

Office of the Governor
Regulatory Compliance Division

Rule Submission Memorandum Template
Updated October 9, 2020

To: Regulatory Compliance Division Director

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

Date: October 1, 2021

Subject: 22 Texas Administrative Code § 365.22 relating to Licensing Procedures for Military Spouses and 22 Texas Administrative Code §§ 365.24 relating to Continuing Education and Training Exemptions.

The Texas State Board of Plumbing Examiners ("TSBPE") has proposed a quadrennial rule review of Chapter 365 and new rule 22 Tex. Admin. Code § 365.24, as published in the August 6, 2021 issue of the *Texas Register*. The Regulatory Compliance Division of the Office of the Governor has identified existing rule 22 Tex. Admin. Code § 365.22 and proposed rule 22 Tex. Admin. Code § 365.24 as possibly having anticompetitive market effects. Accordingly, the TSBPE is submitting this memo to the Regulatory Compliance Division for review. The PDF version of the preamble and text of the proposed rule as published in the *Texas Register*, and the language of any amendments to the proposed rule that the Texas State Board of Plumbing Examiners intends to adopt, are attached to this memorandum.

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

1. Briefly describe the proposed rules. Existing board rule § 365.22 implements Tex. Occ. Code § 55.004(e). Proposed new board rule § 365.24 principally aims to exempt from penalty licensees who cannot meet their continuing education requirements because they are serving as military service members as provided by Tex. Occ. Code §§ 55.002, 1301.404(f), 1301.405(c). The proposed rule also exempts staff and continuing education and training instructors as both groups will spend a considerable amount of time reviewing and/or teaching continuing education materials and thus having them take continuing education courses would provide limited additional value to them or the public.

2. What is the purpose of the proposed rule? To licensee military spouses and to exempt persons from continuing education and training requirements in limited circumstances that serve the public interest.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking. While Tex. Occ. Code §55.003 provides military service members are entitled to two years of additional time to complete continuing education requirements, those two additional years runs up against the statutory requirement in Tex. Occ.

Code § 1301.403(d) that prohibits a person whose license has been expired for two years from renewing their license. The average term of service is four years of active duty followed by four years in a reserve unit, with the possibility of being recalled to active duty, if necessary. <https://www.todaysmilitary.com/faq>. Accordingly, the two additional years provided under Chapter 55 of the Texas Occupations Code to complete continuing education is not sufficient in most circumstances. While some military service members could avail themselves of Tex. Occ. Code 55.004, which allows for alternative licensing for military service members who held a license within the last five years, there would still be a break in their licensure history, and continuous licensure is a statutory requirement to be able to transfer one's license number to a relative under Tex. Occ. Code § 1301.406(a). Exempting all (active duty) military service members from the continuing education requirement removes the most time consuming aspect of the renewal process and provides military service members with the same opportunity to transfer their license in the future that other licensees enjoy. Additionally, exempting military service members from continuing education requirements will assist military service members transitioning back to civilian life because they will not be immediately confronted with the time and expense of continuing education upon their return to the profession.

4. Describe the legal authority for the proposed rule. Tex. Occ. Code § 1301.251(2), provides that the board has a general duty to "adopt and enforce rules necessary to administer" Chapter 1301 of the Texas Occupations Code.

a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s). Yes. 22 Tex. Admin. Code § 365.22 is required by Tex. Occ. Code § 55.004(a). 22 Tex. Admin. Code § 365.24 is required by Tex. Occ. Code § 55.002 to the extent that it relates to military service members and authorized by Tex. Occ. Code §§ 1301.404(f) and 1301.405(c) in general.

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 with general authority to adopt rules. Tex. Occ. Code 55.002 calls for the board to adopt rules "to exempt an individual who holds a license issued by the agency from any increased fee or *other penalty* imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member." The board construes "other penalty" liberally in favor of its licensees who are military service members to include among other things breaks in licensure, which could negatively impact a licensee's future ability to transfer their license. Tex. Occ. Code 55.004(a) requires the board to "adopt rules for the issuance of the license to an applicant who is a military service member, military veteran, or military spouse." Finally, Tex. Occ. Code §§ 1301.404(f) and 1301.405(c) provide the board the authority to exempt persons from continuing education and training requirements if the board determines that the exemption is in the public interest. Given this general and explicit statutory authority, these rules are within the board's purview to adopt.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data

collected or analyzed. Staff placed a draft of the rule on its website to solicit public comment.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm. Existing board rule 22 Tex. Admin. Code § 365.22 is intended to be readopted to carry out the Legislature's imperative in Tex. Occ. Code §55.004 to adopt a rule and prevent the harm of prohibiting qualified military spouses from practicing their profession. Proposed board rule 22 Tex. Admin. Code § 365.24 is intended to address the harm of burdening military service members with the cost and expense of accumulated continuing education and training while they are serving on active duty by preventing the hours of continuing education and training from accumulating in the first place by exempting military service members from this requirement. It will also prevent military service members from having a break in the continuous licensure of their license should the two additional years provided by Tex. Occ. Code §55.002 not prove to be enough time for them to complete the continuing education required.

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. Both rules are aimed at assisting military spouses and military service members to stay in the profession whether they are moving from one jurisdiction to another or transitioning back into civilian life.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code). These rules will have a positive effect on market competition by making it easier for military spouses and military service members to stay in the profession which will increase competition within the profession.

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. No specific impact on market competition is expected as active duty military service members are less than one half of one percent of the U.S. population. <https://www.cfr.org/backgrounder/demographics-us-military>. These rules are consistent with state policy as established by the Legislature in state statute, namely Tex. Occ. Code §§ 55.002, 55.004.

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

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

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule? Staff had intended to readopt 22 Tex. Admin. Code § 365.22 as is, but has drafted proposed amendments to encompass not just military spouses, but military service members and military veterans as well should the Regulatory Compliance Division wish to review those amendments.

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.

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Board of Plumbing Examiners

Title 22, Part 17

Chapter 365 Proposed Rule Review

The Texas State Board of Plumbing Examiners ("Board") files this notice of its intent to review Chapter 365, concerning licensing and registration, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Board as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Board.

Written comments regarding the review may be submitted by mail to Helen Kelley at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with the subject line "Chapter 365 Rule Review." All comments must be received within 30 days of publication of this notice in the *Texas Register*.

TRD-202102849

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Filed: July 26, 2021



Texas Administrative Code

TITLE 22

PART 17

CHAPTER 365

RULE §365.22

EXAMINING BOARDS

TEXAS STATE BOARD OF PLUMBING EXAMINERS

LICENSING AND REGISTRATION

Licensing Procedures for Military Spouses

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- (a) The Board may issue an initial license or registration to an applicant who is a military spouse and holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license or registration.
- (b) The Board may reinstate the license or registration of an applicant who is a military spouse if the license or registration was current at some point during the five (5) years preceding the date the application is submitted.
- (c) After reviewing the credentials of an applicant who meets the criteria set forth in subsections (a) or (b) of this section, the Executive Director may waive any prerequisite for obtaining a license or registration. The Executive Director may also waive a prerequisite if the applicant holds a current license issued by another jurisdiction that has a reciprocity agreement with Texas for the license.
- (d) In addition to any required application(s), an individual who meets the criteria set forth in subsection (a) or (b) of this section, must submit proof that his or her spouse is currently serving on active duty.
- (e) In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the Board may use alternative methods when reviewing an application submitted by an individual who meets that criteria set forth in subsection (a) or (b) of this section. The alternative method(s) may take into consideration any combination of the following:
- (1) education;
 - (2) continuing education;
 - (3) examinations (written and/or practical);
 - (4) letters of good standing;
 - (5) letters of recommendation;
 - (6) work experience; or
 - (7) other relevant information approved by the Executive Director.
- (f) Any information requested in connection with an application reviewed using the method described in subsection (e) of this section shall be submitted in a form and manner prescribed by the Board.
- (g) The Board shall process an application submitted by an individual who meets the criteria in subsection (a) or (b) of this section and issue the corresponding license or registration as soon as practicable.

Source Note: The provisions of this §365.22 adopted to be effective September 1, 2017, 42 TexReg 3774

cumulated continuing education or training requirements before their license, endorsement or registration becomes unrenuable because it has been expired for more than two years. Tex. Occ. Code §55.003; Tex. Occ. Code §1301.403(d). Exempting military service members will also ensure that military service members who serve on active duty for more than two years are able to retain their license, registration or endorsement.

Fiscal Impact on State and Local Government

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

Public Benefits

The Executive Director has determined that for each of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be the streamlining of the renewal process by clarifying what exemptions are available and ensuring that military service members on active duty are able to keep their license, endorsement or registration.

Probable Economic Costs to Persons Required to Comply with the Rule

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

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the new rule is in effect, the agency has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency (5) the rule does not create a new regulation; (6) the rule does not expand or limit an existing regulation; (7) the rule does increase the number of individuals subject to the rule's applicability, specifically it exempts active duty military service members from continuing education requirements rather than grant them a two year extension; and (8) the rule does not adversely affect this state's economy.

Local Employment Impact Statement

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

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

The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to



22 TAC §365.24

The Texas State Board of Plumbing Examiners (Board) proposes new rule 22 Texas Administrative Code (TAC) §365.24, relating to Continuing Education and Training Exemptions.

Background and Justification

Texas Occ. Code §1301.404(f) and §1301.405(c) provide for the Board to exempt certain person from continuing education and training requirements. Currently, exemptions are contained in Rule 365.5 Renewal of License, Registration or Endorsement; however; as part of ongoing clarification and organization efforts aimed at making its rules more accessible to the general public, exemptions within 22 TAC §365.5 are being made in a separate and distinct new 22 TAC §365.24 so that the information contained in each rule is more accurately conveyed by each rule's title. Additionally, by exempting military service members rather than merely granting them an extension to complete continuing education requirements the Board will ensure that military service members who rely on Chapter 55 of the Texas Occupations code do not unintentionally find that they cannot complete the ac-

persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

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

Environmental Rule Analysis

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

Public Comments

Written comments regarding the new rule may be submitted by mail to Helen Kelley at P.O. Box 4200, Austin, Texas 78765-4200, or by email to rule.comment@tsbpe.texas.gov with the subject line "365.24 New Proposed Rule." All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This new rule is proposed under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code. This new rule is also proposed under the authority of Tex. Occ. Code §1301.404(f) and §1301.405(c), which authorizes the Board to exempt certain persons from continuing education and training requirements.

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

§365.24. Continuing Education and Training Exemptions.

The Board finds that it is in the public interest to exempt from annual Continuing Professional Education and Training requirements:

(1) a military service member on active duty who submits documentation establishing active duty status during the period in which the military service member is claiming an exemption;

(2) a Board employee who reviews submitted course materials to determine if the materials meet the minimum standards for curriculum or who monitors courses to ensure compliance with the plumbing license law and Board rules; and

(3) a course instructor approved by the Board for the period in which they are claiming an exemption.

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

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

TRD-202102851

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: September 5, 2021

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