Proposed Rules

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

Title 1. Administration

Part 7. State Office of Administrative Hearings

Chapter 155. Rules of Procedure

Subchapter J. Disposition of Case

1 TAC §155.503

The State Office of Administrative Hearings (SOAH) proposes amendments to Texas Administrative Code, Title 1, Part 7, Chapter 155, Rules of Procedure, Subchapter J, §155.503, concerning Dismissal Proceedings.

Explanation of Proposed Rules

SOAH recently amended its Rules of Procedure in Chapter 155, including amendments to §155.503 regarding the dismissal of contested case proceedings. The current rule in §155.503(c)(3) now provides that when a case is dismissed for a failure to prosecute a matter, the case will be remanded to the referring agency, unless the case is reinstated by order of the presiding judge in response to a timely motion for reinstatement.

While the procedure described in §155.503(c)(3) is suitable for most cases in which the one or more parties fail to prosecute their case, SOAH's administrative law judges recommend that the rule should be clarified to address the procedure to be followed where SOAH is authorized by law to render a final decision. Accordingly, the proposed amendments to §155.503(c)(3) would clarify that: (A) if SOAH is not authorized to render a final decision, then the case will be remanded to the referring agency; and (B) if SOAH is authorized to render a final decision, then SOAH will conclude its involvement in the matter and surrender jurisdiction. Both of these outcomes are supported by Texas Government Code, §2003.051.

Fiscal Note

Public Benefit. Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to the general public, state agencies, attorneys, and parties appearing at SOAH because the proposed rule amendments will provide a clearer understanding of procedures regarding dismissals based on a failure to prosecute.

Probable Economic Costs. Chief Judge Monson has determined that for the first five-year period the proposed rule amendments are in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of the proposed rules. Additionally, Chief Judge Monson has determined that the proposed rule amendments do not have foreseeable implications relating to the costs or revenues of state or local government.

Fiscal Impact on Small Businesses, Micro-Businesses, and Rural Communities. There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule amendments. Because the agency has determined that the proposed rule amendments will have no adverse economic effects on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and Regulatory Analysis, as provided in Government Code §2006.002, is not required.

Local Employment Impact Statement. Chief Judge Monson has determined that the proposed rule amendments will not affect the local economy so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

Government Growth Impact Statement. Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For the first five years the proposed rule amendments will be in effect, the agency has determined the following:

1. The proposed rule amendments do not create or eliminate a government program.

2. Implementation of the proposed rule amendments does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rule amendments does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule amendments do not require an increase or decrease in fees paid to the agency.

5. The proposed rule amendments do not create a new regulation.

6. The proposed rule amendments do not expand, limit, or repeal existing regulations.

7. The proposed rule amendments do not increase the number of individuals subject to the rule's applicability.

8. The proposed rule amendments do not positively or adversely affect this state's economy.

Taking Impact Assessment. Chief Judge Monson has determined that the proposed rule amendments will not affect private real property interests, therefore SOAH is not required to prepare a takings impact assessment under Government Code §2007.043.

Submission of Comments
Written comments on the proposed rules may be submitted to Angela Pardo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: questions@soah.texas.gov with the subject line "Default Rule Comments." The deadline for receipt of comments is 5:00 p.m. on April 12, 2021. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules have been published in the Texas Register.

Statutory Authority

The rule amendments are proposed under: (i) Texas Government Code §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; and (ii) Texas Government Code §2003.051, which provides that a state agency that has referred a matter to the office in which the office will conduct a hearing may not take any adjudicative action relating to the matter until the office has issued its proposal for decision or otherwise concluded its involvement in the matter.

Cross Reference to Statute


§155.503. Dismissal.

(a) Voluntary dismissal or non-suit.

(1) At any time before the date set by the judge for close of the record, the party that bears the burden of proof may move to dismiss a case or take a non-suit. Notice of the dismissal or non-suit shall be served on all parties in accordance with §155.105 of this chapter.

(2) Upon filing of a motion to dismiss or take a non-suit, the judge shall promptly dismiss the case from SOAH's docket, unless such disposition would prevent a party from seeking relief to which it would otherwise be entitled.

(b) Agreed dismissal; settlement.

(1) At any time before the date set by the judge for close of the record, the parties may jointly move to dismiss a case in accordance with the agreement of the parties. Such motion shall be signed by the parties or their attorneys and filed with SOAH or entered on the record at the hearing or prehearing conference in accordance with §155.415 of this chapter.

(2) In accordance with an agreement of the parties, a severable portion of the proceeding may be disposed of under paragraph (1) of this subsection if it will not prejudice the proceedings as to any remaining parties.

(c) Failure to prosecute.

(1) A contested case may be dismissed in whole or in part for want of prosecution if the party seeking affirmative relief fails to prosecute the case in accordance with a requirement of statute, rule, or order of the judge. The order of dismissal shall:

(A) explain the party's failure to prosecute; and

(B) inform the party of an opportunity to seek reinstatement of the case; and

(C) inform the party that the case is dismissed and will be remanded to the referring agency unless:

(i) the party files a motion to reinstate the case on the docket not later than 15 days after the issuance of the order; and

(ii) the motion to reinstate specifies the basis for the motion and addresses the grounds for dismissal stated in the judge's order.

(2) The judge may grant a motion to reinstate the case if the moving party shows good cause for the failure to prosecute.

(3) Unless the judge grants a motion to reinstate the case:

(A) in a dismissal proceeding where SOAH is not authorized by law to issue a final decision, the case will be remanded to the referring agency after the expiration of 15 days from the date of the order.

(B) in a dismissal proceeding where SOAH is authorized by law to render a final decision, the judge will conclude SOAH's involvement in the matter and surrender jurisdiction after the expiration of 15 days from the date of the order.

(4) Dismissal under this section removes the case from the SOAH docket without a decision on the merits.

(d) Other Dismissal Actions.

(1) The judge may dismiss a case or a portion of the case from SOAH's docket for:

(A) lack of jurisdiction over the matter by the referring agency;

(B) lack of statute, rule, or contract authorizing SOAH to conduct the proceeding;

(C) mootness of the case;

(D) failure to state a claim for which relief can be granted;

(E) unnecessary duplication of proceedings; or

(F) abatement of the case for a period longer than 120 days. Dismissal under this subsection removes the case from the SOAH docket without prejudice to relitigating the case.

(2) The judge may issue an order in response to a party's motion or after the judge notifies the parties of an intent to dismiss a case and allows time for responses.

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 March 1, 2021.

TRD-202100841
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-6624

46 TexReg 1578  March 12, 2021  Texas Register
BACKGROUND. The Commission proposes amendments to §8.1 to expand TexShare affiliate membership to libraries that are components of federally recognized American Indian tribes or institutions of higher education accredited by accrediting agencies recognized by the Texas Higher Education Coordinating Board (THECB).

The TexShare consortium is a resource-sharing consortium operated as a program within the Commission for institutions of higher education and for public libraries, libraries of nonprofit corporations, and other types of libraries. Government Code §441.224 authorizes the Commission, by rule, to admit other types of libraries as members or as affiliated members. The Commission adopted §8.1 to clarify definitions related to the consortium and specify the criteria for membership and affiliate membership in TexShare.

Under §8.3, Consortium Membership and Affiliated Membership, public school districts and other eligible nonprofit libraries may apply for affiliate membership. Section 8.1(14) defines "eligible nonprofit library" as a library not qualified for consortium membership by virtue of being a public library, library of clinical medicine, library component of an institution of higher education, or public school district that is (A) physically located in Texas or able to provide services exclusively to Texas residents; (B) a specified type of non-profit organization; (C) a component of one of the listed types of entities; and (D) provides library services as defined in the rule. The proposed amendment to §8.1(14)(C)(i) would broaden the criteria for libraries that are components of institutions of higher education by removing the requirement that the institution of higher education hold a certificate of authorization from THECB. Instead, a library that is a component of an institution of higher education could be eligible if the institution is accredited by an accrediting agency recognized by THECB. The effect of this amendment would be that in addition to library components of institutions that hold certificates of authorization from THECB, library components of institutions that are exempt from THECB regulation may be eligible for affiliate membership, so long as they are accredited by a TCHBE recognized accreditor. The list of THECB recognized accreditors is available at the following link: http://reportcenter.highered.texas.gov/agency-publication/miscellaneous/private-post-secondary-institution-accrediting-agencies-2018/.

The proposed amendments to §8.1(14)(B)(iv) and §8.1(14)(C)(vii) would clarify the criteria for tribal libraries. An omission in §8.1(14)(C) had previously excluded these institutions from affiliate membership.

Additional nonsubstantive amendments clarify rule language and update punctuation for consistency with Texas Register preferences.

PROPOSED RULES  March 12, 2021  46 TexReg 1579
the proposed rules do not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendment and new rule may be submitted to Jennifer Peters, Director, Library Development and Networking, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78771, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the Texas Register.

STATUTORY AUTHORITY. This new rule is proposed under Government Code, §441.224, which authorizes the Commission to admit other types of libraries as members or as affiliated members of the consortium by rule.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter M.

§8.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Institution of higher education--A public junior college certified by the Texas Higher Education Coordinating Board as described by Education Code, §61.063; a general academic teaching institution as defined by Education Code, §61.003(3); a medical and dental unit as defined by Education Code, §61.003(5); a public technical institute as defined by Education Code, §61.003(7); a private or independent institution of higher education as defined by Education Code, §61.003(15); or a public state college as defined by Education Code, §61.003(16).

(2) TexShare Annual Report Survey--A report submitted to the commission each year by TexShare members and affiliate members. The report shall include questions concerning satisfaction with TexShare membership and programs. It may also be used to provide updates to institutional program participation contacts.

(3) Commission--The Texas State Library and Archives Commission.


(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122.

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as:

(i) Library is open and staffed a minimum of 45 hours per week; and

(ii) Staff includes a minimum of one full-time equivalent professional librarian (as defined in 13 TAC §1.84, relating to Professional Librarian); and

(iii) Library employs a library director for at least 40 hours per week in library duties; and

(iv) Services include circulation of materials, reference services, use of computers to access information sources, databases, or other similar services; and

(v) An institutionally-approved collection development policy updated at least every five years.

(B) Extensive collections in the fields of clinical medicine and the history of Medicine is defined as follows:

(i) Clinical medicine is defined as materials in the "W" category of the National Library of Medicine (NLM) classification scheme (www.nlm.nih.gov/clas/index.html).

(ii) History of Medicine is defined as:

(I) Materials fitting the scope of the NLM classification scheme (www.nlm.nih.gov/clas/index.html) under WZ-History of Medicine, Misc or in the NLM classification scheme under history of a particular medical subject (e.g. history of surgery (WO 11), history of dermatology (WR 11), history of gynecology (WP 11), etc.); or

(II) Unique archival materials (print materials, historical artifacts, and other resources) related to institutional history, or reflecting historically significant contributions of persons or institutions, or history of a particular area of health care.

(iii) "Extensive collections" is defined as a minimum of 12,000 library resources in the field of clinical medicine and history of medicine, in print and in electronic formats, comprised of books, journal titles, technical reports, videos, or databases.

(8) Public school district--Any school district or open enrollment charter school accredited by the Texas Education Agency under Texas Education Code, Section 11.001.

(9) Public school library--An organized collection of printed, audiovisual and/or computer resources in a public school or public school campus (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--A public school district staff member holding a current school librarian certificate issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(11) Certified staff member--A public school district staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(12) Consortium membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(a)(1) of this chapter. Libraries meeting these requirements are referred to as "members" or "consortium members."

(13) Affiliate membership refers to membership held by public school districts and by eligible nonprofit libraries meeting the criteria specified in §8.3(a)(2) of this chapter. Libraries admitted under this section are referred to as "affiliate members."

(14) Eligible nonprofit library--A library not qualified for consortium membership by virtue of being a public library, library of clinical medicine, library component of an institution of higher education, or public school district that [is]:

(A) Is physically located in Texas, or if physically located outside of Texas, capable of providing online library services exclusively to Texas residents;

(B) Is established as a nonprofit organization or administrative subdivision of a nonprofit organization:
(i) under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.); [or]

(ii) recognized as exempt from federal income tax under section 501(c)(3) of the U.S. Internal Revenue Code; [or]

(iii) operated by a unit of local, state, or federal government; or

(iv) operated by a federally recognized American Indian tribe: [a designated tribal community library.]

(C) Is a [A] component of one of the following:

(i) An institution accredited by an accrediting agency recognized by [holding a current certificate of authorization from] the Texas Higher Education Coordinating Board as specified in 19 TAC §7.6 [§7.22]; [or]

(ii) Other agency of higher education as defined by Education Code, §61.003 (6); [or]

(iii) A full member of the National Network of Libraries of Medicine, South Central Region; [or]

(iv) The National Archives and Records Administration; [or]

(v) A U.S. Department of Defense installation; [or]

(vi) A non-public school accredited by an agency recognized by the Texas Private School Accreditation Commission; [or]

(vii) A federally recognized American Indian tribe; and

(D) Provides library services, defined as:

(i) Provides services including circulation of materials, reference services, and use of computers to access information sources; [and]

(ii) Is open and staffed a minimum of 20 hours per week; and

(iii) Employs a library director for at least 20 hours per week in library duties.

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 24, 2021.

TRD-202100773
Sarah Swanson
General Counsel
Texas State Library and Archives Commission

Earliest possible date of adoption: April 11, 2021

For further information, please call: (512) 463-5591

CHAPTER 155. RULES RELATING TO STANDARDS OF PRACTICE

22 TAC §155.3

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new rule 22 TAC §155.3, Certain Uses of Logo or Name Prohibited.

The proposed new rule prohibits certain uses of the Board Logo and Name.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed new rule. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed new rule is in effect the public benefits anticipated as a result of enforcing the proposed new rule will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

create or eliminate a government program;
require the creation of new employee positions or the elimination of existing employee positions;
require an increase or decrease in future legislative appropriations to the agency;
require an increase or decrease in fees paid to the agency;
create a new regulation;
expand, limit or repeal an existing regulation; and
increase the number of individuals subject to the rule’s applicability.

For each year of the first five years the proposed new rule is in effect, there is no anticipated impact on the state’s economy.

Comments on the proposed new rule may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The new rule is proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§155.3. Certain Uses of Logo or Name Prohibited.
A license holder, certificate holder, registrant or provider may not use all or part of the logo or name of the Board or another governmental agency in a manner that implies that the person:

(1) is a governmental agency;
(2) is endorsed by the Board or other agency other than as a license holder, certificate holder, registrant, or provider; or
(3) holds a special status that the Board or other agency has not granted.

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 26, 2021.

TRD-202100823
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-3652

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER F. [NEGOTIATED] RULEMAKING.

22 TAC §157.51

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new rule 22 TAC §157.51, concerning Petition for Adoption of Rules.

The proposed new rule §157.51 implements a statutory requirement that state agencies must prescribe by rule the form for a petition for adoption of rules and the procedure for submission, consideration, and disposition.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or adminstering the proposed new rule. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed new rule is in effect the public benefits anticipated as a result of enforcing the proposed new rule will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:
--create or eliminate a government program;
--require the creation of new employee positions or the elimination of existing employee positions;
--require an increase or decrease in future legislative appropriations to the agency;
--require an increase or decrease in fees paid to the agency;
--create a new regulation;
--expand, limit or repeal an existing regulation; and
--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed new rule is in effect, there is no anticipated impact on the state's economy.

Comments on the proposed new rule may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The new rule is proposed under Texas Occupations Code §1103.154, which authorizes TALCB to adopt rules relating to professional conduct and Texas Government Code §2001.021, which requires state agencies to adopt by rule procedures for petitioning for the adoption of rules.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.51. Petition for Adoption of Rules.

(a) Any interested person, as defined by §2001.021, Government Code, may request a rule be adopted, amended, or repealed by submitting a written petition to the Board.

(b) The written petition must include:

(1) the person's full name, mailing address, telephone number, and email address;
(2) a brief summary of the proposed action and its desired effect;
(3) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Board the reasons and arguments on which the person is relying;
(4) if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted; and
(5) if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(c) The written petition must be submitted to the Board by:

(1) delivering the petition in person to the Board's headquarters;
(2) sending the petition via email to general.counsel@talcb.texas.gov; or
(3) sending the petition via fax to (512) 936-3788, ATTN: General Counsel.

(d) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the Executive Committee, in consultation with Board staff, shall review the petition and either:
(1) deny the petition in writing, stating the reasons for the denial and advising of other methods the interested person may communicate his or her concerns to the Board; or

(2) initiate a rulemaking proceeding under Chapter 2001, Government Code, by directing that the petition be placed on the next agenda for discussion by:

(A) the Board; or

(B) the appropriate Board committee.

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 26, 2021.

TRD-202100824
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-3652

CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.155

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.155, concerning Periodic Review of Appraisals.

The proposed amendments specify that an appraiser performing an appraisal review must perform a scope of work sufficient to ensure the appraisal subject to review complies with USPAP and remove specified requirements for a minimum scope of work.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the amendments and rules will:

--require the creation of new employee positions or the elimination of existing employee positions;
--require an increase or decrease in future legislative appropriations to the agency;
--require an increase or decrease in fees paid to the agency;
--create a new regulation;
--expand, limit or repeal an existing regulation; and
--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.


(a) A license holder must review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standards 3 and 4 of USPAP of:

(1) one of the first five appraisals performed for the license holder by each appraiser, prior to making a sixth assignment; and

(2) a total of two percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.

(b) Appraisal reviews performed pursuant to subsection (a)(1) of this section will be counted toward the calculation of two percent for the purposes of subsection (a)(2) of this section.

(c) An appraisal review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act to be registered with the Board.

(d) An appraiser is qualified to perform an appraisal review within the meaning of §1104.153 of the AMC Act if the appraiser conducting the review:

(1) is licensed or certified to act as an appraiser in Texas or another jurisdiction;

(2) holds the appropriate credential to have performed the appraisal being reviewed; and

(3) does not develop an opinion of value.

(e) To satisfy the requirements of the AMC Act and this rule, a license holder performing an appraisal review must perform a scope of work that is sufficient to ensure that methods, assumptions, data sources, and conclusions of the appraisal subject to review comply with USPAP [develop a credible opinion about the completeness, accuracy,
adequacy, relevance and reasonableness of the work under review and
adhere to the following minimum scope of work:

[(1) research and consult the appropriate data sources for
the work being reviewed to, at a minimum, validate the significant char-
acteristics of the comparables and the essential elements of the trans-
actions including:]

[(A) the multiple listing service(s) or other recognized
methods, techniques and data sources for the geographic area in which
the work under review was performed, if the work under review in-
cluded a sales comparison approach; and]

[(B) the sales or listing history of the property which is
the subject of the work under review, if that property was sold within
the three years prior to the effective date of the work under review or
listed for sale as of the effective date of the work under review;]

[(2) provide a certification that complies with Standard 4
of USPAP.]

(f) If the reviewer elects to develop an opinion of value or re-
view opinion, the review must comply with the additional provisions
of Standards 3 and 4 of USPAP governing the development of an opini-
on of value or review opinion.

The agency certifies that legal counsel has reviewed the pro-
posal 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 26,
2021.

TRD-202100825
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-3652

PART 16. TEXAS BOARD OF
PHYSICAL THERAPY EXAMINERS
CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes
amending 22 Texas Administrative Code (TAC) §329.1, con-
cerning General Licensure Requirements.

The amendment is proposed to add reference to the definitions
of an accredited PT and PTA program; to differentiate between
the school transcript requirement for an applicant by exam and
an applicant by endorsement; to allow for digital submission of
a letter of completion for applicants by exam; and to eliminate
the requirement for a letter of completion for an applicant by en-
dorsement if the transcript indicates the date the degree was
conferred. The amendment will remove potential barriers to li-
censure and will improve the efficiency of issuing licenses.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council
of Physical Therapy & Occupational Therapy Examiners (ECP-
TOTE), has determined that for the first five-year period this
amendment is in effect there would be no increase or loss of

46 TexReg 1584 March 12, 2021 Texas Register

revenue to the state. No fiscal implication to units of local gov-
ernment is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period
this amendment is in effect there will be no effect on the public
assurance that the provision of physical therapy services is by
qualified licensees of the board. Additionally, there will be no
cost to the public.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local econ-
omy, so a local employment economic impact statement is not
required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse
economic effects to small or micro-businesses or rural communi-
ties; therefore, an economic impact statement or regulatory flex-
ibility analysis is not required.

Government Growth Impact Statement

Pursuant to Government Code §2001.0221, the agency provides
the following Government Growth Impact Statement for the pro-
posed rule amendments. For each year of the first five years
the proposed amendment will be in effect, Mr. Harper has deter-
mined the following:

(1) The proposed rule amendments will neither create nor elimi-
nate a government program.

(2) The proposed rule amendments will neither create new em-
ployee positions nor eliminate existing employee positions.

(3) The proposed rule amendments will neither increase nor de-
crease future legislative appropriations to the agency.

(4) The proposed rule amendments will neither require an in-
crease nor a decrease in fees paid to the agency.

(5) The proposed rule amendment revises the language to an ex-
isting regulation by adding reference to the definitions of an ac-
ccredited PT and PTA program; differentiating between the school
transcript requirement for an applicant by exam and an appli-
cant by endorsement; allowing for digital submission of a letter of
completion for applicants by exam; and eliminating the require-
ment for a letter of completion for an applicant by endorsement if
the transcript indicates the date the degree was conferred.

(6) The proposed rule amendments will neither repeal nor limit
an existing regulation.

(7) The proposed rule amendments will neither increase nor de-
crease the number of individuals subject to the rule’s applicabil-
ity.

(8) The proposed rule amendments will neither positively nor ad-
versely affect this state’s economy.

Taking Impact Assessment

The proposed rule amendments will not impact private real prop-
erty as defined by Tex. Gov’t Code §2007.003, so a takings im-
 pact assessment under Tex. Gov’t Code §2001.043 is not re-
quired.

Requirement for Rule Increasing Costs to Regulated Persons
Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule amendment.

Public Comment
Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the Texas Register.

Statutory Authority
The amendment is proposed under Texas Occupation Code §453.102, which authorizes the Board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute
The proposed amendment implements provisions in Sec. 453.203, Occupations Code, that pertain to evidence satisfactory to the board that an applicant has completed an accredited physical therapy educational program.

(a) Requirements. All applications for licensure shall include:
(1) - (3) (No change.)
(4) documentation of academic qualifications:
(A) For applicants who completed their physical therapy education at an accredited PT or PTA program as defined in §321.1(1) and §321.1(2) of this title [in the U.S.], the documentation required is:
   (i) a transcript sent directly to the board from the degree-granting institution [showing enrollment in the final semester of an accredited PT or PTA program as provided in §453.203 of the Act];
   [and]
   (II) the transcript must show at least active enrollment in the final semester for applicants by exam;
   (III) the transcript must show date degree was conferred for applicants by endorsement; and
   (ii) a statement submitted [signed] by the program director or other authorized school official, notarized or with the school seal affixed, stating that the applicant has successfully completed the PT or PTA program for applicants by exam.
(B) - (C) (No change.)
(5) (No change.)
(b) (i) (No change.)

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 24, 2021.
TRD-202100768
Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners

Early possible date of adoption: April 11, 2021
For further information, please call: (512) 305-6900

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS
CHAPTER 363. EXAMINATION AND REGISTRATION
22 TAC §363.2
The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §363.2.

Background and Purpose.
In accordance with §1301.4521 and Chapter 53 of the Occupations Code, the Board conducts reviews of individuals with a criminal background seeking licensure by the Board to evaluate their fitness and determine whether their criminal background disqualifies them from being licensed by or registered with the Board. In accordance with §411.122 of the Government Code, the Board is authorized to access criminal background records from the Texas Department of Public Safety (DPS) in order to conduct such reviews, including the submittal and registration of fingerprints with DPS to obtain criminal background records. On January 9, 2019, the Texas Sunset Advisory Commission (Sunset), pursuant to §325.012 of the Government Code, proposed a recommendation for statutory changes to Chapter 1301 of the Occupations Code (Plumbing License Law or PLL) that would require all licensees and registrants to submit and register their fingerprints with DPS. The recommendation comports with Sunset’s Model Standards for Licensing and Regulatory Agencies, which promote fingerprint-based criminal background checks over other types of criminal background checks, particularly when the duties and responsibilities of performing work with the license would allow the individual to enter a person’s home, and whether the licensee could injure or harm a member of the public. Fingerprint-based criminal background checks have become more useful, given the ability to participate in the Federal Rap Back program joined by Texas, and implemented on January 15, 2018, allowing for near-instant notification of additions to an individual’s criminal background, including crimes committed in other states. Taking the foregoing into consideration, the Board anticipates its enabling statute will be amended during the 87th Regular Session to include provisions requiring the Board to conduct fingerprint-based criminal background checks.

This proposal further the process for requiring fingerprint-based criminal background checks and continues to carry out the recommendation of Sunset absent a statutory mandate. The original rule adoption contemplates implementing the requirement for submittal and registration of fingerprints over time, in phases, by amending this rule from time-to-time to add additional license or registration types requiring the submittal and registration of fingerprints.

Section-By-Section Summary.
Amendments to §363.2, concerning General Qualifications, require an applicant for whom the submittal and registration of fingerprints is required to submit documentation of having successfully registered their fingerprints, to the extent they have not previously done so. A new subsection (f) was added in May 2019 governing which license type required the submittal and registration of fingerprints, allowing the Board to impose the requirement in phases by amending subsection (f). This proposal will impose
the requirement for the submittal and registration of fingerprints on individuals seeking a license as a Journeyman Plumber.

Fiscal Impact on State and Local Government.

Lisa G. Hill, Executive Director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rule.

Public Benefits / Costs to Regulated Persons.

The Executive Director has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to have more comprehensive criminal background checks on individuals seeking licensure by the Board, better protecting the public’s health, safety, and welfare.

The Executive Director has further determined that for the first five years the rule is in effect, licensees or registrants required to submit and register their fingerprints with DPS will incur a one-time fee from DPS or its third-party processing vendor. Upon information and belief, the current fee imposed for processing fingerprints is $38.25. The Board presently registers approximately 25,039 Plumber’s Apprentices who could become illegal for licensure. This rule would impose a one-time cumulative cost of $957,741.75 on such individuals. The rule would also require affected individuals to travel to a fingerprint collection office to have their fingerprints scanned. These travel costs will vary widely depending upon the individual’s place of residence. However, the third-party processing vendor currently utilized by DPS has approximately 109 locations throughout the state, including many in rural areas, providing for widespread access which should limit travel costs. Taking the foregoing into consideration, the Board asserts the economic costs imposed are minor, particularly considering the individual should be exempted from any further fingerprinting when they renew their license or seek another license type, provided the fingerprints on file continue to meet the requirements for registration with DPS and/or the Federal Bureau of Investigation.

One-for-One Rule Analysis.

This proposal indicates a fiscal note imposing costs on regulated persons which would ordinarily require the Board, prior to adoption of the amendments, to repeal or amend another regulation to negate those costs in accordance with Government Code §2001.0045. However, the Board asserts the proposed amendments are necessary to protect the health, safety, and welfare of the residents of Texas. A Journeyman Plumber is often allowed in private residences, schools, and elder care facilities where they are around people in a private setting, including children and other vulnerable individuals.

A Journeyman Plumber will often have unsupervised access to the building where the plumbing system is located and thus may be given access to valuable property. A Journeyman Plumber works with hazardous, explosive or volatile materials and may make crucial decisions impacting the health and safety of the public. Taking the foregoing into consideration, the Board asserts the duties and responsibilities of being licensed by or registered with the Board to perform plumbing require robust criminal background checks, and it is precisely the type of activity contemplated by Sunset’s Model Standards for Licensing and Regulatory Agencies in recommending fingerprint-based criminal background checks. As a result, the Board asserts this proposal is critical to protect the health, safety, and welfare of the public, and thus the Board is exempted from the requirements of Government Code §2001.0045.


For each of the first five years the proposed amendments are 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 creates a new regulation imposing fingerprint requirements for certain individuals licensed by or registered with the Board; (6) the rule does not expand or limit an existing regulation; (7) the rule does not increase or decrease the number of individuals subject to the rule’s applicability; and (8) the rule does not positively or adversely affect the 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, Generally.

The Board incorporates by reference the discussion concerning costs to regulated persons as a result of the rule, discussed supra. The Board licenses and registers individuals, and not businesses or corporate structures, to provide plumbing services to the public. This proposal will impose a one-time cost on those registrants to whom the rule applies of $38.25, plus indeterminate travel costs. While the Board intends to eventually impose fingerprinting requirements on all license and registration types over time, this proposal applies only to the Journeyman Plumber and is in addition to the original amendment requirement for the Tradesman Plumber Limited Licensee. According to statistics maintained by the Texas Comptroller of Public Accounts (Comptroller), 90.5% of businesses in Texas operating as building equipment contractors constitute a small business for purposes of Government Code §2006.001 (a category which includes plumbing contractors and other construction trades such as electrical contractors and heating, ventilation and air conditioning (HVAC) contractors). As a result, most licensees and registrants likely work for a business constituting a small or micro-business for purposes of Government Code §2006.001. Moreover, while the Tradesman Plumber-Limited License essentially relates to residential plumbing, a Journeyman Plumber may work on residential and commercial work making it likely the licensee and registrant may occasionally work for a small or micro-business. To the extent a plumbing company for whom an individual works elects to absorb these costs on behalf of its employees, small and micro-businesses will be adversely affected by these costs, though indirectly. Rural communities will similarly be impacted by said costs. The foregoing notwithstanding, other than deviations in travel costs, small and micro-businesses, and rural communities, will share identical costs per-person as compared to other sized businesses and urban areas, and their status as a small or micro-business, or a rural community, does not impact these costs.

Economic Impact Statement.
According to the Comptroller, there are 10,387 businesses in Texas operating as building equipment contractors and that constitute a small business for purposes of Government Code §2006.001. These statistics align with the Board's licensee population figures. Specifically, the Board has approximately 7,771 Master Plumber licensees who have records on file indicating they are serving as a Responsible Master Plumber and allowed by law to advertise and market plumbing services directly to the public, and whose services are required to contract for plumbing work, thereby serving as an analogue for the number of plumbing companies operating across Texas. The Board does not maintain or have access to information regarding the precise number of these plumbing companies that meet the definition of a small or micro-business, or how many licensees or registrants any particular company employs that would be affected by this proposal. However, were the anticipated adverse costs to be distributed evenly amongst these companies, it would result in a per-company cost of $92.21. Assuming the percentage of all building equipment contractors constituting small businesses (90%), established by the Comptroller, holds true when plumbing companies are isolated, 771 such plumbing companies would be affected, resulting in a per-company cost of $123.25, to the extent the Plumber's Apprentice population was evenly distributed amongst such companies and most become Journeyman plumbers.

Of the 21,479 Plumber's Apprentice registered by the Board, 735 have a current mailing address on file indicating they may reside in a municipality meeting the definition of a rural community for purposes of Government Code §2006.001 (said mailing address is chosen by the licensee and may not actually be the licensee's place of residence; the municipality listed for purposes of the mailing address may differ from the actual situs of the address; and, the municipality may be located in a metropolitan area and may meet the definition of a rural community while not actually comporting with traditional notions of a rural community (see, e.g., Bellaire, Texas)). Taking the foregoing into consideration, the rule may have a one-time adverse cumulative impact on rural communities of $12,246, representing 31.2% of the total adverse impact, excluding travel costs. Rural communities may be disproportionately affected as travel costs in connection with visiting an office of the third-party fingerprint processing vendor to provide their fingerprints. However, DPS' third-party processing vendor presently has approximately 109 such locations throughout the state, including many in rural communities, providing convenient options and limiting travel costs for such individuals.

Regulatory Flexibility Analysis.

The Board considered alternative methods of accomplishing criminal background checks on individuals it licenses and registers to perform plumbing; namely, name-based criminal searches. However, as Sunset aptly points out in its Model Standards for Licensing and Regulatory Agencies, name-based criminal searches are inferior to fingerprint-based searches, particularly in light of participation in the Federal Rap Back program, as noted, supra. As a result, the Board determined that name-based searches are now antiquated by comparison, and inadequate to protect the health and safety of the public, particularly given the private settings to which a plumber is allowed access while performing their work, and the potential for harm to the public by a bad actor entrusted with that access. Having established that fingerprint-based criminal background checks are required to protect the public, the Board explored whether there were any options available to reduce the adverse impact of the rule. However, given that DPS has exclusive control over operating the fingerprint registration program, and the fees set by the third-party processing vendor are fixed and non-negotiable, the Board was unable to identify any alternatives to reduce the adverse impact of the rule.

Takeings Impact Assessment.

The Board has determined 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 amendments may be submitted by mail to Lisa G. Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - Fingerprinting Requirements." 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 Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL). Amended §363.2 is proposed under the authority of, and to implement, §1301.4521 of the PLL. Amended §363.2 is also proposed under the authority of Chapter 53 of the Occupations Code and §411.122 of the Government Code.

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

§363.2. General Qualifications.

(a) To be eligible to receive any license or registration issued by the Board an applicant must be:

1. a citizen or national of the United States; or
2. an alien or non-immigrant eligible for licensure by the State of Texas.

(b) In order to qualify for any license, registration, or endorsement, an applicant must:

1. meet all of the requirements of the Board;
2. submit documentation evidencing successful submittal of fingerprints for criminal history background checks, as may be required by subsection (f) of this section or the PLL, if applicable.
3. pay the required fee; and
4. successfully complete and pass the examination, if applicable.

(c) An applicant may qualify for a Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or Plumber's Apprentice Registration.

1. A licensed Plumbing Inspector, Master Plumber or Journeyman Plumber may obtain a Medical Gas Piping Installation
Endorsement, Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement, or Water Supply Protection Specialist Endorsement.

(2) A Tradesman Plumber-Limited may obtain a Drain Cleaner Registration.

(3) A registered Plumber's Apprentice may obtain a Residential Utilities Installer Registration, a Drain Cleaner-Restricted Registration or a Drain Cleaner Registration.

(d) A Plumber's Apprentice or Tradesman Plumber-Limited Licensee applying to take an examination must submit an Employer's Certification Form (ECF) showing that the applicant has accrued the required hours of experience working in the plumbing trade.

(1) If the applicant accrued the hours through employment with multiple employers, the applicant must submit a separate ECF completed by each employer the applicant worked for.

(2) The ECF shall be completed by the Responsible Master Plumber (RMP) who was the RMP for the company at the time the applicant worked there or the licensee who supervised the applicant on the job.

(3) If currently employed, the applicant shall:

(A) submit a request for an ECF in writing; and

(B) provide an ECF to the RMP or the licensee who supervised the applicant.

(4) Once a written request for an ECF is received, the RMP or licensee shall return the completed ECF to the applicant within thirty (30) business days.

(5) Upon separation of employment, or the end of a contract, an employer shall automatically provide a completed ECF to a Plumber's Apprentice or Tradesman Plumber-Limited or send it to the Board.

(e) To receive credit for experience working in the trade, the applicant must hold either a valid Plumber's Apprentice Registration or Tradesman Plumber-Limited License at the time the hours were worked.

(f) Fingerprinting Requirements. In accordance with §1301.4521 and Chapter 53 of the Occupations Code, the Board conducts reviews of individuals seeking licensure by the Board with a criminal background to evaluate their fitness and determine whether their criminal background disqualifies them from being licensed by or registered with the Board. In accordance with §411.122 of the Government Code, the Board is authorized to access criminal background records from the Texas Department of Public Safety (DPS) to conduct such reviews, including the submittal and registration with DPS of fingerprints from an individual seeking licensure with the Board, in order to obtain such records. Specifically, the Board's fingerprinting requirements are as follows:

(1) Fingerprinting required. The submittal and registration of fingerprints with DPS is required when applying for the following license or registration types: Tradesman Plumber-Limited License and Journeyman Plumber license.

(2) Resubmittal of fingerprints. The requirement to submit and register fingerprints applies to both an initial application for a license or registration as well as applications for renewal. However, once fingerprints have been submitted and registered with DPS, an individual ordinarily will not be required to re-submit their fingerprints, including renewals of a license or registration, or when applying for a different license or registration type. The foregoing notwithstanding, re-submittal of fingerprints may be required to the extent required by DPS or its third-party fingerprint processing vendor; for example, to comply with new or enhanced fingerprint records requirements, or if additional biometric data is required to conduct criminal background checks.

(3) Fingerprint procedures; fees. An applicant required to submit and register their fingerprints with DPS in accordance with paragraph (1) of this subsection must follow all instructions and procedures outlined by DPS and its third-party fingerprint processing vendor. The applicant is responsible for and must make payment directly to DPS and/or its designated third-party fingerprint processing vendor, all fees associated with the criminal background fingerprinting process, which is separate from the application fee imposed by the Board.

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 March 1, 2021.
TRD-202100834
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 936-5233

22 TAC §363.4
The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §363.4, concerning Master Plumber License.

Background and Justification
On January 9, 2019, the Texas Sunset Advisory Commission, pursuant to §325.012 of the Government Code, adopted a recommendation directing the Board to eliminate the requirement for individuals licensed by the Board to hold a high school diploma or certificate of high school equivalency in lieu thereof. On May 15, 2019, the board adopted amendments to 22 TAC §363.5 to eliminate the requirement for an individual to hold such high school diploma or certificate of high school equivalency in order to be eligible for a journeyman plumber license. The amendments, if adopted, would further implement the directive of sunset by eliminating the requirement for an individual to hold a high school diploma or certificate of high school equivalency in order to be eligible for a master plumber license.

Fiscal Impact on State and Local Government
Lisa G. Hill, Executive Director, has determined that for the first five year period the amended rule is 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 amended rule. The Executive Director has further determined that for the first five year period the amended rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the amended rule. The amended rule may result in an indeterminate increase in revenue to the state in the form of application and license fees as more individuals will be eligible for, and may seek, licensure by the Board. No increase in revenue for local governments is anticipated as a result of the amended rule directly. However, to the extent the amended rule results in additional individuals being licensed by the Board, overall plumbing activity in the state may
increase, potentially increasing revenue to local governments requiring the permitting and inspection of plumbing work within their jurisdiction, derived from such permits.

Public Benefits

The Executive Director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of amending the rule will be the presence of additional plumbers in the marketplace. Thereby, increasing supply to meet heavy demand for licensed plumbing professionals, and reducing costs to consumers. Removing the requirement will also allow the Board to cease reviewing applications to determine compliance with the requirement, and thus free up agency resources to focus on other functions, such as investigating consumer complaints for the public's benefit.

Probable Economic Costs to Persons Required to Comply with the Rule

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

One-for-One Rule Analysis

Given the amended 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 amended rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed amended rule is in effect, the agency has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the amended rule does not require an increase or decrease in fees paid to the agency by persons already regulated by the Board, and would not alter applicable fee amounts for licensure; however, as related, supra, the amended rule may result in additional individuals being licensed by the Board, which would cause additional fees to be paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand or limit an existing regulation but remove a regulation, expanding the number of individuals eligible for licensure by the Board; (7) the amended rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the amended rule does not adversely affect this state's economy and have the potential to positively impact the state's economy by putting additional licensed plumbers into the marketplace, spurring economic activity and growth.

Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the amended 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 amended rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the amended 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.

Taking Impact Assessment

The Board has determined that there are no private real property interests affected by the amended 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 amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "363.4 Rule Amendments." 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 Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL). This proposal affects the Plumbing License Law.

No other statute is affected by this proposal.

§363.4. Master Plumber License.

(a) To be eligible for a Master Plumber License an applicant must:

[†] have obtained a high school diploma, or the equivalent of a high school diploma; and

[‡] have held a Journeyman Plumber License issued in Texas or another state:

(1) [¶] for at least four years; or

(2) [¶] for at least one year if the applicant has successfully completed a training program approved by the United States Department of Labor, Office of Apprenticeship or another nationally-recognized apprentice training program accepted by the Board.

(b) An applicant who is licensed as a Master Plumber in another state must meet the requirements set forth in subsection (a) of this section.

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 March 1, 2021.
TRD-202100837
Lisa Hill  
Executive Director  
Texas State Board of Plumbing Examiners  
Earliest possible date of adoption: April 11, 2021  
For further information, please call: (512) 936-5233  

22 TAC §363.8  
The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 TAC §363.8 concerning Plumbing Inspector License.  

Background and Justification  
On January 9, 2019 the Texas Sunset Advisory Commission (sunset), pursuant to Government Code §325.012, adopted a recommendation directing the board to eliminate the requirement for individuals licensed by the board to hold a high school diploma or certificate of high school equivalency in lieu thereof. On May 15, 2019 the board adopted amendments to 22 TAC §363.5 to eliminate the requirement for an individual to hold such high school diploma or certificate of high school equivalency in order to be eligible for a journeyman plumber license. The amendments, if adopted, would further implement the directive of sunset by eliminating the requirement for an individual to hold a high school diploma or certificate of high school equivalency in order to be eligible to receive a plumbing inspector license.  

Fiscal Impact on State and Local Government  
Lisa G. Hill, Executive Director, has determined that for the first five year period the amended rule is 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 amended rule. The Executive Director has further determined that for the first five year period the amended rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the amended rule. The amended rule may result in an indeterminate increase in revenue to the state in the form of application and license fees as more individuals will be eligible for, and may seek, licensure by the Board. No increase in revenue for local governments is anticipated as a result of the amended rule directly. However, to the extent the amended rule results in additional individuals being licensed by the Board, overall plumbing activity in the state may increase, potentially increasing revenue to local governments requiring the permitting and inspection of plumbing work within their jurisdiction, derived from such permits.  

Public Benefits  
The Executive Director has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated as a result of amending the rule will be the presence of additional plumbers in the marketplace. Thereby, increasing supply to meet heavy demand for licensed plumbing professionals, and reducing costs to consumers. Removing the requirement will also allow the Board to cease reviewing applications to determine compliance with the requirement, and thus free up agency resources to focus on other functions, such as investigating consumer complaints for the public’s benefit.  

Probable Economic Costs to Persons Required to Comply with the Rule  
The Executive Director has further determined that for the first five years the amended 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 amended rule is in effect, the agency has determined the following: (1) the amended rule does not create or eliminate a government program; (2) implementation of the amended rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency by persons already regulated by the Board, and would not alter applicable fee amounts for licensure; however, as related, supra, the rule may result in additional individuals being licensed by the Board, which would cause additional fees to be paid to the agency; (5) the amended rule does not create a new regulation; (6) the amended rule does not expand or limit an existing regulation but removes a regulation, thus expanding the number of individuals eligible for licensure by the Board as plumbing inspectors; (7) the amended rule does not increase or decrease the number of individuals subject to the amended rule’s applicability; and (8) the amended rule does not adversely affect this state’s economy and have the potential to positively impact the state’s economy by putting additional licensed plumbers into the marketplace, potentially spurring economic activity and growth.  

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

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

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

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

Public Comments
Written comments regarding the amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line “363.8 Rule Amendments.” 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 Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL). This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

§363.8. Plumbing Inspector License.

(a) To be eligible for a Plumbing Inspector License an applicant must(1)
[1] have obtained a high school diploma, or the equivalent of a high school diploma, and]
[2] hold one of the following:
(1) [A] a current Journeyman or Master Plumber License issued in Texas or another state;
(2) [B] a current Plumbing Inspector license issued in another state with licensing requirements substantially equivalent to the licensing requirements of the Board; or
(3) [C] a current professional engineer or a professional architect license issued in Texas.

(b) An [In addition to meeting the requirements in subsection (a) of this section, an] applicant who holds a Journeyman or Master Plumber License issued in another state must take and pass the examination developed by the Board.

(c) An applicant is exempt from the licensure requirement listed in subsection (a) [2] of this section if the applicant has completed a total of 500 hours of training or experience in the plumbing industry. An applicant may receive credit toward the 500 hours as follows:

(1) 100 hours of credit for successful completion of a certification in the Uniform Plumbing Code or the International Plumbing Code, issued by the International Association of Plumbing and Mechanical Officials or the International Code Council plumbing code certification;
(2) 100 hours of credit for successful completion of a Board-approved Medical Gas Piping Installation Endorsement training program;
(3) 100 hours of credit for successful completion of a Board-approved Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program;
(4) 100 of hours credit for successful completion of a Board-approved Water Supply Protection Specialist Endorsement training program;
(5) 100 hours of credit for successful completion of an approved Backflow Tester Certification program;

(6) six (6) hours of credit for successful completion of any of the Board-approved CPE for Licensed Plumbers and Plumbing Inspectors courses;
(7) up to 100 hours of credit for hours attending approved, documented and verified plumbing-related training academy or educational sessions;
(8) up to 200 hours of credit for hours working in the field or an approved, similar plumbing-related, as verified by former employers; or
(9) up to 200 hours of credit for documented and verified on-the-job training in the enforcement of plumbing codes under the direct supervision of a licensed Plumbing Inspector.

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

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
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For further information, please call: (512) 936-5233

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.14
The Texas State Board of Plumbing Examiners (board) proposes amendments to 22 Texas Administrative Code (TAC) §365.14, concerning course year for continuing professional education programs.

Background and Justification
Pursuant to Occupations Code §1301.404, licensed plumbers are required to complete at least six hours of continuing professional education (CPE) each year and charges the board with authority to approve and administer such continuing education programs. Existing 22 TAC §365.14 establishes a course year for such CPE for which the providers of CPE and their materials are approved by the board each year. Specifically, under existing 22 TAC §365.14 begins on July 1 of each calendar year and ends on June 30 of the next calendar year. The amendments to §365.14, if adopted, would change the course year to begin on January 1 of each year and end on December 31 of each year and eliminate requirements determining when a licensee must take CPE based upon when their license expires in relation to the mid-year CPE approval process.

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 amended rule is 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 rules. The executive director has further determined that for the first five year period the amended rule is 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 amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be to have a simpler process for the CPE course year that interested persons of the public can better understand. A simpler process for approval of CPE providers and materials may remove potential barriers to entry allowing more CPE providers to seek approval of the board to become a CPE provider, potentially increasing competition amongst the CPE providers to provide new and innovative training methods or course materials which may better train licensed plumbers and benefit the public by raising the competency and skillfulness of licensed plumbers providing plumbing services to the public.

Probable Economic Costs to Persons Required to Comply with the Rule

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

One-for-One Rule Analysis

Given the amended rule does 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 rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

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

Local Employment Impact Statement

No local economies are substantially affected by the amended rule. 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-Businesses, and Rural Communities

The amended rule 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 amended rule. 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 amended rule. 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 amended rule may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line “365.14 Rule Amendments.” 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 Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law). This proposal is also made under the authority of Occupations Code §1301.404 and §1301.405.

No other statute is affected by this proposal.

§365.14. Course Year for Continuing Professional Education Programs.

(a) The course year for Continuing Professional Education Programs begins on January 1st (July 1st) of each calendar year and ends on December 31st (June 30th) of each (the next) calendar year.

(b) The authority of a Course Provider approved under §365.16 of this chapter to provide CPE courses or a Course Instructor approved under §365.17 of this chapter to teach CPE courses runs concurrently with the course year (that starts on July 1st of the calendar year in which the provider or instructor is approved by the Board).

(c) A licensee or registered Drain Cleaner, Drain Cleaner-Restricted or Residential Utilities Installer shall complete at least six (6) hours of CPE before he or she may renew his or her license or registration. [Paragraphs 1 and 2 of this section and Figure 1 explain how license expiration dates align with the CPE course year.]

(1) An individual whose license or registration expires between January 1st and July 1st must take CPE between July 1st of the calendar year prior to the year in which the license or registration will expire and the expiration date of their license. [Figure: 22 TAC §365.14(c)(1)]

(2) An individual whose license or registration expires between September 1st and December 31st must take CPE between July 1st of the calendar year in which the license or registration will expire and the expiration date of their license. [Figure: 22 TAC §365.14(c)(2)]

(d) The authority of a Publisher of Course Materials approved under §363.15 of this chapter to sell course materials begins on December 1st or thirty-one (31) days prior to the start (July 1st) of the upcoming CPE course (calendar) year for which the materials are approved and continues until the course materials are no longer required for the renewal of an expired license or registration.

(1) The Board may authorize the use of course materials prior to July 1st for industry-related programs or conferences if the person offering the program or conference submits:

(A) a written request stating the date, time, and place the materials will be used; and

(B) a statement from the Publisher whose course materials will be used verifying that the materials will be available on the date included in the request.

(2) A request submitted pursuant to paragraph (1) of this subsection, shall be submitted no later than fifteen (15) business days before the regularly scheduled January or April meeting of the Board.
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
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CHAPTER 367. ENFORCEMENT
22 TAC §367.2
The Texas State Board of Plumbing Examiners (board) proposes amendments to §367.2, concerning code requirements.

Background and Justification
Occupations Code §1301.255 requires the board to adopt plumbing codes governing the minimum design, installation and maintenance requirements of a plumbing system. Specifically, the board was required to adopt the Uniform Plumbing Code (UPC), as published by the International Association of Plumbing and Mechanical Officials and the International Plumbing Code (IPC), as published by the International Code Council. Pursuant to Occupations Code §1301.551, municipalities with a population greater than 5,000 must regulate plumbing within their jurisdiction in accordance with the requirements of Occupations Code Chapter 1301. Municipalities below this threshold, meanwhile, may opt in and elect to regulate plumbing within their jurisdiction in accordance with the requirements of Occupations Code Chapter 1301. Pursuant to Occupations Code §1301.255(c) the plumbing codes adopted by the board apply in areas that are not otherwise subject to regulation under Occupations Code Chapter 1301. Occupations Code §1301.255(b) authorizes the board to adopt later editions of the plumbing codes. Existing 22 TAC §367.2 adopted the 2012 editions of such codes. The amendments, if adopted, would adopt the 2018 editions of the UPC and IPC to ensure that plumbing systems designed, installed, and maintained in the state use modern materials and installation techniques, and conform to modern industry-recognized standards for function, efficiency, and safety.

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 amended rule is 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 rules. The executive director has further determined that for the first five year period the amended rule is 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 amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be to ensure that the plumbing systems utilized by the public in this state are designed, installed, and maintained using modern materials and installation techniques, and in conformity with industry-recognized standards for function, efficiency, and safety.

Probable Economic Costs to Persons Required to Comply with the Rule
The executive director has determined that for the first five years the amended rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the amended rule. Plumbing work is contracted for and provided by and through a plumbing company. Any potential economic costs would be borne by such plumbing companies and not directly by any regulated persons of the board (licensees) required to comply with the rule. Ultimately, any potential economic costs incurred by a plumbing company are ordinarily passed along to the consumer. Moreover, the differences between the 2012 and 2018 editions of the UPC and IPC are incremental rather than monumental and will not impose radically different code requirements that might require a plumbing company to incur substantial economic costs. Additionally, most plumbing is simultaneously regulated at the municipal level for which the requirements of 22 TAC §367.2 do not apply. Many such municipal jurisdictions have already adopted plumbing codes later than the 2012 editions and plumbing companies in such jurisdictions are already subject to such requirements (including, potentially, the 2021 editions of such codes). The foregoing notwithstanding, the board welcomes comments or feedback in response to this proposal concerning any potential costs to regulated persons as a result of enforcing or administering the amended rule.

One-for-One Rule Analysis
Given the amended rule does 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 rule is not subject to the requirements of Government Code §2001.0045.

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

Local Employment Impact Statement
No local economies are substantially affected by the amended rule. 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-Businesses and Rural Communities
The amended rule 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 com-
ply with the amended rule. 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 amended rule. 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 amended rule may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line “367.2 Rule Amendments.” 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 Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law). This proposal is also made under the authority of Occupations Code §1301.255(b).

No other statute is affected by this proposal.

§367.2. Code Requirements.
(a) To protect the health and safety of the citizens of this state, the Board adopts the following plumbing codes:

(1) the 2018 [2012] Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and


(A) the 2018 [2012] International Fuel Gas Code; and

(B) the 2018 [2012] International Residential Code.

(b) To ensure the proper design, installation, and maintenance of plumbing systems within its jurisdiction, a political subdivision may adopt a plumbing code with any amendments necessary to address local concerns provided that the amendments do not substantially vary with the rules or laws of this state.

(c) Plumbing must be installed in accordance with all applicable plumbing codes adopted by the political subdivision in which the plumbing is being installed.

(1) Plumbing installed by an individual licensed under the PLL in an unincorporated area of the county or other area where no plumbing code has been adopted must be installed in accordance with a plumbing code adopted under subsection (a) of this section.

(2) A plumbing installation that was started prior to the Board's adoption of the plumbing codes listed in subsection (a) of this section may be completed under the requirements of the codes in effect at the time permits for the installation were issued or work on the installation commenced.

(3) In addition to all applicable plumbing codes, Liquefied Petroleum Gas (LP-Gas) piping must be installed in accordance with all applicable rules adopted by the Texas Railroad Commission.

(d) Any piping connecting a plumbing fixture, including a water closet, to a potable water supply shall be installed to prevent the back flow of nonpotable substances into the potable water system in accordance with the applicable plumbing code and state laws. Water closet fill valves (ball cocks) shall be of the antisiphon, integral vacuum breaker type with the critical level (the air inlet portion of the vacuum breaker) installed at least one (1) inch above the flood level rim of the fixture (the inlet of the water closet overflow tube).

(e) Plumbing installed in compliance with a code adopted under subsection (a) or (b) of this section must be inspected by a Plumbing Inspector licensed under the PLL and Board Rule §367.4 of this title (relating to Standards of Conduct - Plumbing Inspectors).

(f) A licensee or registrant shall not install, and a person shall not require a licensee or registrant to install, plumbing that is not in compliance with the Plumbing License Law or any other laws of this state, Board Rules, or any applicable plumbing codes.

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 March 1, 2021.
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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners

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For further information, please call: (512) 936-5233

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

SUBCHAPTER E. PETITION FOR ADOPTION OF RULES

22 TAC §533.50

The Texas Real Estate Commission (TREC) proposes new rule 22 TAC §533.50, concerning Petition for Adoption of Rules, in Chapter 533, Practice and Procedure. The proposed new rule §533.50 implements a statutory requirement that state agencies must prescribe by rule the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition. The proposed new rule is recommended by the Executive Committee.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the new rule as proposed will
be improved clarity and transparency for both members of the public and license holders as a result of implementing a well-defined procedure for such petitioning, as well as requirements that comply with statute.

For each year of the first five years the proposed new rule is in effect, the new rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule’s applicability; or
- positively or adversely affect the state’s economy.

Comments on the proposal may be submitted to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, as well as Texas Government Code §2001.021, which requires state agencies to adopt by rule procedures for petitioning for the adoption of rules.

The statutes affected by this proposal are Chapters 1101 and 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed new rule.

§533.50   Petition for Adoption of Rules.

(a) Any interested person, as defined by §2001.021, Government Code, may request a rule be adopted, amended, or repealed by submitting a written petition to the Commission.

(b) The written petition must include:

1. the person’s full name, mailing address, telephone number, and email address;
2. a brief summary of the proposed action and its desired effect;
3. a justification for the proposed action set out in narrative form with sufficient particularity to inform the Commission the reasons and arguments on which the person is relying;
4. if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted; and
5. if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(c) The written petition must be submitted to the Commission by:

1. delivering the petition in person to the Commission’s headquarters;
2. sending the petition via email to general.counsel@trec.texas.gov; or
3. sending the petition via fax to (512) 936-3788, ATTN: General Counsel.

(d) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the Chair of the Commission, in consultation with Commission staff, shall review the petition and either:

1. deny the petition in writing, stating the reasons for the denial; or
2. initiate a rulemaking proceeding under Chapter 2001, Government Code, by directing that the petition be placed on the next agenda for discussion by:
   (A) the Commission; or
   (B) the appropriate advisory committee with subject matter jurisdiction.

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 24, 2021.

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Abby Lee
Deputy General Counsel
Texas Real Estate Commission
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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.220

The Texas Real Estate Commission (TREC) proposes amendments to §535.220, Professional Conduct and Ethics, in Subchapter R of Chapter 535, General Provisions. The proposed amendment clarifies that the consent an inspector must receive from the inspector’s client to receive a fee or other valuable consideration for referring services that are not settlement services or other products to the client must be in writing. The Texas Real Estate Inspector Committee recommends this proposed amendment.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of the change is improved clarity for license holders and greater consumer protection.
For each year of the first five years the proposed amendment is in effect, the amendment will technically expand an existing regulation by requiring the consent to be in writing, but will not:
- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendment is proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendment.

§535.220. Professional Conduct and Ethics.

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector license holder must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

(b) The relationship between an inspector and a client should meet the following guidelines.

1. In accepting employment as an inspector, the inspector should protect and promote the interest of the client to the best of the inspector's ability and knowledge, recognizing that the client has placed trust and confidence in the inspector.

2. In the interest of the client and the inspector's profession, the inspector should endeavor always to maintain and increase the inspector's level of knowledge regarding new developments in the field of inspection.

3. The inspector should conduct the inspector's business in a manner that will assure the client of the inspector's independence from outside influence and interests that might compromise the inspector's ability to render a fair and impartial opinion regarding any inspection performed.

(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.

1. The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector's, the inspector's business and the inspection industry.

2. The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.

3. The inspector accepts the duty of protecting the public against fraud, misrepresentation or unethical practices in the field of real estate inspections.

(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.

1. The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.

2. The inspector should cooperate with other inspectors to insure the continued promotion of the high standards of the real estate inspection profession and pledges himself to the continued pursuit of increasing competence, fairness, education and knowledge necessary to achieve the confidence of the public.

3. If an inspector has knowledge of a possible violation of the rules of the Commission or Chapter 1102, the inspector should report the possible violation to the Commission.

(e) An inspector shall comply with the following requirements.

1. An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.

2. In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

   (A) a person who provides credit report services;
   (B) an attorney;
   (C) an appraiser;
   (D) an inspector;
   (E) a settlement service provider;
   (F) a person who prepares documents, including notarization, delivery, and recordation;
   (G) a person who provides mortgage insurance services;
   (H) a person who provides services involving hazard, flood, or other casualty insurance, homeowner's warranties, or residential service contract;
   (I) a real estate agent or broker; and
   (J) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

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(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:
   (A) the referral of inspections;
   (B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or
   (C) inclusion on lists of inspectors contingent on other financial agreements.
(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector’s client without the client’s written consent.
(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.
(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this subchapter if the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.
(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.
(8) This subsection does not prohibit:
   (A) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred; or
   (B) a payment at market rates to any person for goods actually furnished or for services actually performed.
(f) The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector, the inspector’s business, and the inspection industry.

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

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TRD-202100802  
Abby Lee  
Deputy General Counsel  
Texas Real Estate Commission  
Earliest possible date of adoption: April 11, 2021  
For further information, please call: (512) 936-3057

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 556. NURSE AIDES

26 TAC §§556.2, 556.3, 556.6, 556.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§556.2, concerning Definitions; §§556.3, concerning Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements; §§556.6, concerning Competency Evaluation Requirements; and §§556.9, concerning Nurse Aide Registry and Renewal.

BACKGROUND AND PURPOSE

The purpose of the proposal is to allow a NATCEP provider to offer certain components of required training online in a virtual classroom location. A NATCEP is a program approved by HHSC to train and evaluate an individual’s ability to work as a nurse aide in a nursing facility. Currently, all NATCEP training is provided in a classroom and clinical setting.

This program initiative is a response to a critical shortage in trained nurse aides in nursing homes. External stakeholders, such as Texas Health Care Association and Leading Age, have requested that HHSC allow NATCEP providers to offer online training opportunities for portions of the NATCEP classroom curriculum. This option will increase the number of nurse aides qualified for employment in a nursing facility.

Due to the challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control, HHSC is also proposing NATCEP providers increase infection control training and continuing education requirements for nurse aides.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §556.2 adds definitions for "classroom training," "clinical training," "infection control," and "personal protective equipment," and amends the definitions for "employee misconduct registry," "nurse aide registry," and "informal review."

The proposed amendment to §556.3 standardizes the minimum number of hours of training required to be provided by a NATCEP to a trainee by deleting obsolete language, allows for certain hours to be provided online with security and identification verification requirements, requires eight hours of infection control that include training with personal protective equipment (PPE) before a trainee has any direct contact with a resident, and requires a NATCEP to maintain records of training and make these available to HHSC.

The proposed amendment to §556.3(e)(3) updates the civil money penalty of not less than $10,697 to align with current Centers for Medicare and Medicaid Services requirements.

The proposed amendment to §556.6 allows only HHSC, or an entity HHSC approves, to provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site and deletes the requirements that a NATCEP must provide a facility to administer a competency evaluation and administer a competency evaluation to other eligible trainees from another NATCEP.

The proposed amendment to §556.9 adds the requirement that a nurse aide must complete an HHSC course in infection control and PPE every year.
Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administrating the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;
(2) implementation of the proposed rules will not affect the number of HHSC employee positions;
(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
(4) the proposed rules will not affect fees paid to HHSC;
(5) the proposed rules will create new rules;
(6) the proposed rules will expand existing rules;
(7) the proposed rules will not change the number of individuals subject to the rules; and
(8) the proposed rules will not affect the state’s economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rules will give NATCEP providers the option to provide a portion of the NATCEP training online. NATCEP providers that choose not to add an online component to their training program will not incur any additional costs because of the proposed rules. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule. HHSC lacks sufficient information to determine the economic impact on small businesses, micro-businesses, or rural communities.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health, safety, and welfare of the residents of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

David Kosloun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be more flexibility for trainees to participate in NATCEP from a provider that chooses to provide a portion of the training online, which will increase the number of nurse aids qualified for employment. As a result, nursing facilities will have more ability to meet required staffing levels and resident needs.

Trey Wood has also determined that for the first five years the rule is in effect, there could be a cost to persons required to comply with the rule as proposed. The proposed rule gives NATCEP providers the option to provide a portion of the NATCEP training online. NATCEP providers that do not choose to add an online component to their training program will not incur any additional costs because of these rules. HHSC lacks sufficient information to determine the economic impact to persons required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Bridney Jones at (512) 438-4266 in HHSC Long-term Care Regulatory Services. Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate “Comments on Proposed Rule 19R027” in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §§531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

The amendments implement Texas Government Code §§531.0055 and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.037 and Chapter 250.

§556.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military
forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(7) Clinical training--The training of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) [46] Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) [22] Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) [58] Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.

(11) [9] Direct supervision--Observation of a trainee performing skills in a NATCEP.

(12) [40] Employee misconduct registry (EMR)--[EMR--Employee misconduct registry.] The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(13) [44] Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(14) [42] Facility-based NATCEP--A NATCEP offered by or in a facility.

(15) [44] General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(16) [44] HHSC--The Texas Health and Human Services Commission or its designee.

(17) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(18) [45] Informal Review (IR)--[IR--Informal review.] An opportunity for a nurse aide to dispute a finding of misconduct [made by HHSC] by providing testimony and supporting documentation to an impartial HHSC staff person.

(19) [46] Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

(A) a physician;
(B) a physician assistant;
(C) a physical, speech, or occupational therapist;
(D) a physical or occupational therapy assistant;
(E) a registered nurse;
(F) a licensed vocational nurse; or
(G) a licensed social worker.

(20) [472] Licensed nurse--A registered nurse or licensed vocational nurse.

(21) [449] LVN--Licensed vocational nurse. An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(22) [449] Military service member--A person who is on active duty.

(23) [449] Military spouse--A person who is married to a military service member.

(24) [449] Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(25) [222] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(26) [24] NATCEP--Nurse aide training and competency evaluation program. A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a facility.

(27) [25] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(28) [26] Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(29) [222] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(30) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(31) [28] Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(32) [29] Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;
(B) prevention of illness and disability;
(C) management of health care during acute and chronic phases of illness;
(D) guidance and counseling of individuals and families; and
referral to other health care providers and community resources when appropriate.

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§1919(h)(2)(A)(ii) (NATCEP)

Resident--An individual accepted for care or residing in a facility.

RN--Registered nurse. An individual licensed by the Texas Board of Nursing to practice professional nursing.

Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(d) of this chapter.

Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

(a) To train nurse aides, a facility must apply for and obtain approval from HHSC to offer a NATCEP or the facility must contract with another entity offering a NATCEP.

(b) A person that wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each classroom location from which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site.

(e) HHSC does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than $10,697 [§5,000] as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(f) A facility that is prohibited from offering a NATCEP under subsection (e) of this section must contract with a person who has not been employed by the facility or by the facility's owner to offer NATCEP in accordance with §1819(f)(2) and §1919(f)(2) of the Act if:

(1) the NATCEP is offered to employees of the facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited facility;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the facility is no longer prohibited from offering a NATCEP.

(h) A NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training with at least one program instructor for every 10 trainees.

(1h) Before September 1, 2013, a NATCEP must provide at least 75 hours of training to a trainee. The 75 hours must include:

(1l) 51 hours of classroom training; and

(1m) 24 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(i) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (q) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(1i) Effective September 1, 2013, a NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1j) 60 hours of classroom training; and
§483.152.  Direct Care and Support Requirements

(2) 40 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(j) A NATCEP must teach the curriculum established by HHSC and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;
(2) infection control;
(3) safety and emergency procedures, including the Heimlich maneuver;
(4) promoting a resident's independence;
(5) respecting a resident's rights;
(6) basic nursing skills, including:
   (A) taking and recording vital signs;
   (B) measuring and recording height and weight;
   (C) caring for a resident's environment;
   (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
   (E) caring for a resident when death is imminent;
(7) personal care skills, including:
   (A) bathing;
   (B) grooming, including mouth care;
   (C) dressing;
   (D) toileting;
   (E) assisting with eating and hydration;
   (F) proper feeding techniques;
   (G) skin care; and
   (H) transfers, positioning, and turning;
(8) mental health and social service needs, including:
   (A) modifying the aide's behavior in response to a resident's behavior;
   (B) awareness of developmental tasks associated with the aging process;
   (C) how to respond to a resident's behavior;
   (D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
   (E) using a resident's family as a source of emotional support;
(9) care of cognitively impaired residents, including:
   (A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;
   (B) communicating with a cognitively impaired resident;
   (C) understanding the behavior of a cognitively impaired resident;
   (D) appropriate responses to the behavior of a cognitively impaired resident; and
   (E) methods of reducing the effects of cognitive impairments;
(10) basic restorative services, including:
   (A) training a resident in self care according to the resident's abilities;
   (B) use of assistive devices in transferring, ambulation, eating, and dressing;
   (C) maintenance of range of motion;
   (D) proper turning and positioning in bed and chair;
   (E) bowel and bladder training; and
   (F) care and use of prosthetic and orthotic devices; and
(11) a resident's rights, including:
   (A) providing privacy and maintenance of confidentiality;
   (B) promoting the resident's right to make personal choices to accommodate their needs;
   (C) giving assistance in resolving grievances and disputes;
   (D) providing needed assistance in getting to and participating in resident, family, group, and other activities;
   (E) maintaining care and security of the resident's personal possessions;
   (F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and
   (G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(l) A NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(m) A NATCEP must verify that a trainee:

   (1) is not listed on the NAR in revoked status;
   (2) is not listed as unemployable on the EMR; and
   (3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the five years immediately before participating in the NATCEP.

(n) A NATCEP must ensure that a trainee:

   (1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;
(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(o) [(n)] A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(p) [(o)] A NATCEP must use an [a] HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(q) [(p)] A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records [and make them] available to HHSC or its designees at any reasonable time. [The records must include:]

(1) The classroom and clinical training records must include:

(A) [(1)] dates and times of all classroom and clinical training;

(B) [(2)] the full name and social security number of each [a] trainee;

(C) [(3)] a [attendance] record of the date and time of each classroom and clinical training session a trainee attends;

(D) [(4)] a final course grade [for the training portion of the NATCEP] that indicates pass or fail for each [a] trainee; and

(E) [(5)] a [daily] physical or electronic sign-in record [records] for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (i)(2) of this section.

(2) A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(r) [(q)] A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(s) [(r)] HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(t) [(s)] HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(u) [(t)] HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(v) [(u)] A new employee or trainee orientation given by a faculty to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(w) [(v)] A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.6. Competency Evaluation Requirements.

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a [A] skills examiner [must administer a competency evaluation] at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer [approved NATCEP that offers] the [competency] evaluation [and accepts the trainee for a competency evaluation].

(d) An eligible trainee [who does not take a competency evaluation at the location where the trainee received training] must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange [with another approved NATCEP] to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

[(1) provide a facility where a trainee may perform the skills demonstration and a location where a trainee may take the written or oral examination;]

(1) [(2)] promptly, after one of its trainees successfully completes the NATCEP training, approve trainees to take a competency evaluation [offer a competency evaluation to its own trainees promptly after successful completion of the training portion of a NATCEP];

(2) [(3)] administer a competency evaluation to other eligible trainees the NATCEP has accepted for the competency evaluation;

(2) [(4)] provide the trainees with information regarding scheduling [schedule] a competency evaluation; and

(3) [(5)] ensure that the trainee [trainees] accurately completes [complete] the competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for a competency evaluation [evaluations];

(3) complete a competency evaluation application and submit the application in accordance with application instructions; and

(4) request another competency evaluation if the trainee fails a competency evaluation; and
(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be recorded in a manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the [a NATCEP] competency evaluation, a trainee must achieve a score HHSC designates as a passing [pass] score on:

(1) the skills demonstration[,] as determined by HHSC; and

(2) the written or oral examination[,] as determined by HHSC.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before taking a competency evaluation that HHSC records successful completion of the competency evaluation on the NAR.

(l) HHSC records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged [facility must not charge a nurse aide] for any portion of a competency evaluation if the trainee [nurse aide] is employed by or has received an offer of employment from a facility on the date the trainee [nurse aide] takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual [nurse aide] to take a competency evaluation if the individual [nurse aide] is employed as a nurse aide by, or has received an offer of employment from, a facility within 12 months after taking the competency evaluation.

§556.9. Nurse Aide Registry and Renewal.

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) HHSC does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) [A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a facility, licensed or certified by HHSC; by the Department of State Health Services; or by the Board of Nursing.

(5) No more than 12 hours of the in-service education required by paragraph (4) of this subsection may be provided by an entity described in paragraph (4)(D) of this subsection.

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 25, 2021.

TRD-202100812
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: April 11, 2021
For further information, please call: (512) 701-8109

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.39, §5.49

The Comptroller of Public Accounts proposes amendments to §§5.39, concerning hazardous duty pay and §5.49, concerning longevity pay.

The amendments to §5.39 update the format of the definitions in subsection (a) to present them in the same format as other definitions listed in Chapter 5; delete the definitions of institution of higher education and TYC in subsection (a) because they are no longer used in this section; add definitions of calendar month, day, TABC, TJJD, and TPWD in subsection (a); change TYC to TJJD in subsections (b), (c), and (f) to reflect the current name of the agency; update the definition of “state employee” in subsection (b)(2)(A) as it applies to individuals employed by TJJD to reflect changes made by the legislature in House Bill 3689, 86th Legislature (2019); change 12 month to 12-month in subsections (c) and (f) to correct the grammar in these subsections; clarify in subsection (e)(1) that an individual who is on leave without pay for a full calendar month does not accrue lifetime service credit for the month; clarify the process for determining an employee’s effective service date in subsection (e)(3) to make it easier to understand when it is applied to an employee who has been employed one or more times by the state; and change Parks and Wildlife Department to TPWD in subsection (g), Texas Department of Criminal Justice to TDCJ in subsections (a) and (g), and Texas Alcoholic Beverage Commission to TABC in subsection (g), to use the defined acronym for these agencies.

The amendments to §5.49 add definitions of hazardous duty position and lifetime service credit, and update citations, in subsection (a); clarify the process for determining a state employee’s effective service date in subsection (d) to make it easier to understand when it is applied to an employee who has been employed one or more times by the state; update the citation in subsection (i); and clarify in subsection (i) that an individual who leaves a position that accrues lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and is reemployed with the state after completing that service in accordance with any applicable federal or state veterans’ reemployment law accrued lifetime service credit during that service, even if the individual is on leave without pay during the individual’s period of military service.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules’ applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rules would have no fiscal impact on small businesses or rural communities.

Comments on the proposals may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The amendments to §5.39 are proposed under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L, concerning hazardous duty pay. The amendments to §5.49 are proposed under Government Code, §659.047, which requires the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter D, concerning longevity pay.


(a) Definitions. The following words and terms, when used [Except as otherwise provided] in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Calendar month—The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) [(1) "Classified position--A [" means a] position included in the position classification plan in the General Appropriations Act, Article IX.

(3) [(2) "Correctional officer--An [" means an] employee in a job class designated by TDCJ [the Texas Department of Criminal Justice] as a correctional officer holding a hazardous duty position and reported annually to the Comptroller of Public Accounts before the start of each fiscal year].

(4) Day--The 24 consecutive hour period beginning at 12:00 midnight and ending at 11:59 p.m.

(5) [(3) "Full-time state employee--Has [" has] the meaning assigned by Government Code, §659.301(1).]

(6) [(4) "Hazardous duty position--A [" means a] position in the service of the state that:

(A) renders any individual holding that position a "state employee," as defined in paragraph (11) [(10)] of this subsection; or

(B) requires the performance of hazardous duty.

[(5) "Institution of higher education" has the meaning assigned by Government Code, §659.301(3).]

(7) [(6) "Lifetime service credit--The [" means the] number of months that an individual has served in a hazardous duty position during the individual's lifetime.

(8) [(7) "Part-time state employee--Has [" has] the meaning assigned by Government Code, §659.301(4).

(9) [(8) "Regular hours--The [" means the] number of hours an individual actually works during a month.

(10) [(9) "Standard hours--The [" means the] total number of hours that an individual would work during a month if the individual worked exactly eight hours during each workday of that month.}
(1) [11] State employee--An individual who is a state employee under subsection (b)(1)(A) or (b)(2)(A) of this section.

(2) [12] TABC--The Texas Alcoholic Beverage Commission.

(13) [14] TDCJ--The Texas Department of Criminal Justice.

(14) [15] TJJD--The Texas Juvenile Justice Department.

(15) [16] TPWD--The Texas Parks and Wildlife Department.

[(12) "TYC" means the Texas Youth Commission.]

[(13) Type 1 grandfathered employee--A state employee whose compensation for services provided to the state during any month before August 1987, included hazardous duty pay that was based on total state service performed before May 29, 1987.

[(14) Type 2 grandfathered employee--An individual who is entitled to receive hazardous duty pay under subsection (g) of this section.

[(15) Workday--Has the meaning assigned by Government Code, §659.301(6).

(b) Receiving hazardous duty pay.

(1) Individuals not employed by TJJD [TYC].

(A) In this paragraph, "state employee" has the meaning assigned by Government Code, §659.301(5).

(B) Hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in Government Code, §659.302(a), except as provided in subsection (g) of this section, concerning type 2 grandfathered employees.

(C) An individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay entitlement for that month. The full amount of hazardous duty pay must be paid to the individual.

(D) For purposes of Government Code, §659.302(a)(2), the 12 months of lifetime service credit are not required to be 12 continuous months.

(E) This paragraph does not apply to an individual employed by TJJD [TYC].

(2) Individuals employed by TJJD [TYC].

(A) In this paragraph, "state employee" means an individual who:

(i) does not work at TYC's central office; and

(ii) has routine direct contact with youth:

(I) placed in a residential facility of TJJD [TYC]; or

(II) released under TJJD's supervision;

or

(iii) is an investigator, inspector general, security officer, or apprehension specialist employed by TJJD's office of the inspector general.

(B) Except as provided in Government Code, §659.303, TJJD [TYC] may include hazardous duty pay in the compensation paid to an individual for services rendered during a month if the individual:

(i) is a state employee for any portion of the first workday of the month; and

(ii) has completed at least 12 months of lifetime service credit not later than the last day of the preceding month.

(C) Hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in subparagraph (B) of this paragraph.

(D) An individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay eligibility for that month.

(E) For purposes of subparagraph (B)(ii) of this paragraph, the 12 months of lifetime service credit are not required to be 12 continuous months.

(F) This paragraph applies only to an individual employed by TJJD [TYC].

(c) Amount of hazardous duty pay.

(1) Monthly amount for individuals employed by TJJD [TYC].

(A) The amount of hazardous duty pay that TJJD [TYC] pays monthly to a full-time state employee must be expressed in terms of a specific dollar amount for each 12-month [12 month] period of lifetime service credit and, for type 1 grandfathered employees, for each 12-month [12 month] period of state service credit. The amount must be the same for each type of service credit.

(B) The amount of hazardous duty pay that TJJD [TYC] pays monthly to a full-time state employee may not exceed $10 for each 12-month [12 month] period of lifetime service credit accrued by the employee.

(C) In this paragraph, "state employee" has the meaning assigned by subsection (b)(2)(A) of this section.

(D) This paragraph applies only to an individual employed by TJJD [TYC].

(2) Part-time state employees.

(A) The amount of a part-time state employee's hazardous duty pay is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time state employee; and

(ii) a quotient:

(I) the numerator of which is equal to the number of hours the employee normally works each week, not to exceed 40; and

(II) the denominator of which is equal to 40.

(B) For purposes of subparagraph (A)(ii)(I) of this paragraph, the number of hours that a part-time state employee normally works each week during a particular month is equal to the number of hours that the employee is scheduled to work each week as of the first workday of that month.

(3) Hourly state employees. The amount of an hourly state employee's hazardous duty pay for a particular month is equal to the product of:

(A) the amount of hazardous duty pay that the employee would receive if the employee were a full-time state employee; and

(B) a quotient:
(i) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(ii) the denominator of which is equal to the number of standard hours for that month.

(4) Correctional officers of TDCJ.

(A) The amount of hazardous duty pay for a particular month for a full-time correctional officer employed by TDCJ is the lesser of:

(i) $12 for each 12-month period of lifetime service credit accrued by the employee; or

(ii) $300.

(B) The amount of hazardous duty pay that TDCJ pays a part-time correctional officer is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time correctional officer; and

(ii) a quotient:

(I) the numerator of which is equal to the number of hours the employee normally works each week, not to exceed 40; and

(II) the denominator of which is equal to 40.

(C) The amount of hazardous duty pay that TDCJ pays an hourly correctional officer is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time correctional officer; and

(ii) a quotient:

(I) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(II) the denominator of which is equal to the number of standard hours for that month.

(d) Timing for payment of hazardous duty pay.

(1) Employees paid once each month.

(A) This paragraph applies to a state employee only if the employee is normally paid once each month.

(B) Any hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time the compensation is paid to the employee.

(2) Employees paid twice each month.

(A) This paragraph applies to a state employee only if the employee is normally paid twice each month.

(B) Any hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time the compensation earned by the employee during the first half of the month is paid to the employee.

(3) Employees paid once every two weeks.

(A) This paragraph applies to a state employee only if the employee is normally paid once every two weeks.

(B) The hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety on the pay day that is closest to the date that a monthly employee is paid the compensation earned by the employee during that month.

(e) Lifetime service credit.

(1) Accrual. An individual acquires lifetime service credit for the period the individual holds a hazardous duty position. However, an individual who is on leave without pay for a full calendar month does not accrue lifetime service credit for the month.

(2) Amount. The amount of an individual's lifetime service credit at any particular time is equal to the number of months that have elapsed since the individual's effective service date. A month begins on the same day each month as the effective service date and ends on the day before that day during the next month, regardless of how many days are included in the month.

(3) Effective service date.

(A) An individual's "effective service date" is used to determine the amount of lifetime service credit for the purpose of [during previous employment in] hazardous duty pay [positions].

(B) "Effective" service date of an individual who accrued lifetime service credit during previous employment in hazardous duty positions is determined by completing the following steps: [counting backwards from the first day of the individual's current continuous employment in a hazardous duty position. The number of days to count backwards is equal to the individual's "number of days served," which is determined by counting each day of those employments. The individual accrues one full day of credit for any part of a day employed in a hazardous duty position.]

(i) adding together all days the individual was employed in a hazardous duty position in all previous periods of employment with the state;

(ii) counting backward from the first day of the individual's current continuous employment with the state in a hazardous duty position using the total number of days calculated in clause (i) of this subparagraph; and

(iii) counting forward the number of months in which the individual was on leave without pay for any full calendar month during all periods of employment in a hazardous duty position using the date calculated in clause (ii) of this subparagraph.

(C) An example of determining a state employee's effective service date is as follows: The employee's first day of employment at your agency is February 5, 2021. The employee was previously employed in a hazardous duty position from October 8, 2011 to August 31, 2017, or 2,155 days. During that employment, the employee had one period of leave without pay from December 7, 2015 to February 2, 2016, for a total of one full calendar month of leave without pay. To determine the employee's effective service date, first count backwards 2,155 days from February 5, 2021, to arrive at March 15, 2015. Then count forward one month (the number of months in which the individual was on leave without pay for any full calendar month during all periods of employment in a hazardous duty position) from March 15, 2015 to arrive at April 15, 2015, which is the employee's effective service date.

(D) An individual accrues one full day of credit for any part of a day the individual is employed in a hazardous duty position.
(4) Transfers. For the purposes of paragraph (3)(A) of this subsection, an individual's transfer from one state agency to another does not interrupt continuity of employment if no workdays occur between the two employments.

(f) Exceptions for type 1 grandfathered employees.

(1) State service credit. For purposes of this subsection, the amount of an individual's state service credit equals the sum of:

(A) the amount of the individual's lifetime service credit; and

(B) the number of months during the individual's lifetime that the individual has provided services to the state in a position that is not a hazardous duty position.

(2) Applicability of other subsections. Subsections (a) - (e) of this section apply to a type 1 grandfathered employee except as provided in this subsection.

(3) Amount for non-hourly employees.

(A) The amount of hazardous duty pay for a type 1 grandfathered employee who is not hourly and who is not employed by TJJD [TJC] is equal to the sum of:

(i) $10 for each 12-month [12 month] period of state service credit the employee finished accruing before May 29, 1987; and

(ii) $10 for each 12-month [12 month] period of lifetime service credit that is accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12-month [12 month] period of state service credit.

(B) The amount of hazardous duty pay for a type 1 grandfathered employee who is not hourly and who is employed by TJJD [TJC] is equal to the sum of:

(i) the dollar amount specified by TJJD [TJC] under subsection (c)(2) of this section for each 12-month [12 month] period of state service credit the employee finished accruing before May 29, 1987; and

(ii) the dollar amount specified by TJJD [TJC] under subsection (c)(2) of this section for each 12-month [12 month] period of lifetime service credit that is accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12-month [12 month] period of state service credit.

(4) Amount for hourly employees. The amount of hazardous duty pay for an hourly type 1 grandfathered employee is equal to the product of:

(A) the amount calculated under paragraph (3) of this subsection; and

(B) a quotient:

(i) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(ii) the denominator of which is equal to the number of standard hours for that month.

(5) Limitation. A type 1 grandfathered employee may not receive more than $10 for each 12-month [12 month] period of state service credit or lifetime service credit, regardless of the number of positions the employee holds or the number of hours the employee works each week.

(g) Exceptions for type 2 grandfathered employees.

(1) Applicability of other subsections. Subsections (a) - (e) of this section apply to a type 2 grandfathered employee as if the employee were a state employee, except as provided in this subsection.

(2) Entitlement for certain TPWD [Texas Parks and Wildlife Department] personnel. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:

(A) is not a state employee on the first workday of that month;

(B) is one of the commissioned law enforcement personnel of TPWD [Texas Parks and Wildlife Department] for any portion of the first workday of that month; and

(C) on May 29, 1987, was receiving or was entitled to receive hazardous duty pay because the individual on that date was one of the commissioned law enforcement personnel of TPWD [Texas Parks and Wildlife Department].

(3) Entitlement for certain employees of TDCJ [Texas Department of Criminal Justice]. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:

(A) is not a state employee on the first workday of that month;

(B) holds any of the following positions with TDCJ [Texas Department of Criminal Justice] for any portion of the first workday of that month:

(i) correctional officer I through warden;

(ii) a position that requires the individual to work on a unit and have routine direct contact with inmates, e.g., farm manager, livestock supervisor, maintenance foreman, shop foreman, medical assistant, food service supervisor, steward, education consultant, commodity specialist, correctional counselor;

(iii) a position assigned to an administrative office and requiring routine direct contact with inmates, e.g., investigator, compliance monitor, an accountant routinely required to audit unit operations, sociologist, interviewer, classification officer, supervising counselor;

(iv) a position that requires the individual to respond to emergency situations involving inmates, e.g., director, deputy director, assistant director, administrative duty offices, except that not more than 25 administrative duty officers may qualify under this clause;

(v) a position that requires the individual to work within the prison compound or have daily contact with inmates, except that not more than 500 individuals may qualify under this clause; or

(vi) warden I or II, assistant warden, major of correctional officers, captain of correctional officers, lieutenant of correctional officers, sergeant of correctional officers, or correctional officer I, II, or III; and

(C) on May 29, 1987, was receiving or was entitled to receive hazardous duty pay because the individual on that date held a position with the Texas Department of Corrections that is listed in subparagraph (B) of this paragraph.

(4) Entitlement for certain employees of TABC [Texas Alcoholic Beverage Commission]. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:
is not a state employee on the first workday of that month;

(B) holds any of the following positions with TABC [the Texas Alcoholic Beverage Commission] for any portion of the first workday of that month:

(i) chief or assistant chief of enforcement and marketing practices;
(ii) district supervisor or assistant district supervisor;
(iii) senior agent or agent I, II, or III;
(iv) port of entry supervisor or port of entry inspector I or II;
(v) supervising auditor I or II or auditor I, II, or III;
(vi) assistant director of auditing and tax reporting; or
(vii) senior tax auditor; and

(C) on May 29, 1987, was receiving or was eligible or entitled to receive hazardous duty pay because the individual on that date:

(i) held a position with TABC [the Texas Alcoholic Beverage Commission] that is listed in subparagraph (B)(i) - (iii) of this paragraph; or
(ii) both:

(I) held a position with TABC [the Texas Alcoholic Beverage Commission] that is listed in subparagraph (B)(iv) - (vii) of this paragraph; and

(II) was receiving hazardous duty pay on August 31, 1981, because the individual on that date was engaged in full time law enforcement work while holding any of the following classified positions:

(-a-) supervisor tax collector;
(-b-) tax collector I or II;
(-c-) district supervisor;
(-d-) chief or assistant chief, enforcement division;
(-e-) assistant district supervisor;
(-f-) inspector I or II;
(-g-) supervising auditor I;
(-h-) auditor I, II, or III;
(-i-) supervisor or assistant supervisor, marketing practices;
(-j-) special project director;
(-k-) director of auditing; or
(-l-) assistant director of auditing.

§5.49. Longevity pay.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Calendar month--The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) Day--The 24 consecutive hour period beginning at 12:00 midnight and ending at 11:59 p.m.

(3) Full-time state employee--Has the meaning assigned by Government Code, §659.041(2) [§659.041].

(4) Hazardous duty position--Has the meaning assigned by §5.39(a)(6) of this title (relating to Hazardous Duty Pay).

(5) [44] Institution of higher education--Has the meaning assigned by Education Code, §61.003(8) [§61.003], but does not include a public junior or community college.

(6) Lifetime service credit--The number of months that an individual has served in a position listed in Government Code, §659.046, during the individual's lifetime.

(7) [64] Military--The Armed Forces of the United States, the Texas National Guard, the Texas State Guard, or a reserve component of the Armed Forces of the United States.

(8) [66] Retiree--A state employee who retires from state employment and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Government Code, §802.001(3) [§802.001], that was credited to the state employee.

(9) [72] State agency--

(A) a board, commission, department, office, or other entity that is in the executive branch of state government, including an institution of higher education;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, the state bar, or another state judicial agency.

(10) [68] State employee--Has the meaning assigned by Government Code, §659.041(4) [§659.041].

(11) [69] Workday--Any day that is not Saturday, Sunday, or a state or national holiday under Government Code, §662.003. The term includes a state or national holiday on which a state employee is not entitled to a paid day off from work under Government Code, §662.005.

(b) Authority. Longevity pay is governed by Government Code, Chapter 659, Subchapter D, the General Appropriations Act; and the rules adopted by the comptroller under Government Code, Chapter 659, Subchapter D.

(c) Verification of prior state employment periods. A state agency that currently employs a state employee who accrued lifetime service credit during one or more previous employments shall verify the amount of that credit.

(d) Effective service date.

(1) A state employee's "effective service date" is used to determine the amount of the employee's lifetime service credit.

(2) "Effective service date" is determined by completing the following steps:

(A) adding together all days the employee served in all previous periods of employment with the state;

(B) subtracting the number of days in which the employee was on leave without pay for any full calendar month from the total number of days calculated in subparagraph (A) of this paragraph; and

(C) except as provided in subsection (I) of this section, counting forward the number of months in which the employee was
on leave without pay for any full calendar month during all periods of employment using the date calculated in subparagraph (B) of this paragraph.

(3) An example of determining a state employee's effective service date is as follows: The employee’s first day of employment at your agency is February 10, 2021. The employee had two previous periods of state employment. The first previous period of employment was from January 6, 2017 to May 25, 2017, or 140 days. The second previous period of employment was from October 1, 2018 to December 31, 2020, or 823 days. During the employee's second previous period of employment, the employee had one period of leave without pay from March 25, 2019 to April 30, 2019, for a total of one full calendar month of leave without pay. To determine the employee's effective service date, first add together the total number of days in the employee's two previous periods of state employment to arrive at 933 days. Next, count backward 933 days from February 10, 2021, to arrive at June 24, 2018. Finally, count forward one month (the number of months in which the employee was on leave without pay for any full calendar month during all periods of employment) from June 24, 2018 to arrive at July 24, 2018, which is the employee's effective service date.

(4) [44] An individual's transfer from one state agency to another shall not interrupt continuity of employment if no workdays occur between the two employments.

(e) Workday. If an individual is a state employee for any part of a workday, the individual is considered to be a state employee for the entire workday for the purpose of longevity pay.

(f) Change in status. A full-time state employee in paid status on the first workday of the calendar month is entitled to the full amount of longevity pay for that calendar month even if the employee terminates state employment after the first workday of that calendar month.

(g) Employees of Institutions of Higher Education.

(1) The determinations required by Government Code, §659.0411(a) and (b) must be made publicly available to all employees under the institution's or board of regent's jurisdiction and must be made available to the comptroller, upon request by the comptroller.

(2) The determinations required by Government Code, §659.0411(a) and (b) shall not take effect until they have been made publicly available to all employees under the institution's or board of regent's jurisdiction.

(3) The determinations required by Government Code, §659.0411(b) must apply to every institution under the board of regent's jurisdiction.

(h) Return to work retirees who leave state employment.

(1) A retiree who retired from state employment on or after June 1, 2005, is not entitled to longevity pay upon returning to state employment.

(2) A retiree who retired from state employment prior to June 1, 2005, and did not return to state employment prior to September 1, 2005, is not entitled to longevity pay upon returning to state employment.

(iii) A retiree who retired from state employment prior to June 1, 2005, returned to state employment prior to September 1, 2005, and subsequently leaves state employment, is not entitled to longevity pay upon returning to state employment.

(i) Public retirement system. "Public retirement system,” as the term is used in Government Code, §659.042(7) and subsection (a)(8) (475-0387) of this section, includes the Employees Retirement System of Texas; Teacher Retirement System; and Optional Retirement Program as described in Government Code, Chapter 830.

(j) Hazardous duty pay.

(1) A state employee's lifetime service credit for the purpose of longevity pay shall include any period served in a hazardous duty position, except as provided in Government Code, §659.046(f)(2) or paragraph (2) of this subsection.

(2) A state employee is not entitled to accrue lifetime service credit for the purpose of longevity pay during the period the employee serves in a hazardous duty position that entitles the employee to receive hazardous duty pay. When the employee is no longer serving in the hazardous duty position, the employee is entitled to accrue the lifetime service credit for the purpose of longevity pay for the period the employee previously served in the hazardous duty position.

(3) For the purpose of longevity pay, lifetime service credit is accrued during the one year that a state employee serves in a hazardous duty position before becoming eligible or entitled to receive hazardous duty pay. The amount of longevity pay the employee receives during that year is based on the credit accrued during that year. But, the lifetime service credit used to calculate the amount of longevity pay received by the employee while receiving hazardous duty pay shall not include the one year waiting period.

(4) If a state employee received hazardous duty pay based on total state service performed before May 29, 1987, and held a position that required the performance of hazardous duty on May 29, 1987, the employee's lifetime service credit for the purpose of longevity pay shall not include any state service credit the employee accrued for the purpose of hazardous duty pay before May 29, 1987.

(k) Contract for less than 12 calendar months. An individual eligible to accrue lifetime service credit who works for a state agency under a formal written contract for less than 12 calendar months each year accrues 12 calendar months of credit each year if the individual is constantly under contract during the calendar months the individual does not work. The individual is constantly under contract if the individual’s contract for the next work period is entered into before the end of the existing work period, even though the individual will not work during the interim period.

(l) Military service. If an individual leaves a position that accrues lifetime service credit (or that would have accrued lifetime service credit had the longevity pay law been in effect when the individual left the position) to serve in the military and the individual is reemployed with the state after completing that service in accordance with any applicable federal or state veterans’ reemployment law, the individual accrued lifetime service credit during that service, even if the individual is on leave without pay during the individual’s period of military service.

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

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Vicky North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) proposes to amend §452.2 of Title 40, Part 15, Chapter 452 of the Texas Administrative Code, concerning Advisory Committees.

PART I. PURPOSE AND BACKGROUND
The proposed amendments to the rule provide modified term limits for the committee chair and vice chair, establish certain duties of the vice chair, and provide modified term length parameters for all committee members.

The proposed amendment is authorized under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

PART II. EXPLANATION OF SECTIONS

§452.2. Advisory Committees.

Subparagraph (a)(3) alters the term length of the chair from annually to one-to-two years but no more than two years as chair during his or her appointment to the committee; adds vice chair and establishes the term length as one-to-two years but no more than two years during his or her appointment to the committee; and authorizes the vice chair to perform the duties of the chair in the event the chair is unavailable or unable to perform those duties.

Subparagraph (a)(4)(A) deletes four-year staggered terms for committee members and establishes that, "The term of office for each member will be determined by the commission in order to achieve staggered terms."

PART III. IMPACT STATEMENTS

FISCAL NOTE
Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS
Ms. Nall has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT
Jim Martin, Interim Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT
Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT
Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's two remaining advisory committees.

GOVERNMENT GROWTH IMPACT STATEMENTS
Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

1) The proposed rule amendment will not create or eliminate a government program.
2) Implementation of the proposed rule amendment will not require creation of new employee positions, or elimination of existing employee positions.
3) Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.
4) No fees will be created by the proposed rule amendment.
5) The proposed rule amendment will not require new regulations.
6) The proposed rule amendment has no effect on existing regulations.
7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.
8) The proposed rule amendment has no effect on this state's economy.

PART IV. COMMENTS
Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the Texas Register.

PART V. STATUTORY AUTHORITY
The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

The rule amendment is proposed to implement General Appropriations Act, Article I, Texas Veterans Commission Rider IX,

46 TexReg 1610 March 12, 2021 Texas Register
85th Legislature, Regular Session, 2017, which authorizes the commission to reimburse advisory committees.

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

§432.2. Advisory Committees.

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) - (2) (No change.)

(3) Committee chair and vice chair. The chair and vice chair of each advisory committee is selected by [annually from among] the committee’s voting members. Committee chair and vice chair term lengths are one or two-year terms as determined by the committee’s voting members, and are limited to two years of service as the chair or vice chair during their appointment to the committee. The committee chair determines the agenda for each meeting. The vice chair shall perform the chair duties when the chair is unavailable or unable to perform.

(4) Conditions of membership.

(A) Terms of service. The term of office for each member [appointed by the commission shall be staggered for a four-year term.] will be determined by the commission in order to achieve staggered terms. In the event that a member [appointed by the commission] cannot complete his or her term, or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(B) - (D) (No change.)

(5) - (10) (No change.)

(b) - (d) (No change.)

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 22, 2021.

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Houston John Goodell
General Counsel
Texas Veterans Commission
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CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §§460.3, 460.8, 460.10

The Texas Veterans Commission (commission) proposes amendments to Chapter 460, Subchapter A, §460.3, Applicant Eligibility; §460.8, Grant Objectives; and §460.10, Limitations of Grant Funds.

PART I. PURPOSE AND BACKGROUND

The proposed amendments are made to eliminate redundant language and modify the objectives of the Fund for Veterans' Assistance Grant Program. The proposed rule amendments update obsolete references to provide current citations to the Code of Federal Regulations, which provide a government-wide framework for grants management.

PART II. EXPLANATION OF SECTIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

Section 460.3. Applicant Eligibility

Subsection (a) adds the words "Any of" to avoid the perception that an entity applying for a grant must satisfy multiple subcategories and therefore ensure maximum participation in the grant application process.

Subsection (a)(3) deletes specification of "private" to ensure inclusion of all IRS Code §501(c)(3) non-profit entities.

Subsection (a)(5) deletes "Nonprofit organization authorized to do business in Texas with experience providing services to veterans," a redundant item to subsection (b)(4) and therefore unnecessary assuming deletion of "private" in subsection (a)(3).

Subsection (b)(3) deletes the term "including" to allow for interpretation that if a unit of state or federal government is not specified in the items that follow, they are eligible. Adding "research institutions," to provide specificity that is necessary to prevent commission grants from funding research.

Section 460.8. Grant Objectives.

Section 460.8(7) adds Pro bono, aligning the Rule to match the language defined in Texas Government Code §434.024(5).

Section 460.8(8) deletes the term "development" to clarify the use of grant funding by professional services networks.

Section 460.8(9) adds "veterans mental health treatment" to specifically address existing programs that meet treatment needs for veterans mental health.

Section 460.8(10) adds "participation in Veteran Treatment Court programs" to specifically address current participation in Veteran Treatment Court programs.

Section 460.8(11) adds "home modification projects" to specifically address participation in home modification projects.

Section 460.10. Limitations on Grant Funds.

Section 460.10(7) inserts language to avoid grantee reimbursement requests for expenses, which have no value or relevance to the grant project funded by the commission.

Section 460.10(10) removes catchall provision to prevent any cost that is not allowable under the Grant Agreement, the Fund for Veterans' Assistance Fiscal guidelines, and State of Texas Uniform Grant Management Standards. Inserts language to prevent the use of grant funds for medical costs as well as lists examples of what medical costs might be.

Section 460.10(11) adds language to prevent payment of stipends to beneficiaries, volunteers, students, interns, employees, and members of the board of directors.

Section 460.10(12) adds language preventing funding of capital assets located outside Texas to ensure that grant funding benefits remain inside the state.
Section 460.10(13) contains language formerly located in §460.10(10). The new paragraphs contains catchall provisions to prevent any cost that is not allowable under the Grant Agreement, the Fund for Veterans’ Assistance Fiscal guidelines, and State of Texas Uniform Grant Management Standards.

PART III. IMPACT STATEMENTS

FISCAL NOTE
Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendments will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rules.

COSTS TO REGULATED PERSONS
Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rules.

LOCAL EMPLOYMENT IMPACT
Jim Martin, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rules.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT
Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rules will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT
Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of administering the amended rules will increase participation within each of the agency’s two remaining advisory committees.

GOVERNMENT GROWTH IMPACT STATEMENT
Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

(1) The proposed rule amendments will not create or eliminate a government program.
(2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.
(3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.
(4) No fees will be created by the proposed rule amendments.
(5) The proposed rule amendments will not require new regulations.
(6) The proposed rule amendments has no effect on existing regulations.
(7) The proposed rule amendments has no effect on the number of individuals subject to the rules’ applicability.
(8) The proposed rule amendments have no effect on this state’s economy.

PART IV. COMMENTS

Comments on the proposed amended rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include “Chapter 452 Rules” in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the Texas Register.

PART V. STATUTORY AUTHORITY

The rule amendments are proposed under Texas Government Code §434.010 which authorizes the commission to establish rules if considers necessary for its administration; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency’s advisory committees. The rule amendments are proposed to implement General Appropriations Act, Article I, Texas Veterans Commission Rider IX, 85th Legislature, Regular Session, 2017, which authorizes the commission to reimburse advisory committees.

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

§460.3. Applicant Eligibility.
(a) Any of the following are eligible to apply for grant funds:
(1) - (2) (No change.)
(3) IRS Code §501(c)(3) [private] nonprofit organizations authorized to do business in Texas; or
(4) Texas chapters of IRS Code §501(c)(4) veterans service organizations. [ or ]
(5) Nonprofit organizations authorized to do business in Texas with experience providing services to veterans.
(b) Any of the following are not eligible to apply for grant funds:
(1) - (2) (No change.)
(3) Units of federal or state government, [including] state agencies, colleges, and research institutions;
(4) - (5) (No change.)
(c) (No change.)

§460.8. Grant Objectives.
It is the objective of the Fund for Veterans’ Assistance to provide reimbursement grants to meet the needs of veterans and their families. Such needs include, but are not limited to, the following:
(1) - (6) (No change.)
(7) Pro bono legal services, excluding criminal defense;
(8) [development of] professional services networks;
(9) veteran mental health treatment;
(10) participation in Veteran Treatment Court programs;
§460.10. Limitations on Grant Funds.

Grant funds cannot be used for the following:

(1) - (6) (No change.)

(7) any expense that is not necessary to complete the grant project, or not consistent with the Grant Agreement;

(8) (No change.)

(9) contributions that support or oppose candidates for public or party office, or to support or oppose any ballot propositions; [or]

(10) medical costs, including physician fees, prescription medications, over-the-counter medications, medical insurance premiums or copays, emergency/after-hours clinic fees, and prescribed prosthetics; [any cost that is not allowable under the Grant Agreement, the Fund for Veterans’ Assistance Fiscal Guidelines, State of Texas Uniform Grant Management Standards (UGMS), or 2 C.F.R. 200 - Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards. ]

(11) stipends for beneficiaries, volunteers, students, interns, employees, and members of the board of directors;

(12) payments for capital assets that are not physically in Texas; and

(13) any cost that is not allowable under the Grant Agreement, the Fund for Veterans’ Assistance Fiscal Guidelines, State of Texas Uniform Grant Management Standards (UGMS), or 2 C.F.R. 200 - Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards.

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

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Houston John Goodell
General Counsel
Texas Veterans Commission
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SUBCHAPTER B. MONITORING ACTIVITIES

40 TAC §460.23

The Texas Veterans Commission (commission) proposes amendments to Chapter 460, Subchapter B, §460.23, Fiscal Monitoring.

PART I. PURPOSE AND BACKGROUND

The proposed rule amendments update obsolete references to provide current citations to the Code of Federal Regulations, which provide a government-wide framework for grants management. Previous federal regulations found in OMB Circulars are now superseded by recent modifications to the Uniform Grant Guidance in the Code of Federal Regulations.

PART II. EXPLANATION OF SECTION

SUBCHAPTER B. MONITORING ACTIVITIES.
(7) The proposed rule amendments has no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the Texas Register.

PART V.

STATUTORY AUTHORITY

The rule amendments are proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency's advisory committees. The rule amendments are proposed to implement General Appropriations Act, Article I, Texas Veterans Commission Rider IX, 85th Legislature, Regular Session, 2017, which authorizes the commission to reimburse advisory committees.

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

§460.23. Fiscal Monitoring.

(a) - (b) (No change.)

(c) Processes and procedures used to assess a Grantee shall include a review, evaluation, and determination regarding compliance with the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, the State of Texas Uniform Grant Management Standards (UGMS), and 2 C.F.R. 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Nonprofit Organizations), and other documents, processes and systems as determined by the Agency.]

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

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