply for a new registration, license, or endorsement before the first anniversary of the date the denial becomes final.

§363.16. Examination Schedule.

(a) The Board shall conduct examinations on a regular basis according to demand.

(b) ~~Applications will be processed and exams will be scheduled on a first-come, first-served basis, unless an application is subject to review under Chapter 53 of the Texas Occupations Code and §363.15 of this chapter.]~~ The Board will not process incomplete applications.

(c) ~~An applicant shall receive notification of written or practical examination with the time, date, and place of examination. [Once an applicant is scheduled for an exam, the Board shall provide the applicant with written notification of the time, date and place of examination.]~~

§363.17. Reporting for Examination.

(a) An applicant shall report promptly at the place of the examination.

(b) If an applicant is scheduled for an examination and cannot appear, the applicant must notify the agency [Chief Examiner] in writing, postmarked no later than ten (10) business days before the scheduled examination date. An applicant who fails to appear or does not give the required notice shall forfeit the examination fee and must submit a new exam application and fee.

(c) An applicant who fails to appear for an exam due to an excused emergency may reschedule once without having to submit a new exam application and fee.

(1) An applicant must submit a written request to reschedule an exam to the agency [Chief Examiner], postmarked no later than five (5) business days after the original examination date, that includes an explanation of the emergency that caused the applicant's failure to appear.

(2) An applicant who does not submit a request to reschedule within the required time period must submit a new exam application and fee.

(d) The following are considered excused emergencies:

(1) a death in the applicant's family;

(2) illness or hospitalization of the applicant or a member of the applicant's immediate family;

(3) an automobile accident on the day of the examination;

(4) any other unplanned event that is serious enough to prevent the applicant from appearing for the exam if approved by the agency [Chief Examiner].

(e) Emergencies will be subject to verification by the agency [Chief Examiner]. Scheduling conflicts due to work will not be considered an excused emergency.

§363.18. Description of Examination.

(a) For each license and endorsement, the Board shall design and conduct a uniform, reasonable examination that includes written questions and practical applications, when appropriate.

(b) ~~The [In addition to the information described in §363.16(e) of this chapter, the]~~ Board shall furnish an applicant with written information explaining the scope of the examination. The Board shall also make the information about the scope of each examination it administers accessible on its website.

§363.19. Non-Standard Examination Accommodations.

(a) An applicant seeking to take an examination with non-standard accommodations shall submit an Applicant Request for Non-Standard Examination Accommodations Form and a Physician or Qualified Licensed Professional Recommendation for Non-Standard Examination Accommodations Form to be used by the agency [Chief Examiner] to determine whether the applicant qualifies for non-standard examination accommodations.

(b) Due to the duties and responsibilities of registrants and licensees to protect the health and safety of the public, the Board shall not allow Examiners to provide oral versions of the written components of examinations.

(1) Examiners may give oral instructions and explanations to individuals taking an examination.

(2) An applicant who has been diagnosed by a physician or other qualified licensed professional as having a specific learning or reading disability, such as dyslexia, may request additional time to complete an examination, a separate examination area, or other reasonable accommodation.

(c) The Board shall reserve the right to make all final decisions regarding reasonable examination accommodations and may require a consultation by an expert of its choosing for a second opinion, if it determines that it is necessary for a particular applicant.

§363.24. Providers and Instructors of Endorsement Training Programs.

(a) ~~Only an approved CPE [a] Course Provider [who is approved to provide CPE courses, under §365.16 of the Board rules] may provide or instruct a training program [required by §§363.9-363.11 of this chapter].~~

~~[(1) Once approved under §365.16 of the Board Rules, a Course Provider is automatically approved to provide the training required by §§363.9-363.11 of this chapter and is not required to submit a separate application to the Board.]~~

~~[(2)] An approved Course Provider may utilize another governmental or industry-recognized entity to provide a portion of the course instruction so long as an approved Course Instructor is also present.]~~

(b) Only a Course Instructor who is approved to instruct CPE courses~~[, under §365.17 of the Board rules]~~ may instruct a training program ~~[required by §363.9 of this chapter]~~ provided that the instructor:

(1) is licensed as a Master Plumber, Plumbing Inspector, or Journeyman Plumber; and

(2) holds the endorsement that corresponds to the training program the Instructor will teach [Medical Gas Piping Installation Endorsement].

{(e) Only a Course Instructor who is approved to instruct CPE courses, under §365.17 of the Board rules may instruct a training program required by §363.10 and §363.11 of this chapter provided that the instructor;}

{(1) is licensed as a Master Plumber, Journeyman Plumber or Plumbing Inspector; and}

{(2) holds the endorsement that corresponds to the training program the Instructor will teach;}

(c) [(d)] A Course Provider or Instructor whose approval [under §365.16 or §365.17 of the Board Rules] is suspended or revoked for any reason, may not provide or instruct any [the] training [required by §§363.9-363.11 of this chapter].

(d) [(e)] All Course Providers and Instructors shall:

(1) adhere to the approved instruction criteria [approved by the Board in this section]; [and]

(2) ensure that only students who complete a course or training receive credit; and [receive the specified number of contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for completing the training required by §§363.9-363.11 of this chapter.]

(3) provide a certificate of completion to a student upon completion of the training.

{(f) The training required by §§363.9-363.11 of this chapter may be provided in increments, as appropriate.}

{(1) A Course Provider or Instructor shall provide a certificate of completion to a student upon completion of the training.}

(c) [(2)] The certificate of completion shall state:

(1) [(A)] the title of the endorsement training program;

(2) [(B)] the names of the Course Provider and Course Instructor;

(3) [(C)] the name and license number of the student; and

(4) [(D)] the date that the instruction was completed.

{(3) A Course Provider shall maintain an electronic copy or record of each certificate of completion for at least two (2) years after the date the certificate was issued.}

(f) [(g)] A Course Provider shall:

(1) notify the Board at least seven (7) days before conducting an endorsement training program or post electronic notice of the class schedule, including the dates(s), time(s), and place(s) class(es) will be held, on the provider's website at least seven (7) days before conducting a class;

(2) perform self-monitoring to ensure compliance with this section and reporting as required [by the Board]; [and]

(3) submit a course outline that includes the number of hours of instruction on each topic included in the outline to the executive director [Board] for approval; and[-]

(4) maintain an electronic copy or record of each certificate of completion for at least two (2) years after the date the certificate was issued.

(g) [(h)] The Board may monitor endorsement training programs to ensure compliance with all applicable laws and Board rules and may deny, suspend, or revoke approval of a Course Provider or Instructor who fails to comply.

(h) [(i)] The executive director [Board] may require a Course Provider to resubmit a previously-approved course outline for an endorsement training program at any time in order to ensure the program meets the current requirements of the plumbing codes, laws, and administrative rules applicable to the specific training program.

§363.25. Providers and Instructors of Training Programs for Journeyman Plumber and Tradesman Plumber-Limited License Applicants.

(a) An approved CPE [Only a] Course Provider or Course Instructor [who is approved to provide or instruct CPE courses under §365.16 or §365.17 of the Board rules] may provide instruction in plumbers professional training related to health and safety, the latest version of all plumbing codes adopted by the board, and water conservation [or instruct the classroom training required by §363.5(a)(2) and §363.6(a)(1) of this chapter].

{(1) Once approved under §365.16 or §365.17 of the Board rules, a Course Provider or Instructor is automatically approved to provide or instruct the training required by §363.5(a)(2) and §363.6(a)(1) of this chapter and is not required to submit a separate application for approval to the Board.}

{(2) A Course Provider or Instructor whose approval under §365.16 or §365.17 of the Board Rules is suspended or revoked for any reason, may not provide or instruct the training required by §363.5(a)(2) and §363.6(a)(1) of this chapter.}

(b) An approved Course Instructor must be authorized by OSHA to provide OSHA instruction. A person who is an OSHA authorized construction trainer, but is not an approved instructor, may teach OSHA instruction through an approved Course Provider, so long as an approved Course Instructor is also present.

{(b) In addition to the meeting the requirements of subsection (a) of this section, a Course Instructor must be authorized by OSHA to provide the training described in §363.5(f)(2) of this chapter. A person who is authorized by OSHA, but is not approved under §365.17 of the Board Rules, may teach the training described in §363.5(f)(2) of this chapter through an approved Course Provider so long as an approved Course Instructor is also present.}

(c) Approved Course Providers and Instructors [Course Providers and Instructors approved to provide or instruct the training required by §363.5(a)(2) and §363.6(a)(1) of this chapter] shall:

(1) teach the approved material; [adhere to the instruction criteria described in §363.5(f)-(g) and §363.6(e) of this chapter;]

(2) ensure that only students who complete the course [the specified number of contact hours of instruction (excluding any time spent on breaks from instruction)] receive credit [for completing the training required by §363.5(a)(2) and §363.6(a)(1) of this chapter];

(3) provide notice of intent to conduct training required by posting the course schedule on the provider's website or sending electronic notice to the at least seven (7) days before instruction; [§363.5(a)(2) and §363.6(a)(1) of this chapter in the same manner required by §365.19(i) of the Board rules; and]

(4) abide by the same standards of conduct required of approved continuing professional education providers; [described in

§365.20 of the Board rules when providing the training required by §363.5(a)(2) and §363.6(a)(1) of this chapter.]

(5) provide a certificate of completion to the student. The certificate of completion shall state:

(A) the names of the Course Provider and Course Instructor;

(B) the name and registration or license number of the student;

(C) the specific instruction and number of hours completed; and

(D) the date that the increment of instruction was completed; and

(6) maintain an electronic copy or record of each certificate of completion for at least six (6) years after the date the certificate was issued.

~~[(d) The training required by §363.5(a)(2) and §363.6(a)(1) of this chapter may be provided in increments, as appropriate.]~~

~~[(1) The Course Provider or Instructor shall provide a certificate of completion to the student for each increment completed.]~~

~~[(2) The certificate of completion shall state:]~~

~~[(A) the names of the Course Provider and Course Instructor;]~~

~~[(B) the name and registration or license number of the student;]~~

~~[(C) the specific instruction and number of hours completed; and]~~

~~[(D) the date that the increment of instruction was completed.]~~

~~[(3) The Course Provider shall maintain an electronic copy or record of each certificate of completion for at least six (6) years after the date the certificate was issued.]~~

~~(d) [(e)] An applicant for examination is responsible for the safekeeping of each original certificate of completion earned by the applicant. [until such time that the applicant:]~~

~~[(1) has completed the training required under §363.5(a)(2) and §363.6(a)(1) of this chapter;]~~

~~[(2) has met all other requirements under §363.5 or §363.6 of this chapter to qualify to take the Tradesman Plumber-Limited or Journeyman Plumber examination; and]~~

~~[(3) has submitted the original certificates of completion along with the appropriate examination application and other required documentation to the Board.]~~

~~(c) [(f)] Providing false certificates of completion or any other false information related to the training required by [§363.5(a)(2) and §363.6(a)(1) of this chapter to] the Board may result in:~~

~~(1) the denial of the applicant's examination application;~~

~~(2) disciplinary action, as provided by the Plumbing License Law, Board Rules, or other laws of this state; or~~

~~(3) both.~~

~~(f) A Course Provider or Instructor whose approval is suspended or revoked for any reason may not provide instruction.~~

§363.27. *Criminal Conviction Guidelines.*

(a) Licensed individuals are required to exercise independent judgment and carry out their duties and responsibilities without risking the health, safety, welfare, and property of the public. It is estimated that the majority of Plumber's Apprentices are working toward licensure; therefore, the Board has determined that the duties and responsibilities listed in subsection (b) of this section apply to both licensees and registrants.

(b) After considering the factors set forth in §53.022 of the Texas Occupations Code, the Board has identified the following, non-exhaustive list of duties and responsibilities of individuals performing plumbing or plumbing inspections:

(1) entering a consumer's home or a place of business, including, but not limited to:

(A) private residences;

(B) apartment complexes;

(C) schools;

(D) child care facilities;

(E) elder care facilities;

(F) health care facilities;

(G) financial institutions; and

(H) businesses where valuable merchandise is stored and sold;

(2) making personal contact with consumers and their families, including elderly persons and minor children;

(3) engaging in contractual and financial transactions with consumers;

(4) representing the employer and taking responsibility for vehicles and tools provided by the employer;

(5) ensuring safety when working with hazardous, explosive, or volatile materials;

(6) complying with laws, rules, ordinances, and codes that regulate plumbing; and

(7) working with officials who are carrying out their duties to enforce laws, rules, ordinances, and codes that regulate plumbing, including:

(A) Field Representatives of the Board;

(B) Plumbing Inspectors; and

(C) other law enforcement officers.

(c) Due to the nature of the duties and responsibilities stated in subsection (b) of this section, the Board has determined that the following offenses are directly related to plumbing (list is not exhaustive):

(1) Any crime of a sexual nature that requires the convicted person to be registered as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure, including:

(A) Aggravated Sexual Assault;

(B) Aggravated Rape;

(C) Sexual Assault;

(D) Rape;

(E) Statutory Rape;

(F) Indecency with a Child (including exposure);

- (G) Prohibited Sexual Conduct;
- (H) Sexual Performance by a Child;
- (I) Possession or Promotion of Child Pornography;
- (J) Aggravated Kidnapping (with the intent to commit an illegal act of a sexual nature);
- (K) Kidnapping (with the intent to commit an illegal act of a sexual nature);
- (L) Unlawful Restraint (with the intent to commit an illegal act of a sexual nature);
- (M) Burglary (with the intent to commit an illegal act of a sexual nature);
- (N) Indecent Exposure;
- (O) Public Lewdness; or
- (P) Improper Photography or Visual Recording.

(2) Any crime of a sexual nature regardless of whether the convicted person is required to be registered as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure;

- (3) Capital Murder;
- (4) Murder;
- (5) Criminally [~~Criminal~~] Negligent Homicide;
- (6) Manslaughter;
- (7) Aggravated Kidnapping;
- (8) Kidnapping;
- (9) Unlawful Restraint;
- (10) Injury to a Child, Elderly Individual, or Disabled Individual;
- (11) Burglary of a Habitation;
- (12) Burglary of a Building;
- (13) Burglary of an Automobile;
- (14) Robbery;
- (15) Theft;
- (16) Fraud;
- (17) Forgery;
- (18) Arson;
- (19) Aggravated Assault of a Police Officer (or other public official);
- (20) Aggravated Assault;
- (21) Assault;
- (22) Illegal Drug Related Crimes;
- (23) Terroristic Threat; or
- (24) Any criminal violation of laws or ordinances that regulate plumbing or the practice of plumbing.

(d) The agency [~~Enforcement Committee~~] shall use the following levels of risk in determining the fitness of an applicant who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The levels of risk are listed in order from highest to lowest. The agency [~~Enforcement Committee~~] shall con-

sider those applicants with convictions of a sexual nature or first degree felony to be the highest risk, and those applicants who have a conviction other than that of a sexual nature or first degree felony, and who have completed all required consequences of the conviction more than five years prior to the date of application, to be the lowest risk.

(1) Level One - Applicants who have:

(A) a conviction of a sexual nature listed in subsections (c)(1) and (2) of this section; or

(B) a conviction for a first-degree felony.

(2) Level Two - Applicants who have a conviction for a second-degree felony.

(3) Level Three - Applicants who have a conviction other than specified in Level One or Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed less than five (5) years prior to the date of application, or are still being completed.

(4) Level Four - Applicants who have convictions other than specified in Level One and Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed more than five (5) years prior to the date of application. Written proof of completion from the court, probation or parole officer must be submitted by the applicant.

(e) Applicants with convictions that place them in more than one level of risk[,] shall be classified using the highest applicable level of risk.

(f) Applicants with multiple convictions will be considered an increased risk, depending on the number and types of convictions.

(g) The agency [~~Enforcement Committee~~] shall use these guidelines and follow the requirements of §363.15 of this chapter when reviewing applications for registration, examination, and renewal of registrations, licenses, and endorsements, to determine the fitness of applicants for licensure.

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 October 13, 2022.

TRD-202204093

Patricia Latombe

General Counsel

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: November 27, 2022

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



22 TAC §363.3, §363.26

The Texas State Board of Plumbing Examiners (Board or TS-BPE) proposes repeals to the existing rules at 22 Texas Administrative Code (TAC), Chapter 363, §363.3 and §363.26 which concern examination and registration. The proposed repeals are referred to as the "proposed repeals."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed repeals 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 updating and simplifying the rules as part of its four-year rule review. 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. 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 initiated a rule simplification initiative to make the rules easier to use and understand by eliminating unnecessary language, adding clarifying language, and restructuring regulations for ease of use. Unnecessary and outdated rules are eliminated to update the current rules as part of that review.

SECTION BY SECTION SUMMARY

§363.3 on qualifications for applicants with military experience is repealed as it was expanded upon and replaced by the adoption of §365.22 which provides provisions for military veterans, spouses, and active military.

§363.26 is repealed as HB 636 eliminated the RMP training program.

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 repeals 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 repeals. The Executive Director has further determined that for the first five-year period the proposed repeals 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 repeals.

PUBLIC BENEFITS

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

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

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

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

Given that the proposed repeals 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 repeals are in effect, the Board has determined the following: (1) the proposed repeals do not create or eliminate a government program; (2) implementation of the proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed repeals

do not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed repeals do not require an increase or decrease in fees paid to the agency; (5) the proposed repeals do not create a new regulation; (6) the proposed repeals do not expand, limit, or repeal an existing regulation; (7) the proposed repeals do not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed repeals do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed repeals. 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 repeals 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 repeals. 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 repeals. 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 repeals may be submitted by mail to Patricia Latombe at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@ts-bpe.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.

§363.3. *Qualifications for Applicants with Military Experience.*

§363.26. *Training Program for Responsible Master Plumber Applicants.*

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 October 17, 2022.

TRD-202204114

Patricia Latombe

General Counsel

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: November 27, 2022

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

