

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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 118. LASER HAIR REMOVAL

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 118, Subchapter A, §§118.1 - 118.4; Subchapter B, §§118.10 - 118.14; Subchapter C, §§118.20 - 118.29; Subchapter D, §118.30; Subchapter E, §118.40; Subchapter F, §118.50 and §118.51; Subchapter G, §118.60 and §118.61; Subchapter H, §118.70; and Subchapter I, §118.80 and §118.81; and proposes the repeal of existing rules at §§118.1 - 118.3, 118.10, 118.20, 118.30 - 118.35, 118.40, 118.50, 118.60, 118.61, 118.70, 118.71, 118.80, 118.90, 118.91, 118.100, and 118.110, with the addition of subchapters to an existing chapter, regarding the Laser Hair Removal program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 118, implement Texas Health and Safety Code, Chapter 401, Subchapter M, Laser Hair Removal; and Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department.

The proposed rules are necessary to implement changes recommended as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department's Notice of Intent to Review 16 TAC, Chapter 118, was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5597). At its meeting on January 25, 2022, the Commission readopted the rule chapter in its entirety without changes. The readoption notice was published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 988).

The Department did not receive any public comments in response to the Notice of Intent to Review.

The proposed rules include changes recommended by Department staff during the rule review process to reorganize and streamline the entire chapter. These recommendations include changes to consolidate the existing rules, reorganize provisions by subject matter, eliminate duplicative provisions, and apply plain language principles to improve clarity.

SECTION-BY-SECTION SUMMARY

The proposed rules repeal all sections under 16 TAC, Chapter 118, which include §§118.1 - 118.3; 118.10; 118.20; 118.30 - 118.35; 118.40; 118.50; 118.60; 118.61; 118.70; 118.71; 118.80; 118.90; 118.91; 118.100; and 118.110.

The proposed rules add new Subchapter A, General Provisions.

The proposed rules repeal existing §118.1, Authority. The provision in this repealed rule has been updated and supplemented under new §118.1.

The proposed rules add new §118.1, Authority. This new rule includes provisions from existing §118.1, which is being repealed, and establishes that Chapter 118 is promulgated under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M.

The proposed rules repeal existing §118.2, Purpose.

The proposed rules repeal existing §118.3, Scope. The provision in this repealed rule has been updated and supplemented under new §118.2.

The proposed rules add new §118.2, Scope. This new rule includes provisions from existing §118.3, which is being repealed, and establishes who the chapter applies to and that a certification issued under this chapter only authorizes a person to perform nonablative cosmetic Laser Hair Removal (LHR). The proposed rules also establish that this chapter applies to a person who receives, possesses, uses, owns, or acquires an LHR device, even if that person does not hold an LHR facility license.

The proposed rules add new §118.3, Definitions. This new rule includes provisions from existing §118.10, which is being repealed, and adds several definitions, including "Alternate consulting physician," "Certifying entity," "Delegate," "LHR facility license," "Operate an LHR facility," "Serious injury," and "Training program." The proposed rules amend several definitions, including "Consulting physician," "Direct supervision," "Individual LHR Certification," "Laser hair removal procedure," "Operator," "Person," and "Physician." The proposed rules also remove several definitions, including "Applicant," "Certificate of LHR registration," "Certified individual," "Contract," "Laser safety officer," "Living quarters," "Mobile LHR facility," and "Registrant."

The proposed rules add new §118.4, Laser Hair Removal Procedure, and establish that a laser hair removal procedure involves removal of hair from four body areas. The proposed rules establish what areas of the body are considered one procedure, and what areas may be split into right and left sides and count as more than one single procedure if done simultaneously.

The proposed rules add new Subchapter B, Laser Hair Removal Facility.

The proposed rules repeal existing §118.10, Definitions. The provision in this repealed rule has been updated and supplemented under new §118.3.

The proposed rules add new §118.10, LHR Facility--License Requirements and Application. This new rule includes provisions from existing §118.30, which is being repealed, and establishes

that a separate LHR facility license is required for each LHR facility and establishes when an LHR facility license is not required. The proposed rules establish the eligibility requirements for an LHR facility license and establish that a person may not operate an LHR facility unless the person holds a license issued by the department.

The proposed rules add new §118.11, LHR Facility--License Term; Renewal. This new rule includes provisions from existing §118.40, which is being repealed, and establishes that an LHR facility license is valid for two years and establishes the process for renewing an LHR facility license. The proposed rules establish that an LHR facility must end use of all LHR devices if the license is not renewed.

The proposed rules add new §118.12, LHR Facility--Responsibilities. This new rule includes provisions from existing §118.31, which is being repealed, and establishes that a LHR facility must notify the department within 30 days after certain changes and must follow adverse reporting requirements. The proposed rules also establish the protocols if a LHR facility loses the services of the consulting physician and/or the alternate consulting physician. The proposed rules establish that a LHR facility must maintain a physical inventory of all devices; must maintain records of receipt, transfer, and disposal for each device; must not make false or misleading claims or advertisements; must post a warning sign containing radiation and complaint information. Lastly, the proposed rules establish that a LHR facility license is not transferable, and that the facility must not continue to offer services if the facility loses the services of the LHR professional.

The proposed rules add new §118.13, LHR Facility--Consulting Physician. This new rule includes provisions from existing §118.60, which is being repealed, and establishes the contents of the required written contract between a LHR facility and a consulting physician. The proposed rules establish the requirements of a protocol between the consulting physician and LHR facility and establish the contents of a protocol, including the level of licensure required for each LHR procedure.

The proposed rules add new §118.14, LHR Facility--Audits. This new rule includes provisions from existing §118.61, which is being repealed, and establishes that the consulting physician must conduct audits of the LHR facility to verify that operations are being conducted in accordance with the protocols established by the contract. The proposed rules establish the requirements for an audit, including that it must be unannounced, it may be conducted by the consulting physician, and it must be recorded.

The proposed rules add new Subchapter C, Laser Hair Removal Individual Certifications.

The proposed rules repeal existing §118.20, Prohibitions. The provision in this repealed rule has been updated and supplemented under new §118.50.

The proposed rules add new §118.20, LHR Individual Certification--Requirements and Application. This new rule includes provisions from existing §118.33, which is being repealed, and establishes the requirements that all applicants for an individual LHR certification must follow.

The proposed rules add new §118.21, LHR Individual Certification--Responsibilities. This new rule includes provisions from existing §118.33, which is being repealed, and establishes the responsibilities of certified individuals, including that certifications are not transferable, that each certification must be displayed in an open public area of the LHR facility, and that the certified

individual must present proof of licensure or certification to the department, upon request.

The proposed rules add new §118.22, Certification Term; Renewal. This new rule includes provisions from existing §118.33, which is being repealed, and establishes that an individual certification issued by the department is valid for two years and establishes the requirements for renewing an individual LHR certification.

The proposed rules add new §118.25, Continuing Education Requirements. This new rule includes provisions from existing §118.35, which is being repealed, and establishes that each individual who holds an individual LHR certification must obtain eight hours of continuing education per certification term on certain topics. The rules establish that the continuing education hours may be obtained online.

The proposed rules add new §118.26, LHR Individual Certification--Apprentice-in-Training. This new rule includes provisions from existing §118.33, which is being repealed, and establishes that an applicant for an apprentice-in-training certification must be at least 18 years old; have 40 hours of training in specific topics; and must submit proof of successful completion of a training program approved by the department. The proposed rules establish that an apprentice-in-training must not perform LHR procedures unless under the direct supervision of a senior LHR technician or a LHR professional.

The proposed rules add new §118.27, LHR Individual Certification--Technician. This new rule includes provisions from existing §118.33, which is being repealed, and establishes that an applicant for a LHR technician certification must hold a current apprentice-in-training certification and have performed at least 100 LHR procedures under the direct supervision of a senior LHR technician or a LHR professional within the 12 months of submitting an application. The proposed rules also establish the requirements of a supervisor who directly supervises the activities of a LHR Technician.

The proposed rules add new §118.28, LHR Individual Certification--Senior LHR Technician. This new rule includes provisions from existing §118.33, which is being repealed, and establishes that an applicant for a senior LHR technician certification must hold a current LHR technician certification and have directly supervised at least 100 LHR procedures. The proposed rules also establish the requirements of a supervisor who performs the direct supervision activities of a senior LHR technician.

The proposed rules add new §118.29, LHR Individual Certification--LHR Professional. This new rule includes provisions from existing §118.33, which is being repealed, and establishes that an applicant for a LHR professional certification must hold a current senior LHR technician certification; be certified by a certifying entity approved by the department; and pass a department approved test. The proposed rules also establish the requirements of a supervisor who performs the direct supervision activities of a LHR professional.

The proposed rules add new Subchapter D, Apprentice Training Programs.

The proposed rules repeal existing §118.30, Laser Hair Removal Facility Certificate--Requirements and Application. The provision in this repealed rule has been updated and supplemented under new §118.10.

The proposed rules add new §118.30, Apprentice Training Programs. This new rule includes provisions from existing §118.33,

which is being repealed, and establishes that training must be obtained from a department-approved training program and that programs must follow specific education requirements. The proposed rules establish the application requirements and eligibility requirements for training programs.

The proposed rules repeal existing §118.31, Laser Hair Removal Facility--Responsibilities. The provision in this repealed rule has been updated and supplemented under new §118.12.

The proposed rules repeal existing §118.32, Laser Safety Officer--Designation and Responsibilities.

The proposed rules repeal existing §118.33, Laser Hair Removal Individual Certificate--Requirements and Application. The provisions in this repealed rule have been updated and supplemented under new §118.21, §118.22, and §§118.26-118.29.

The proposed rules repeal existing §118.34, Laser Hair Removal Professionals and Senior Laser Hair Removal Technicians--Auditing and Supervision Requirements. The provisions in this repealed rule have been updated and supplemented under new §118.28 and §118.29.

The proposed rules repeal existing §118.35, Continuing Education Requirements. The provision in this repealed rule has been updated and supplemented under new §118.25.

The proposed rules add new Subchapter E, Requirements for Certifying Entities and Examinations.

The proposed rules repeal existing §118.40, License Terms; Renewals. The provision in this repealed rule has been updated and supplemented under new §118.11.

The proposed rules add new §118.40, Requirements for Certifying Entities and Examinations. This new rule includes provisions from existing §118.50, which is being repealed, and establishes the requirements a certifying entity must meet and establishes the requirements a certification program must meet.

The proposed rules add new Subchapter F, Laser Hair Removal Devices.

The proposed rules repeal existing §118.50, Requirements for Certifying Entities and Examinations. The provision in this repealed rule has been updated and supplemented under new §118.40.

The proposed rules add new §118.50 LHR Devices--General and Operating Requirements. This new rule includes provisions from existing §118.70, which is being repealed, and establishes requirements for use of an LHR device in an LHR facility, including minimum requirements for a prescription from a licensed physician for the purchase of an LHR device. The proposed rules include other requirements such as establishing a controlled area within a room in which LHR devices are used; that protective eyewear must be worn by all individuals using an LHR device and all individuals present; and that an LHR facility must not be used for living or sleeping purposes.

The proposed rules add new §118.51, LHR Devices--Stolen, Lost, or Missing. This new rule includes provisions from existing §118.71, which is being repealed, and establishes the procedures to report a stolen, lost, or missing device. The proposed rules establish the information that must be included in the report, including a description of the device and a description of the circumstances under which the loss occurred.

The proposed rules add new Subchapter G, Records Requirements.

The proposed rules repeal existing §118.60, Consulting Physician--Responsibilities and Protocols. The provision in this repealed rule has been updated and supplemented under new §118.13.

The proposed rules add new §118.60, Records Retention Requirements. This new rule includes provisions from existing §118.100, which is being repealed, and establishes that records must be properly maintained, made available upon department request, and retained for specific amounts of time.

The proposed rules repeal existing §118.61, Consulting Physician--Audits of LHR Facility Protocols and Operations. The provision in this repealed rule has been updated and supplemented under new §118.14.

The proposed rules add new §118.61, Disclosures and Confidentiality Requirements. This new rule includes provisions from existing §118.110, which is being repealed, and establishes that client records must not be disclosed unless certain factors are met.

The proposed rules add new Subchapter H, Fees.

The proposed rules repeal existing §118.70, Laser Hair Removal Devices--General and Operating Requirements. The provision in this repealed rule has been updated and supplemented under new §118.50.

The proposed rules add new §118.70, Fees. The proposed rules include provisions from existing §118.80, which is being repealed, and establish the fees for the licenses and certifications in this chapter.

The proposed rules repeal existing §118.71, Laser Hair Removal Devices--Stolen, Lost, or Missing. The provision in this repealed rule has been updated and supplemented under new §118.51.

The proposed rules add new Subchapter I, Enforcement.

The proposed rules repeal existing §118.80, Fees. The provision in this repealed rule has been updated and supplemented under new §118.70.

The proposed rules add new §118.80, Administrative Penalties and Sanctions. The proposed rules include provisions from existing §118.90, which is being repealed, and establish that violations of provisions of the Texas Occupations Code, Health and Safety Code, this chapter, or any other rule or order may result in penalties and/or sanctions.

The proposed rules add new §118.81, Enforcement Authority. The proposed rules include provisions from existing §118.91, which is being repealed, and establish the enforcement authority to enforce Texas Health and Safety Code Chapter 401, Subchapter M and this chapter.

The proposed rules repeal existing §118.90, Administrative Penalties and Sanctions. The provision in this repealed rule has been updated and supplemented under new §118.80.

The proposed rules repeal existing §118.91, Enforcement Authority. The provision in this repealed rule has been updated and supplemented under new §118.81.

The proposed rules repeal existing §118.100, Records Retention Requirements. The provision in this repealed rule has been updated and supplemented under new §118.60.

The proposed rules repeal existing §118.110, Disclosures and Confidentiality Requirements. The provision in this repealed rule has been updated and supplemented under new §118.61.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the intended public benefit will be a reduction of the complexity of the governing administrative rules that allows certificate and license holders and the general public to understand and comply with the rules more easily.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation.

The proposed rules expand existing regulations by requiring certain notifications to the department to be made within 30 days; by authorizing certain areas of the body to be split into right and left sides and counted as more than one single procedure if done simultaneously; by stipulating the contents of a training program completion license and a training program certificate of completion; by providing detail on certain records that must be retained; and by requiring a certificate or license to be presented to a representative of the department upon request. The proposed rules repeal an existing regulation by repealing the requirement for a laser safety officer.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

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

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at: <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§118.1 - 118.3, 118.10, 118.20, 118.30 - 118.35, 118.40, 118.50, 118.60, 118.61, 118.70, 118.71, 118.80, 118.90, 118.91, 118.100, 118.110

STATUTORY AUTHORITY

The proposed repeals are repealed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No

other statutes, articles, or codes are affected by the proposed repeals.

§118.1. Authority.

§118.2. Purpose.

§118.3. Scope.

§118.10. Definitions.

§118.20. Prohibitions.

§118.30. Laser Hair Removal Facility Certificate--Requirements and Application.

§118.31. Laser Hair Removal Facility--Responsibilities.

§118.32. Laser Safety Officer--Designation and Responsibilities.

§118.33. Laser Hair Removal Individual Certificate--Requirements and Application.

§118.34. Laser Hair Removal Professionals and Senior Laser Hair Removal Technicians--Auditing and Supervision Requirements.

§118.35. Continuing Education Requirements.

§118.40. License Terms; Renewals.

§118.50. Requirements for Certifying Entities and Examinations.

§118.60. Consulting Physician--Responsibilities and Protocols.

§118.61. Consulting Physician--Audits of LHR Facility Protocols and Operations.

§118.70. Laser Hair Removal Devices--General and Operating Requirements.

§118.71. Laser Hair Removal Devices--Stolen, Lost, or Missing.

§118.80. Fees.

§118.90. Administrative Penalties and Sanctions.

§118.91. Enforcement Authority.

§118.100. Records Retention Requirements.

§118.110. Disclosures and Confidentiality Requirements.

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 May 19, 2025.

TRD-202501702

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 475-4879



SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§118.1 - 118.4

STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M.

§118.2. Scope.

(a) Except as otherwise specifically provided, this chapter applies to all persons who:

(1) perform or attempt to perform laser hair removal (LHR); or

(2) operate a laser hair removal facility.

(b) This chapter does not apply to the manufacture of LHR devices.

(c) Except for consulting physicians and alternate consulting physicians, this chapter does not apply to a physician or to a physician's employee or delegate acting under Texas Occupations Code, Chapter 157.

(d) A certification issued under this chapter only authorizes a person to perform nonablative cosmetic LHR. The certification does not authorize the person to diagnose, treat, or offer to treat any client for any illness, disease, injury, defect or deformity of the human body.

(e) This chapter applies only to LHR devices used for nonablative hair removal.

(f) A person who receives, possesses, uses, owns, or acquires an LHR device and who does not hold an LHR facility license is subject to the requirements of this chapter, including any requirement applicable to a person who does hold an LHR facility license.

(g) A health professional licensed under another law is not required to hold a certificate issued under this chapter to perform laser hair removal if the performance of laser hair removal is within the scope of that professional's practice as determined by the professional's licensing board.

§118.3. Definitions.

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

(1) Act--Texas Health and Safety Code, Chapter 401, Subchapter M.

(2) Adverse event--Any death or serious injury to a client or employee of an LHR facility that is a result of use, misuse, or failure of an LHR device or LHR safety equipment.

(3) Advertising--All representations disseminated in any manner or by any means for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of laser hair removal services.

(4) Alternate consulting physician--A physician, licensed in Texas, designated by an LHR facility to be available for emergency consultation with the facility if the consulting physician is unavailable and as appropriate to the circumstances.

(5) Certifying entity--A non-governmental organization approved by the department that administers an examination for obtaining the LHR Professional certification and meets the requirements of §118.50.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Consulting physician--A physician, licensed in Texas, who has a written contract with a LHR facility for the purpose of meeting the requirements under Section 401.519 of the Act.

(8) Customer--An equivalent term for "client".

(9) Delegate--The act of a consulting physician or alternate consulting physician to delegate any medical act that a reasonable and prudent consulting physician or alternate consulting physician would find within the scope of sound medical judgement to delegate. The act must be performed by properly trained persons, as specified in Texas Occupations Code, Chapter 157.

(10) Department--The Texas Department of Licensing and Regulation.

(11) Direct supervision--Direct observation by an individual who is physically present in the LHR facility and available to provide immediate assistance if required.

(12) Executive Director--The executive director of the department.

(13) Individual LHR certification--A certification issued by the department to an individual who has met the requirements for individual LHR licensure. The term includes certifications issued by the department for a LHR apprentice-in-training, a LHR technician, a senior LHR technician, and a LHR professional.

(14) Laser hair removal (LHR)--The use of a laser or pulsed light device for nonablative hair removal procedures. For purposes of this chapter, "laser hair reduction" is an equivalent term.

(15) LHR facility--A business location that provides laser hair removal.

(16) LHR facility license--A license issued by the department that allows a person to operate an LHR facility.

(17) Laser hair removal procedure--The removal of hair from one of the four body areas as specified in §118.4.

(18) Laser or pulsed light device--A device approved by the FDA for laser hair removal or reduction. For purposes of this chapter, "LHR device" is an equivalent term.

(19) Licensed health professional--An individual licensed in accordance with Occupations Code, Title 3.

(20) Nonablative hair removal procedure--A hair removal procedure using a LHR device that does not remove the epidermis.

(21) Operate an LHR facility--To do any of the following:

(A) own an LHR facility; or

(B) perform or attempt to perform laser hair removal at an LHR facility as:

(i) an agent of an owner of the LHR facility; or

(ii) an independent contractor of the LHR facility;

(22) Operator--A person who:

(A) owns an LHR facility; or

(B) performs or attempts to perform laser hair removal at an LHR facility as:

(i) an agent of an owner of the LHR facility; or

(ii) an independent contractor of the LHR facility.

(23) Person--An individual or a legal entity.

(24) Physician--An individual licensed to practice medicine in Texas. Only a Doctor of Medicine (MD) or Doctor of Osteopathic Medicine (DO) can serve as a consulting physician or alternate consulting physician.

(25) Serious injury--An injury or illness that:

(A) is life-threatening;

(B) results in permanent impairment of a body function or permanent damage to a body structure; or

(C) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure. Permanent means irreversible impairment or damage to a body structure or function, excluding trivial impairment or damage.

(26) Supervision--The physical presence of a senior LHR technician or LHR professional at the LHR facility.

(27) Training Program--A program, approved by the department, that offers the educational requirements for an "apprentice-in-training" for laser hair removal in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M, and this chapter, and follows applicable state laws, including Texas Education Code, Chapter 132.

§118.4. Laser Hair Removal Procedure.

(a) A laser hair removal procedure is the removal of hair from one of the following four body areas, conducted during the same or separate appointment by one person:

(1) head and neck;

(2) upper extremities, to include hands, arms (including armpits), and shoulders;

(3) torso, to include front and back (including pelvic region and buttocks); or

(4) lower extremities, to include legs and feet.

(b) The following areas are considered one procedure, regardless of how many individual body parts are treated within that area:

(1) forehead, glabella, cheeks, nose, upper lip, chin, sideburns, ears, front of neck, and back of neck;

(2) hands, fingers, armpits, shoulders;

(3) areolas, chest (man), abdomen, bikini or Brazilian, upper back lower back, buttocks, midline; and

(4) knees, feet, toes

(c) The following areas may be split into right and left sides and count as more than one single procedure if done simultaneously.

(1) Upper arms;

(2) Lower arms;

(3) Upper legs; and

(4) Lower legs.

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 May 19, 2025.

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For further information, please call: (512) 475-4879

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SUBCHAPTER B. LASER HAIR REMOVAL FACILITY

16 TAC §§118.10 - 118.14

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.10. LHR Facility--License Requirements and Application.

(a) A separate application must be submitted for each LHR facility license.

(b) A separate LHR facility license is required for each LHR facility.

(c) If a physician owns or operates a facility where only LHR procedures are performed, an LHR facility license is required.

(d) An LHR facility license is not required for the following:

(1) a facility owned or operated by a physician for the practice of medicine;

(2) a licensed hospital; or

(3) a clinic owned or operated by a licensed hospital.

(e) To be eligible for an LHR facility license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) designate an individual who holds an LHR professional certification who will supervise laser hair removal procedures performed at the facility;

(3) designate the consulting physician and alternate consulting physician with whom the facility has a written contract that includes the following:

(A) proper protocols for the services provided by the consulting physician at the facility as specified in §118.13;

(B) a provision for the consulting physician to audit the LHR facility's protocols and operations in accordance with §118.14;

(C) a commitment that the consulting physician will be available for emergency consultation with the LHR facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client; and

(D) an alternate consulting physician who must be available for the consultation with the LHR facility relating to care for the client if the consulting physician is unavailable; and

(4) submit the fee required under §118.70.

(f) A person must not operate an LHR facility unless the person holds an LHR facility license issued by the department under this chapter, unless exempt as prescribed in §118.10(d).

§118.11. LHR Facility--License Term; Renewal.

(a) An LHR facility license issued by the department is valid for two years.

(b) Each applicant for renewal of an LHR facility license must:

(1) complete an application on department approved forms; and

(2) submit the renewal fee(s) specified under §118.70;

(c) If an LHR facility does not submit an application for renewal of the LHR facility license, the LHR facility must on or before the expiration date of the LHR facility license:

(1) end use of all LHR devices; and

(2) submit to the department a record of the disposition of the LHR devices, and if transferred, to whom the devices were transferred, as specified in §118.12(f).

(d) Expiration of the LHR facility license does not relieve the LHR facility owner or operator of the requirements of this chapter.

§118.12. LHR Facility--Responsibilities.

(a) An LHR device used for laser hair removal in a LHR facility must follow all applicable federal and state laws and regulations.

(b) An LHR facility must notify the department within 30 days after any change to the following:

(1) business name of the LHR facility;

(2) physical location of the LHR facility;

(3) street address where LHR devices will be used;

(4) LHR professional designated for the facility; or

(5) consulting physician or alternate consulting physician for the facility.

(c) The LHR facility must follow the adverse reporting requirements for device user facilities in Title 21, CFR, Part 803 - Medical Device Reporting. Copies of all reports of adverse events submitted in accordance with Title 21, CFR, Part 803 must be submitted to the department within 24 hours of their initial submission to the manufacturer, FDA or both as determined by the consulting physician in accordance with §118.13.

(d) If an LHR facility loses the services of the consulting physician, the facility may use the alternate consulting physician designated in the contract in accordance with §118.10, and the LHR facility must contract with a new consulting physician within 30 calendar days. If an LHR facility loses the services of both consulting physicians, the LHR facility must immediately cease LHR procedures until the LHR facility establishes a new contractual relationship with a consulting physician and alternate consulting physician. All new contracts must be sent to the department within 30 days.

(e) Each LHR facility must conduct and maintain a physical inventory of all LHR devices in its possession at an interval not to exceed one year. Records of the inventories must be made and maintained in accordance with §118.60, and must include:

(1) LHR device manufacturer's name;

(2) model and serial number of the LHR device;

(3) specific location of the LHR device (for example, room number);

(4) name, title, and signature of the person performing the inventory; and

(5) date the inventory was performed.

(f) Each LHR facility must maintain records of receipt, transfer, and disposal for each LHR device in accordance with §118.60. The records must include the following information:

- (1) LHR manufacturer's name;
- (2) model and serial number of the LHR device;
- (3) date of the receipt, transfer, or disposal;
- (4) name and address of person LHR devices were received from, transferred to, or disposed of with; and
- (5) name of the individual recording the information.

(g) An operator is responsible for maintaining the LHR facility's compliance with the requirements of the Act and this chapter.

(h) An operator must not claim, advertise, or distribute promotional materials claiming that laser hair removal is free from risk or provides any medical benefit.

(i) An operator must not produce false or misleading advertising regarding the services offered at the facility.

(j) When an LHR facility ends all activities requiring an LHR facility license, the LHR facility must immediately submit to the department:

- (1) a written request for termination of the LHR facility license; and
- (2) a record of the disposition of the LHR devices, and if transferred, to whom the devices were transferred, as specified in §118.12(f).

(k) A warning sign must be posted in a conspicuous location that is readily visible to a person entering the LHR facility. The warning sign must meet the following requirements:

- (1) be of a size with dimensions at least 8 and 1/2 inches by 11 inches;
- (2) contain wording with a font size no smaller than size 26;
- (3) contain at least the following wording:

(A) Laser hair removal devices emit electromagnetic radiation that is considered to be an acute hazard to the skin and eyes from direct and scattered radiation. Laser hair removal procedures provide no medical benefit and may result in adverse effects.

(B) To make a complaint, contact the Texas Department of Licensing and Regulation, Laser Hair Removal Program at P.O. Box 12157, Austin, Texas 78711, (512) 539-5600, or www.tdlr.texas.gov.

(l) The LHR controlled area must be conspicuously posted with signs or labels as prescribed by applicable federal and state laws and regulations.

(m) An LHR facility license is not transferrable.

(n) Except as provided by subsection (o), an LHR facility must have an LHR professional present to provide supervision of the LHR procedures performed at the facility during the facility's operating hours.

(o) If an LHR facility loses the services of the LHR professional, or the LHR professional is continuously absent for up to 44 calendar days, the LHR facility must not continue to offer LHR services unless the LHR facility has a senior LHR technician present to perform or directly supervise each procedure. By the 45th day after the date the LHR professional leaves or is continuously absent from the facility:

(1) the facility's senior LHR technician must become certified as an LHR professional in accordance with this chapter; or

(2) the facility must hire a new LHR professional.

§118.13. LHR Facility--Consulting Physician.

(a) A LHR facility must have a written contract with a consulting physician. The LHR facility's contract with its consulting physician must provide the following:

(1) The consulting physician must be available for emergency consultation with the facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client. This responsibility may be met through telemedicine in accordance with Texas Occupations Code, Chapter 111;

(2) If the consulting physician is unavailable for an emergency consultation, the alternate consulting physician must be available for the consultation with the facility relating to care for the client;

(3) The consulting physician and alternate consulting physician must have a non-residential primary practice site located within seventy-five (75) miles of the LHR facility; and

(4) The consulting physician must be responsible for reviewing all adverse events, serious injuries, and for determining whether such events are reportable in accordance with applicable laws.

(b) The protocols required in accordance with §118.10 are:

(1) written instructions agreed upon and signed and dated by the consulting physician and the LHR facility operator;

(2) maintained at the LHR facility; and

(3) reviewed and signed by the consulting physician and LHR operator at least annually.

(c) The protocols required in accordance with §118.10, must include at least the following:

(1) the level of licensure which is required for each LHR procedure;

(2) the circumstances or conditions under which each procedure is to be performed;

(3) specific instructions to be followed for individual LHR certification who are working under direct supervision or who are giving direct supervision;

(4) conditions under which emergency consultation is required;

(5) designated settings, in accordance with the manufacturer's instructions, at which the LHR device can be expected to safely remove hair; and

(6) list of medications taken by the client that must be reported to the consulting physician before LHR services are provided or that, if taken by the client, preclude a LHR procedure from being performed.

(d) The requirements in this section do not relieve a consulting physician or another health care professional from complying with applicable regulations prescribed by a state or federal agency.

§118.14. LHR Facility--Audits.

(a) The LHR facility must ensure that operations are being conducted in accordance with the protocols established by the contract specified in §118.10. The consulting physician must conduct audits of the LHR facility to verify compliance with the protocol.

(b) The audits must be unannounced, must be conducted at the physical site of the LHR facility, and must be conducted at least quarterly.

(c) The audits may be scheduled in advance if the consulting physician determines that advance notice does not compromise the ability to determine that operations are being conducted in accordance with established protocols.

(d) The audits may be conducted by the consulting physician, another alternate consulting physician or an advanced practice nurse or physician's assistant acting under the consulting physician's delegated authority.

(e) If the audit is conducted by an advanced practice nurse or physician's assistant, the consulting physician must sign the audit.

(f) The consulting physician must make records of audits conducted under the terms of the contract and maintain those records in accordance with the requirements of this chapter. The consulting physician audit records must be maintained in accordance with this chapter.

(g) The record of the audit must include at least the following:

(1) date audit was performed;

(2) name of the LHR facility audited;

(3) assessment of the LHR facility's performance of the protocols established by the written contract; and

(4) signature of the consulting physician, the LHR facility operator, and any other alternate consulting physician or advanced practice nurse or physician's assistant acting under the consulting physician's delegated authority to conduct the audit.

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SUBCHAPTER C. LASER HAIR REMOVAL INDIVIDUAL CERTIFICATION

16 TAC §§118.20 - 118.22, 118.25 - 118.29

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.20. LHR Individual Certification--Requirements and Application.

(a) All applicants for an individual LHR certification must:

(1) submit a completed application on a department-approved form;

(2) submit the applicable fee specified under §118.70; and

(3) pass a criminal history background check.

(b) An individual must not perform or attempt to perform laser hair removal unless the person holds the appropriate individual LHR certification issued by the department under this chapter, unless exempt as prescribed by §118.2(g).

§118.21. LHR Individual Certification--Responsibilities.

(a) An individual LHR certification issued in accordance with this chapter is subject to the applicable provisions of the Act and to the applicable rules and orders of the department.

(b) An individual LHR certification issued or granted under this chapter is not transferrable.

(c) Each certificant must display the LHR certification issued in accordance with this chapter in an open public area of the LHR facility. Copies of an individual's certification document may be made for display in multiple facilities.

(d) Upon request, each certificant must present to the department or the department's representative any certificate issued by the department or the department's representative.

§118.22. Certification Term; Renewal.

(a) An individual LHR certification issued by the department is valid for 2 years.

(b) Each applicant for renewal of an individual LHR certification must:

(1) complete an application on department approved forms; and

(2) submit the renewal fee(s) specified under §118.70.

(c) Each applicant for renewal of an individual LHR certification must also successfully pass a criminal history background check.

(d) Expiration of an individual LHR certification does not relieve the license holder of the requirements of this section.

(e) Renewals for LHR professionals must provide proof of current certification.

§118.25. Continuing Education Requirements.

(a) General Requirements. Each individual who holds an individual LHR certification issued by the department must obtain eight (8) hours of continuing education (CE) hours per certification term to include the following LHR related topics:

(1) refresher training in the topics specified in §118.26;

(2) LHR technology updates;

(3) applicable regulatory changes; and

(4) other health and safety related topics.

(b) Web-Based Training. The continuing education hours required by this section may be obtained by web-based online training.

§118.26. LHR Individual Certification--Apprentice-in-Training.

(a) LHR Apprentice-In-Training Certification Requirements. An applicant for an LHR apprentice-in-training certification must:

(1) be at least 18 years of age.

(2) have at least 24 hours of training in:

- (A) LHR device safety;
- (B) laser physics;
- (C) skin typing;
- (D) skin reactions;
- (E) treatment protocols;
- (F) burns;
- (G) eye protection;
- (H) emergencies; and
- (I) post-treatment protocols.

(3) have an additional 16 hours of training in:

(A) cardio-pulmonary resuscitation (a valid cardio-pulmonary resuscitation certificate may be used to satisfy up to 8 hours of the training required by this subparagraph);

(B) review of client's pre-existing conditions to determine if consultation with a consulting physician is needed for possible diagnosis or treatment;

(C) review of client's previous LHR procedures by another modality;

(D) review of client's current medications to determine if any medications need to be brought to the attention of the consulting physician based on established protocols;

(E) proper signage and posting;

(F) use of an LHR device; and

(G) anesthesia used in conjunction with LHR procedures.

(b) LHR Apprentice-In-Training Certification Submission Requirement. An applicant for an LHR apprentice-in-training certification must submit proof of successful completion of a training program approved by the department covering the topics listed in §118.26(a)(2). An individual must not perform LHR procedures unless under the direct supervision of a senior LHR technician or an LHR professional.

§118.27. LHR Individual Certification--Technician.

(a) LHR Technician Certification Requirements. An applicant for an LHR technician certification must meet the following requirements:

(1) hold a current LHR apprentice-in-training certification in accordance with this chapter; and

(2) have performed at least 100 LHR procedures under the direct supervision of a senior LHR technician or an LHR professional in the 12 months prior to the application submission date.

(b) Supervisor requirements. A physician or other licensed health professional must not perform the direct supervision activities of an LHR professional or senior LHR technician in accordance with this section unless that individual meets the requirements of §118.28 and §118.29.

§118.28. LHR Individual Certification--Senior LHR Technician.

(a) Senior LHR Technician Certification Requirements. An applicant for a senior LHR technician certificate must meet the following requirements:

(1) hold a current LHR technician certification in accordance with this chapter; and

(2) have directly supervised at least 100 LHR procedures verified by an LHR professional in the 12 months prior to the application submission date.

(b) Verification requirements. A physician or other licensed health professional must not verify the LHR procedures directly supervised by an applicant for a senior LHR technician certificate in accordance with this section unless that individual meets the requirements for a LHR professional specified in §118.29.

§118.29. LHR Individual Certification--LHR Professional.

(a) LHR Professional Certification Requirements. An applicant for an LHR professional certification must meet the following requirements:

(1) hold a current senior LHR technician certification in accordance with this chapter;

(2) be certified by a certifying entity approved by the department pursuant to §118.40; and

(3) pass a department approved examination pursuant to §118.40.

(b) LHR Professional Responsibilities. The duties of an LHR professional include, but are not limited to:

(1) ensuring that users of LHR devices are trained in laser safety;

(2) assuming control and having the authority to institute corrective actions, including shutdown of operations when necessary, in emergency situations or if unsafe conditions exist;

(3) ensuring that maintenance and other practices required for safe operation of the LHR devices are performed;

(4) ensuring the proper use of protective eyewear and other safety measures;

(5) ensuring compliance with the requirements in this section and with protocols specified by the LHR facility;

(6) ensuring audits required in accordance with this chapter are conducted;

(7) maintaining records as required by this chapter; and

(8) ensuring that personnel are adequately trained, certified, and are in compliance with this chapter, the conditions of the LHR facility license, and the protocols of the LHR facility.

(c) Supervisor requirements. An LHR professional must ensure that there was direct supervision of the 100 LHR procedures performed by a LHR technician under §118.27 while obtaining the requirements of a senior LHR technician under §118.28.

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SUBCHAPTER D. APPRENTICE TRAINING PROGRAMS

16 TAC §118.30

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.30. Apprentice Training Programs.

(a) Training program requirements. Training required by this chapter must be obtained from a department-approved training program.

(b) Training program application. Training programs must follow all education requirements set out in this chapter.

(1) Training programs must apply on a department approved application for approval.

(2) An application submitted to the department for approval must include the following:

(A) Course syllabus, including topics covered and time allotted for each topic;

(B) Qualifications of instructors;

(C) Verification that exam(s) are administered to assess the student's knowledge of material presented;

(D) The criteria for successful completion of the course;
and

(E) A copy of the certification that will be issued upon successful completion of the training program that includes the following information:

(i) Name of the training program;

(ii) A heading or title of training on the certificate that states "Laser Hair Removal 40 Hour Training;

(iii) A statement that the training was completed in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M, and the rules under 16 Texas Administrative Code, Chapter 118;

(iv) The date the training was completed; and

(v) Verification that the training program is in compliance with applicable state laws, including Texas Education Code, Chapter 132.

(c) Individual Eligibility. An individual should determine his or her eligibility to participate in an educational program to obtain an LHR individual certification, as prescribed by Texas Occupations Code §53.152.

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SUBCHAPTER E. REQUIREMENTS FOR CERTIFYING ENTITIES AND EXAMINATIONS

16 TAC §118.40

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.40. Requirements for Certifying Entities and Examinations.

(a) A certifying entity must meet the following requirements:

(1) apply on a department approved application for approval and follow all education requirements set out in this chapter;

(2) be a non-governmental organization such as a society, association, business, or school with an interest in the field of laser hair removal or whose members participate in or have an interest in the field of laser hair removal;

(3) if a society or association, not restrict its membership due to race, color, religion, age, national origin or disability and also make its memberships available to the general public nationwide;

(4) if a society or association, have a certification program open to nonmembers as well as members;

(5) be an incorporated nationally recognized entity in good standing involved in setting national standards of practice within its fields of expertise;

(6) have an adequate staff, a viable system for financing its operations, and a policy- and decision- making review board;

(7) have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and include a system for monitoring and enforcing these by-laws and policies;

(8) have a committee whose members carry out their responsibilities impartially to review and approve their certification guidelines and procedures and advise the organization's staff in implementing the certification program;

(9) have a committee whose members carry out their responsibilities to impartially review complaints against certified individuals and then determine appropriate sanctions;

(10) have written procedures describing all aspects of its certification program including its administration, and maintain records of the current status of an individual's certification;

(11) have procedures to ensure certified individuals are provided due process with respect to the administration of a certification program, including the certification process and the imposition of any sanctions against certified individuals;

(12) have procedures for proctoring examinations, including qualifications for proctors. These procedures must ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees;

(13) exchange information about certified individuals with the agency and other certifying entities and allow periodic review of its certification program and related records by the agency; and

(14) provide a description to the agency of its procedures for choosing examination sites and for providing an appropriate examination environment.

(b) To be approved by the department, a certification program must meet the following requirements:

(1) require applicants for certification to:

(A) receive training in the topics specified in §118.26(a); and

(B) satisfactorily complete a written examination covering these topics;

(2) require applicants for certification to provide documentation that demonstrates that the applicant has:

(A) received training in the topics specified in §118.26(a); and

(B) satisfactorily completed a minimum period of LHR apprentice-in-training certification requirements;

(3) include procedures to ensure that all examination questions are protected from disclosure, as prescribed by 16 Texas Administrative Code §60.54;

(4) include procedures for denying an application and revoking, suspending, and reinstating a certificate;

(5) include procedures for notifying each applicant of current guidelines to determine eligibility in the educational program, as prescribed by Texas Occupations Code §53.152;

(6) provide a certification period of at least 3 years, but not more than 5 years;

(7) include procedures for renewing certifications and, if the procedures allow renewals without examination, require evidence of recent full-time employment and continuing education hours as required by this chapter;

(8) provide a timely response to inquiries from members of the public about an individual's certification status; and

(9) issue a certificate of completion that includes:

(A) the issue date;

(B) the expiration date; and

(C) a statement that the certification program was completed in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M, and the rules under 16 Texas Administrative Code, Chapter 118.

(c) An examination administered or used by a certifying entity must be designed to test an individual's knowledge and understanding of at least the topics specified in §118.26(a).

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SUBCHAPTER F. LASER HAIR REMOVAL DEVICES

16 TAC §118.50, §118.51

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.50. LHR Devices--General and Operating Requirements.

(a) An LHR device used in an LHR facility must follow all applicable federal and state laws and regulations.

(b) An LHR device used by an LHR facility must be purchased either by a physician (such as the consulting physician or alternate consulting physician) or by an LHR facility pursuant to a written prescription or other order of a licensed physician in Texas.

(c) A prescription or other order from a licensed physician for the purchase of an LHR device must include at a minimum:

(1) the date the physician issued the order;

(2) the name and quantity of the LHR device(s) authorized to be purchased;

(3) the name, address, and telephone number of the registered LHR facility authorized to purchase and own the laser;

(4) the intended use of the device is limited to nonablative laser hair removal;

(5) the name, address, and telephone number of the physician at the physician's usual place of business, legibly printed or stamped;

(6) a statement that the prescription is valid up to twelve (12) months from the date of issue; and

(7) the signature of the authorizing physician.

(d) An LHR device must not be used for LHR procedures unless:

(1) the LHR device is approved for laser hair removal or reduction by the FDA for that purpose; and

(2) the LHR device is operated only at the settings expected to safely remove hair, in accordance with the manufacturer's instructions and protocols established by the consulting physician in accordance with this chapter and other applicable law regulating devices.

(e) Individuals operating each laser presently being used or listed on the current inventory, must be provided with written instructions for safe use, including clear warnings and precautions to be taken when using the LHR device.

(f) Each individual receiving the instructions must document that they have read and understand the instructions. The instructions and the documentation that each individual has read and understands the instructions must be maintained in accordance with §118.60.

(g) A controlled area must be established within a room in which LHR devices are used and the LHR devices must be secure from unauthorized removal.

(h) Each LHR device must incorporate a key-actuated or computer-actuated master control. The key must be removable and the LHR device must not be operable when the key is removed. When the LHR device is not being prepared for operation or is unattended, the controlled area must be secured to prevent unauthorized access.

(i) Protective eyewear must be worn by all individuals using an LHR device and all individuals present, including clients, in the room where an LHR device is being used. Protective eyewear devices must meet the following requirements:

(1) provide a comfortable and appropriate fit all around the area of the eye;

(2) be in proper condition to ensure the optical filter(s) and frame provide the required optical density or greater at the desired wavelengths, and retain all protective properties during its use;

(3) be suitable for the specific wavelength of the laser and be of optical density adequate for the energy involved;

(4) have the optical density or densities and associated wavelength(s) permanently labeled on the filters or eyewear; and

(5) be examined, at intervals not to exceed twelve (12) months, to ensure the reliability of the protective filters and integrity of the protective filter frames. Unreliable eyewear must be discarded. Documentation of the examination must be made and maintained in accordance with §118.60.

(j) Each client must be provided with a written statement outlining the relevant risks associated with LHR procedures, including a warning that failure to use the eye protection provided to the client by the LHR facility may result in damage to the eyes.

(k) Compliance with the written statement requirement specified in subsection (j), does not affect the liability of the LHR facility operator or a manufacturer of a LHR device.

(l) Each LHR facility licensed by the department to offer LHR procedures using LHR devices in accordance with this chapter must confine use and possession of the LHR devices to the location and purpose authorized in the LHR facility application. If an LHR facility operator owns multiple LHR facilities, the operator may transfer an LHR device from facility to facility that the operator owns if each facility is licensed.

(m) An individual must not operate an LHR device with the intent to treat an illness, disease, injury, or physical defect or deformity unless the individual is:

(1) a physician;

(2) acting under a physician's order; or

(3) authorized under other law to treat the illness, disease, injury, or physical defect or deformity in that manner.

(n) A person who violates subsection (m), is practicing medicine in violation of Occupations Code, Title 3, Subtitle B, and is subject to the penalties under that subtitle and under Health and Safety Code §401.522.

(o) An LHR facility must not be used for living or sleeping purposes, or any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public. A facility that is attached to a residence must have an entrance that is separate and distinct from the residential entrance. Any door between a residence and a licensed facility must be closed during business hours.

§118.51. LHR Devices--Stolen, Lost, or Missing.

(a) Each LHR facility licensed by the department must report to the Department of State Health Services - Radiation Control Program a stolen, lost, or missing LHR device within twenty-four (24) hours after its occurrence becomes known to the person.

(b) Each person or facility required to make a report must, within thirty (30) days after making the initial report, make a written report to the Department of State Health Services - Radiation Control Program that includes the following information:

(1) a description of the LHR device involved, including the manufacturer, model, serial number, and class;

(2) a description of the circumstances under which the loss or theft occurred;

(3) a statement of disposition, or probable disposition, of the LHR device involved;

(4) actions that has been taken, or will be taken, to recover the LHR device; and

(5) procedures or measures that has been taken to prevent the loss or theft of LHR devices in the future.

(c) After filing the written report, the person must also report additional substantive information on the loss or theft within thirty (30) days after the person learns of such information.

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For further information, please call: (512) 475-4879



SUBCHAPTER G. RECORDS REQUIREMENTS

16 TAC §118.60, §118.61

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the

Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.60. Records Retention Requirements.

All records required by this chapter must be properly maintained, and made available upon department request, in accordance with the following time requirements for record keeping:

(1) Retain for Three Years:

(A) Audits;

(i) Records of each audit must be maintained.

(ii) The records must include, but not be limited to,

the following:

(I) name of the LHR professional;

(II) name(s) of the individual(s) being audited;

and

(III) date of the procedure;

(B) Inventory;

(C) Instruction to Individuals;

(D) Protective Eyewear Examination; and

(E) LHR Procedures Performed;

(i) Records of each LHR procedure must be main-

tained.

(ii) Each record must include, but not be limited to,

the following:

(I) client identification;

(II) date of the LHR procedure;

(III) indication that the client was given the no-

tification;

(IV) name of the individual performing the LHR

procedure;

(V) type of individual LHR certification pos-
sessed by the individual performing the LHR procedure;

(VI) name of the senior LHR technician or LHR
professional providing direct supervision, if applicable; and

(VII) manufacturer, model number, and serial
number of the LHR device and the settings used to perform the
procedure.

(2) Retain until termination or expiration of LHR facility
license: receipts, transfers, and disposals under §118.12.

§118.61. Disclosures and Confidentiality Requirements.

(a) Except as provided by subsection (b), no person may dis-
close a client record required to be kept by the department or another
authorized agency.

(b) A person may disclose a client record if:

(1) the client or a person authorized to act on behalf of the
client requests the record;

(2) the department, the Texas Medical Board, a health au-
thority, or an authorized agency requests the record;

(3) the client consents in writing to disclosure of the record
to another person;

(4) the client is a victim, witness, or defendant in a criminal
proceeding and the record is relevant to that proceeding;

(5) the record is requested in a criminal or civil proceeding
by court order or subpoena; or

(6) disclosure is otherwise required by law.

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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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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SUBCHAPTER H. FEES

16 TAC §118.70

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.70. Fees.

(a) All fees paid to the department are non-refundable.

(b) The two-year initial licensing fee for a LHR facility license
is \$900.

(c) The two-year renewal fee for an LHR facility license is
\$750.

(d) The two-year initial licensure fees and two-year renewal
fees for individual LHR certifications are as follows:

(1) LHR professional--\$150;

(2) Senior LHR technician--\$100;

(3) LHR technician--\$70; and

(4) LHR apprentice-in-training--\$50.

(e) A duplicate/replacement fee for a license or certification
issued under this chapter is \$25.

(f) Late renewal fees for licenses and certifications issued un-
der this chapter are provided under §60.83.

(g) A dishonored payment fee is the fee prescribed under
§60.82.

(h) The fee for a criminal history evaluation letter is the fee prescribed under §60.42.

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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SUBCHAPTER I. ENFORCEMENT

16 TAC §118.80, §118.81

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 401, Subchapter M. No other statutes, articles, or codes are affected by the proposed rules.

§118.80. Administrative Penalties and Sanctions.

If an individual or entity violates any provision of Texas Occupations Code, Chapter 51; Texas Health and Safety Code, Chapter 401, Subchapter M; this chapter; or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both, in accordance with the provisions of Texas Occupations Code, Chapter 51; Texas Health and Safety Code, Chapter 401, Subchapter M; and any associated rules.

§118.81. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapter 51; Texas Health and Safety Code, Chapter 401, Subchapter M; and any associated rules may be used to enforce Texas Health and Safety Code, Chapter 401, Subchapter M and this chapter.

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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Doug Jennings

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 235. CLASSROOM TEACHER CERTIFICATION STANDARDS

The State Board for Educator Certification (SBEC) proposes the repeal of §§235.115, 235.117, 235.131, 235.133, and 235.135 and new §§235.115, 235.117, 235.131, 235.135, and 235.137, concerning classroom teacher certification standards. The proposal would repeal standards in current Subchapters F and G and combine and align language across educator standards in new proposed Subchapter F. The proposal would also implement the statutory requirements of House Bill (HB) 2256, 87th Texas Legislature, Regular Session, 2021, and define the educator standards for the Bilingual Special Education certificate, as recommended by the SBEC-approved educator standards advisory committee.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 235, Classroom Teacher Certification Standards, specify the standards for the classroom teacher class of certificates, including Subchapter F, Supplemental Certificate Standards, and Subchapter G, Special Education Certificate Standards. The SBEC is statutorily authorized to ensure that all candidates for certification or renewal demonstrate the knowledge and skills necessary to improve the performance of Texas's population and required to appoint educator standards advisory committee members to recommend standards for each class of certificate. The educator standards advisory committees include practicing educators, school district personnel, experts, and educator preparation program (EPP) faculty. These individuals collaborate to draft new and review existing educator standards to ensure that the educator standards align with the commissioner's educator standards, reflect best practices, and, where applicable, align with the Texas Essential Knowledge and Skills (TEKS) adopted by the SBOE.

Proposed New 19 TAC Chapter 235, Subchapter F, and Repeal of Chapter 235, Subchapters F and G:

The proposal reflects the reorganization and combining of educator standard groups into one subchapter; aligns the language of standard sets across 19 TAC Chapter 235; and includes the new classroom teacher certification standards that would serve to implement HB 2256, 87th Texas Legislature, Regular Session, 2021.

HB 2256 (2021), Bilingual Special Education Certification Requirements

HB 2256 requires the SBEC to implement a new Bilingual Special Education educator certificate. The intent of the certificate is to ensure that there are teachers with special training in providing instruction to emergent bilingual students with disabilities. HB 2256 specifies that to be eligible for the certificate, a candidate must complete EPP coursework, with skills-based course of instruction on providing instruction to emergent bilingual students with disabilities, including the foundations of bilingual and second language special education; providing individualized education programs for emergent bilingual students with disabilities; providing assessment of emergent bilingual students with and without disabilities; developing teaching methods to recognize the intellectual, developmental, and emotional needs of students in dual language and transitional bilingual education set-

tings; teaching fundamental academic skills, including reading, writing, and mathematics, to students of limited English proficiency; and creating partnerships with families and school professionals.

Additionally, HB 2256 requires that candidates perform satisfactorily on a Bilingual Special Education Certification exam prescribed by the Board. The proposed Bilingual Special Education standards will serve as the foundation for this exam.

Previous SBEC Action to Implement HB 2256 (2021)

The SBEC has previously taken action to implement HB 2256. A summary of previous SBEC action is outlined in the following table.

Figure 1: 19 TAC Chapter 235, Subchapters F and G - Preamble

At a future meeting, the SBEC will consider additional rule updates to 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, to further implement HB 2256 and the Bilingual Special Education certificate.

Proposed Repeal of Subchapters F and G and Proposed New Subchapter F, Supplemental and Special Education Certificate Standards

The SBEC proposes the repeal of Subchapter F, Supplemental Certificate Standards, and Subchapter G, Special Education Certificate Standards.

The SBEC proposes new Subchapter F, Supplemental and Special Education Certificate Standards, that would include all content pedagogy standards previously adopted in Subchapters F and G.

The following table provides a high-level summary of the reorganization of educator standards in Chapter 235, Subchapters F and G.

Figure 2: 19 TAC Chapter 235, Subchapters F and G - Preamble

Proposed New 19 TAC §235.115. English as a Second Language Standards

The proposed new 19 TAC §235.115 would list English as a Second Language (ESL) content pedagogy standards for teachers of emergent bilingual students in proposed new Subchapter F, Supplemental and Special Education Certificate Standards.

The proposed new §235.115(a) would provide an overview of the ESL content pedagogy standards.

The proposed new §235.115(b) would specify the necessary knowledge and skills related to Foundations of Language Acquisition.

The proposed new §235.115(c) would specify the necessary knowledge and skills related to Linguistically Sustaining Practices.

The proposed new §235.115(d) would specify the necessary knowledge and skills related to Effective Instruction and Assessment Across All Content Areas and Disciplines.

The proposed new §235.115(e) would specify the necessary knowledge and skills related to Language Proficiency Assessment, Program Placement, and Reclassification.

The proposed new §235.115(f) would rename the standard group and specify the necessary knowledge and skills related to Professional Learning, Partnerships, and Student Support.

Proposed New 19 TAC §235.117. Bilingual Spanish Standards

The proposed new 19 TAC §235.117 would list Bilingual Spanish content pedagogy standards for classroom teachers of bilingual education programs (Spanish and English) in proposed new Subchapter F, Supplemental and Special Education Certificate Standards.

The proposed new §235.117(a) would provide an overview of the Bilingual Spanish content pedagogy standards.

The proposed new §235.117(b) would specify the necessary knowledge and skills related to Language Abilities.

The proposed new §235.115(c) would specify the necessary knowledge and skills related to Linguistically Sustaining Practices.

The proposed new §235.117(d) would specify the necessary knowledge and skills related to Instructional Practice.

The proposed new §235.117(e) would specify the necessary knowledge and skills related to Development and Assessment of Biliteracy.

The proposed new §235.117(f) would specify the necessary knowledge and skills related to Foundations of Bilingual Education.

Proposed New 19 TAC §235.131. Special Education Standards: Early Childhood-Grade 12

The proposed new 19 TAC §235.131 would list Special Education content pedagogy standards, for teachers of students who receive special education services (Grades EC-12), including grade-band specific standards, in proposed new Subchapter F, Supplemental and Special Education Certificate Standards.

The proposed new §235.131(a) would provide an overview of the Special Education Standards: Early Childhood-Grade 6.

The proposed new §235.131(b) would specify the necessary knowledge and skills related to Legal and Ethical Guidelines.

The proposed new §235.131(c) would specify the necessary knowledge and skills related to Understanding and Addressing Each Individual's Developmental and Learning Needs.

The proposed new §235.131(d) would specify the necessary knowledge and skills related to Subject Matter Content and Specialized Curricular Knowledge.

The proposed new §235.131(e) would specify the necessary knowledge and skills related to Assessment for Data-based Decision Making.

The proposed new §235.131(f) would specify the necessary knowledge and skills related to Supporting Learning Using Effective Instruction.

The proposed new §235.131(g) would specify the necessary knowledge and skills related to Supporting Students' Non-academic Growth.

The proposed new §235.131(h) would specify the necessary knowledge and skills related to Professional Learning and Collaboration.

The proposed new §235.131(i) would specify the necessary knowledge and skills related to Elementary Special Education Teachers (Early Childhood-Grade 6).

The proposed new §235.131(j) would specify the necessary knowledge and skills related to Secondary Special Education Teachers (Grades 6-12).

Proposed New 19 TAC §235.135. Deafblind Standards: Early Childhood-Grade 12

The proposed new 19 TAC §235.135 would list Deafblind content pedagogy standards for teachers of students who are Deafblind (Grades 6-12) in proposed new Subchapter F, Supplemental and Special Education Certificate Standards.

The proposed new §235.135(a) would provide an overview of the Deafblind Standards: Early Childhood-Grade 12.

The proposed new §235.135(b) would specify the necessary knowledge and skills related to the foundations of Deafblind education.

The proposed new §235.135(c) would specify the necessary knowledge and skills related to Learner Characteristics.

The proposed new §235.135(d) would specify the necessary knowledge and skills related to Evaluation and Assessment.

The proposed new §235.135(e) would specify the necessary knowledge and skills related to Planning for Instruction.

The proposed new §235.135(f) would specify the necessary knowledge and skills related to Learning Environment.

The proposed new §235.135(g) would specify the necessary knowledge and skills related to Instructional Delivery.

The proposed new §235.135(h) would specify the necessary knowledge and skills related to Collaborative Consultation.

The proposed new §235.135(i) would specify the necessary knowledge and skills related to Professional Conduct and Leadership.

The proposed new §235.135(j) would specify the necessary knowledge and skills related to Reflection and Personal Growth.

Proposed New §235.137. Bilingual Special Education Standards: Early Childhood-Grade 12

The proposed new 19 TAC §235.137 would list Bilingual Special Education standards for the new Bilingual Special Education Supplemental: Early Childhood-Grade 12 certificate in proposed new Subchapter F, Supplemental and Special Education Certificate Standards. The proposed educator standards would emphasize the knowledge and skills necessary to address linguistic and disability-related needs for students with limited English proficiency and to establish a solid foundation for bilingual special education students in classroom settings that span Early Childhood-Grade 12.

The proposed new §235.137(a) would specify the purpose and function for the proposed new Bilingual Special Education Supplemental: Early Childhood-Grade 12 certificate standards.

The proposed new §235.137(b) would specify knowledge and skills related to Legal and Ethical Guidelines. This group of standards would outline the bilingual special educator's ability to demonstrate understanding and apply knowledge of both special education and emergent bilingual practices and procedures to effectively integrate both areas as they relate to legal and ethical guidelines.

The proposed new §235.137(c) would specify knowledge and skills related to Knowledge of Students and Factors that Influence Learning. This group of standards would outline the bilingual special educator's ability to demonstrate understanding and apply knowledge of the wide variety of individual student char-

acteristics that influence school success and the appropriate instructional and behavioral methodologies.

The proposed new §235.137(d) would specify knowledge and skills related to Language and Literacy Development. This group of standards would require the bilingual special educator to demonstrate understanding and apply knowledge of the components and methodologies related to biliteracy instruction and instructional best practices for students with disability-related needs and limited English proficiency.

The proposed new §235.137(e) would specify knowledge and skills related to Eligibility, Program Placement, and Assessment. This group of standards would require the bilingual special educator to demonstrate understanding and apply knowledge of the appropriate special education and language proficiency-related services, establishing academic goals, analyzing student data, communicating student achievement, and ongoing assessment of student progress.

The proposed new §235.137(f) would specify knowledge and skills related to Content Knowledge and Instructional Practices. This group of standards would require the bilingual special educator to demonstrate understanding and apply knowledge of instructional best practices in all content areas to design, model, and support learning experiences that are appropriate for each dually identified student.

The proposed new §235.137(g) would specify knowledge and skills related to Student Support, Collaboration, and Professional Responsibilities. This group of standards would require the bilingual special educator to demonstrate understanding and apply knowledge of the professional responsibilities of a bilingual special educator, which include effective communication with families and collaboration with other school and community personnel.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the rules would be in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

TEA staff met with Texas EPPs (large and small education service centers, institutions of higher education, and alternative certification programs) that produce bilingual education candidates to determine potential fiscal implications of the proposal, which includes the addition of new Bilingual Special Education educator standards. Programs that choose to implement these new educator standards and offer the new certificate may incur costs associated with hiring additional faculty members and creating new coursework and/or revising existing coursework in alignment with the standards. Programs may also incur costs related to training faculty for appropriate field supervision of candidates seeking certification in this area. These costs were estimated by programs to be between \$0-\$100,000. The Bilingual Special Education certificate is not required and is an option for EPPs, and the bilingual special educator is not a required assignment for school districts.

The proposal may eventually result in an increase in fees paid to TEA because the proposed rule would serve as the foundation for the new Bilingual Special Education Supplemental: Early Childhood-Grade 12 certification. This new certificate would require a new certification exam, which could generate additional fees. While TEA collects \$11 per exam administered, TEA does not have an estimate of revenue increase since this would be an

optional certification area, and bilingual special educators are not required positions in school districts.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal does not impact microbusinesses and rural communities. The proposal may impact small businesses. The proposal may result in costs associated with implementation of the new Bilingual Special Education standards, which include costs to small EPPs that choose to offer this certification pathway. Accordingly, an economic impact statement has been prepared and included in the notice of this proposed rule. A regulatory flexibility analysis is not required as this certificate is required by TEC, §21.04891, and the Board lacks the authority to implement an alternative rule.

ECONOMIC IMPACT STATEMENT: The state of Texas currently has a total of 120 approved EPPs, and TEA staff estimates that there are between 1-100 small businesses that may be impacted by the proposed rules. The proposal will have an additional fiscal impact on entities required to comply with the proposal, including small businesses, microbusinesses, and EPPs. Implementation of the Bilingual Special Education standards, while optional, will impose varying costs on EPPs to comply with the standards. Programs will incur new costs related to training faculty and revising curriculum in accordance with the new standards. These costs were estimated by programs to be between \$0-\$100,000. The Bilingual Special Education certificate is not required and is an option for EPPs, and the bilingual special educator is not a required assignment for school districts.

COST INCREASE TO REGULATED PERSONS: While the proposal imposes a cost on regulated persons, it is not subject to TGC, §2001.0045, because the proposal is necessary to receive a source of funds or to comply with federal law. In addition, the proposal is necessary to ensure certified Texas educators are competent to educate Texas students and, therefore, necessary to protect the health, safety, and welfare of the residents of this state. The TEA staff has determined there are fiscal implications as a result of the proposal.

EPPs that choose to implement the new Bilingual Special Education educator standards may incur costs associated with hiring additional faculty members and creating new coursework and/or revising existing coursework in alignment with the standards. Programs may also incur costs related to training faculty for appropriate field supervision of candidates seeking certification in this area. These costs were estimated by programs to be between \$0-\$100,000. The Bilingual Special Education certificate is not required and is an option for EPPs, and the bilingual special educator is not a required assignment for school districts.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would require an increase in fees paid to the agency due to the optional Bilingual Special Education Sup-

plemental: Early Childhood-Grade 12 certificate; would not require a decrease in fees paid to the agency; would create a new regulation by adding educator standards for the Bilingual Special Education Supplemental: Early Childhood-Grade 12 certificate and the Bilingual Special Education certificate; would repeal an existing regulation by moving English as a second language, bilingual Spanish, special education, and Deafblind standards to one proposed new subchapter; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, the public benefit anticipated would be teachers with special training in providing instruction to students with disabilities and who need linguistic support to develop English proficiency. There is an anticipated cost to persons who are required to comply with the proposal, but those costs would only be incurred if a teacher is seeking the optional Bilingual Special Education Supplemental: Early Childhood-Grade 12 certificate.

DATA AND REPORTING IMPACT: The proposal would have no additional data and reporting impact.

ENVIRONMENTAL IMPACT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA staff has determined the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 30, 2025, and ends June 30, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will also take registered oral and written comments on the proposal during the July 25, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER F. SUPPLEMENTAL CERTIFICATE STANDARDS

19 TAC §235.115, §235.117

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter

21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate and specifies certification requirements for the certificate.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1), (2), and (4); and 21.04891.

§235.115. *English as a Second Language Standards.*

§235.117. *Bilingual Spanish Standards.*

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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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-14977



SUBCHAPTER F. SUPPLEMENTAL AND SPECIAL EDUCATION CERTIFICATE STANDARDS

19 TAC §§235.115, 235.117, 235.131, 235.135, 235.137

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate and specifies certification requirements for the certificate.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1), (2), and (4); and 21.04891.

§235.115. *English as a Second Language Standards.*

(a) English as a Second Language (ESL) Standards. The standards identified in this section are targeted for classroom teachers of emergent bilingual students. The standards address the discipline associated with the theory and practice of teaching students who have a primary language other than English. The standards inform appropriate teaching techniques, methods, and teacher actions, judgments, and decisions by taking into consideration theories and research of language acquisition, second language learning, understandings of the needs and strengths of emergent bilingual students, and the backgrounds and interests of individual students.

(b) Foundations of Language Acquisition. ESL teachers know, understand, and use the major theories and research related to the structure and language acquisition process to help emergent bilingual students develop language and literacy and achieve in the content areas. The ESL teacher must:

(1) demonstrate and apply basic linguistic concepts, such as structure, patterns, and conventions of written and spoken English, that relate to instruction for emergent bilingual students as they acquire the English language and literacy to achieve in the content areas;

(2) apply a conscious knowledge of language as a system to develop and accommodate instructional materials and to build understanding of the foundations of English needed for content-based instruction fostered through the English Language Proficiency Standards (ELPS) in Chapter 120, Subchapter B, of Part 2 of this title (relating to English Language Proficiency Standards);

(3) use knowledge of interrelated aspects of listening, speaking, reading, and writing as they support emergent bilingual students' acquisition of language and content knowledge;

(4) understand the ways in which languages are similar and different by identifying linguistic structures that distinguish written and spoken language forms as well as those representing social and academic uses of language;

(5) build on similarities between English and the students' primary language (L1) and anticipate common challenges that emergent bilingual students may have with English language concepts;

(6) apply knowledge of dialect variety in English and factors affecting language variation, register, and style and language change;

(7) understand and apply theories, concepts, and research in language acquisition in L1 and secondary language (L2) to support emergent bilingual students' language, literacy, and content area development;

(8) recognize and apply knowledge of the interrelatedness of L1 and L2 acquisition, including similarities and differences between L1 and L2 acquisition and L1 influence on L2;

(9) apply understanding of characteristics of various stages of first- and second-language acquisition to select effective and appropriate instructional methods that promote English language development at various stages of language proficiency;

(10) apply understanding of cognitive processes involved in internalizing language rules and learning vocabulary in a second language (e.g., generalization, categorization, metacognition);

(11) apply understanding of the ELPS Proficiency Level Descriptors (PLDs) and the relationship of the ELPS PLDs to the stages of second language acquisition; and

(12) apply understanding of the interconnected development of linguistic, cognitive, and academic processes through the interdependence on affective variables.

(c) Linguistically Sustaining Practices. ESL teachers know, understand, and use major concepts, principles, theories, and research related to the nature and role of language development to build knowledge while leveraging the experiences of emergent bilingual students. The ESL teacher must:

(1) use knowledge of major theories and research related to the nature and role of language variations and select instructional materials and methods, and deliver techniques that facilitate learning for emergent bilingual students;

(2) build on emergent bilingual students' prior knowledge, experiences, and academic background to connect new learning through linguistically sustaining practices;

(3) seek to understand and to value the surface and deep aspects of language variations;

(4) use knowledge of the stages of language development to create a linguistically sustaining/sustainable environment;

(5) apply understanding that academic achievement is positively impacted by valuing the linguistic assets that emergent bilingual students bring into the classroom; and

(6) create an effective learning environment that addresses the affective, linguistic, and cognitive needs of emergent bilingual students through second language acquisition methods.

(d) Effective Instruction and Assessment Across All Content Areas and Disciplines. ESL teachers know, understand, and use evidence-based practices and strategies related to planning and implementing all content and language instruction. ESL teachers are skilled in instructional methods for developing and integrating language skills. ESL teachers purposefully and appropriately select, integrate, and utilize technology and resources for their emergent bilingual students. The ESL teacher must:

(1) use knowledge of the required Texas Essential Knowledge and Skills (TEKS) and the ELPS as the foundational curriculum;

(2) design and implement instruction that addresses all language domains (listening, speaking, reading, and writing) through authentic, meaningful practice with content material;

(3) know, adjust, and implement research-validated instructional methods for emergent bilingual students that make the content comprehensible while supporting English language development (e.g., sheltered instruction, content-based language instruction (CBLI));

(4) use prior knowledge, experiences, and academic background to building connections with new learning;

(5) choose, adapt, and use a wide range of instructional materials, resources, and technologies for emergent bilingual students to support language and content knowledge acquisition while maintaining rigor;

(6) integrate and foster critical thinking by providing scaffolds needed for emergent bilingual students to demonstrate their higher-order thinking skills in English;

(7) establish safe, positive, supportive, interactive, and rigorous learning environments for emergent bilingual students;

(8) create an effective learning environment that addresses the needs of emergent bilingual students through second language acquisition methods;

(9) implement effective classroom management methods that support student growth and learning;

(10) address the needs of emergent bilingual students at all English language proficiency levels as described in the ELPS PLDs through targeted language instruction within content material;

(11) create multiple opportunities for authentic, meaningful use of social and academic language;

(12) recognize the background factors that can affect literacy development, such as students with interrupted formal education (SIFE);

(13) understand and apply the interrelatedness of language domains (listening, speaking, reading, and writing) for oral language and literacy development;

(14) utilize a communicative approach that focuses on meaning and communicative practice over error correction;

(15) recognize and apply the transfer of oral language and literacy skills from L1 to L2;

(16) recognize the individual factors that require focused, targeted, systematic language instruction in accordance with the ELPS for emergent bilingual students in Grade 3 and higher at beginning and intermediate levels of English language proficiency, including recognizing the specific needs and assets of newcomer emergent bilingual students at various levels of English language proficiency;

(17) provide appropriate feedback for emergent bilingual students at all English language proficiency levels;

(18) recognize and address the various factors that affect reading comprehension and implement applicable methods of reading instruction;

(19) utilize content-based language methods that are linguistically communicated, sequenced, and scaffolded;

(20) ensure access to full content curriculum for all emergent bilingual students through the use of comprehensible input techniques and research-validated learning strategies across content areas;

(21) recognize the factors that affect cognitive academic language development (e.g., developmental characteristics, student background, academic strengths, and need) in order to effectively plan for instruction;

(22) promote receptive and expressive language acquisition by embedding content-related opportunities for emergent bilingual students to interact using social and academic vocabulary;

(23) embed language teaching through content instructional materials and academic text features;

(24) use ongoing quantitative and qualitative data to demonstrate content and language development, inform planning, and adjust instruction;

(25) understand the different purposes of assessment (e.g., pre-assessment, formal, informal) and limitations of each type in order to select, develop, and adapt assessments for specific purposes of language and content;

(26) utilize and adapt assessments to allow students flexibility in demonstrating content knowledge through varied outputs;

(27) know and use a variety of performance-based assessment tools with appropriate rubrics to inform and guide instruction in the classroom;

(28) understand the interdependent relationship between teaching and assessment and develop instructional tasks and assessment tools that promote and measure student growth in language and content;

(29) develop classroom assessments using a variety of item types and elicitation and response formats to assess emergent bilingual students' receptive (listening and reading) and expressive (speaking and writing) language skills; and

(30) understand and apply the uses and limitations of formal and informal assessments for emergent bilinguals.

(e) Language Proficiency Assessment, Program Placement, and Reclassification. ESL teachers demonstrate understanding of how to use language proficiency assessments in their role in the identification, placement, and reclassification of emergent bilingual students. The ESL teacher must:

(1) understand mandated policies and statutes related to emergent bilingual students, including Language Proficiency Assessment Committee (LPAC) guidelines for identification and classification as emergent bilingual student in Texas;

(2) use state-approved identification assessments for emergent bilingual students in Texas and understand how to interpret the results;

(3) understand the value and use of primary language assessments;

(4) use knowledge of the connection between the ELPS in Chapter 120, Subchapter B, of Part 2 of this title and the Texas English Language Proficiency Assessment System (TELPAS) to evaluate and monitor the progress of emergent bilingual students in English language proficiency;

(5) understand mandated policies and statutes related to programs for emergent bilingual students, including LPAC guidelines for program placement, reclassification, and monitoring in Texas;

(6) understand the similarities and differences between state-approved ESL and bilingual program models in Texas;

(7) apply the mandated requirements for emergent bilingual students with parental denial, including assessment, monitoring, and usage of the ELPS in all content instruction;

(8) understand and apply the similarities and differences of linguistic accommodations for instructional purposes and allowable accommodations for emergent bilingual students on state assessments;

(9) apply the appropriate mandated criteria and LPAC procedures for reclassification, monitoring, and exit; and

(10) understand the role of the LPAC in coordinating with other special programs (e.g., special education, Section 504, gifted and talented) as applicable.

(f) Professional Learning, Partnerships, and Student Support. ESL teachers keep current with new instructional techniques, research, advances in the ESL field, and education policy issues related to emergent bilinguals and demonstrate knowledge of the history of programs and services for emergent bilingual students. ESL teachers work collaboratively with school staff, parents, and the community to improve

the learning environment for and provide support to emergent bilingual students and their families. The ESL teacher must:

(1) demonstrate knowledge of theory, research, and current practice and methodologies in the field of bilingual and ESL programming to inform teaching and learning;

(2) understand the history of programming and services for emergent bilingual students, including key court cases, legal mandates, and policies that impact current bilingual and ESL programs;

(3) know and understand policies that impact effective programming related to the education of emergent bilingual students;

(4) take advantage of and actively participate in professional growth opportunities specific to the needs of emergent bilingual students;

(5) demonstrate reflective practices through the process of setting and revisiting specific goals for professional learning;

(6) be accountable to goals for growth in supporting emergent bilingual students through self-reflection, peer evaluation, and coordinated leadership monitoring of implementation;

(7) collaborate with general education and content-area colleagues and the school community to support effective instruction and assessment of emergent bilingual students;

(8) promote emergent bilingual students' success by playing an active role in the campus LPAC, including coordination of services for emergent bilingual students in other special programs for which they qualify;

(9) serve as a resource for emergent bilingual students and their families through partnerships with colleagues and the community by enlisting the support and involvement of community partners and resources that enhance the education of emergent bilingual students;

(10) facilitate parent/guardian involvement in students' linguistic, academic, and personal development; and

(11) provide effective communication that is accessible, consistent, and targeted to the needs of emergent bilingual students and their parents/families in a variety of educational and social contexts.

§235.117. Bilingual Spanish Standards.

(a) Spanish and English Bilingual Standards. The standards identified in this section are targeted for classroom teachers of bilingual education programs (Spanish and English). The standards address the discipline associated with the theory and practice of teaching students who are learning two languages simultaneously. The standards inform appropriate teaching techniques, methods, teacher actions, judgments, and decisions by taking into consideration theories and research of language acquisition, second language learning, understanding the needs and strengths of bilingual learners, and the backgrounds and interests of individual students.

(b) Language Abilities. The bilingual education teacher possesses the language ability to teach across the curriculum and demonstrate proficiency in Spanish.

(1) Listening. In the Spanish language, the bilingual teacher understands oral communication in a variety of listening situations relevant to bilingual education, including professional topics, academic language, and day-to-day communication with students, parents, guardians, colleagues, and community members.

(2) Listening. In the Spanish language, the bilingual teacher understands oral communication in extended academic discourse on topics related to the profession.

(3) Speaking. In the Spanish language, the bilingual teacher uses appropriate formal and informal registers to communicate with various audiences and within settings relevant to the bilingual school context.

(4) Speaking. In the Spanish language, the bilingual teacher uses oral discourse that reflects correct grammatical and syntactical structures and accurate Spanish conventions to communicate information and discuss topics relevant to the bilingual school context.

(5) Speaking. In the Spanish language, the bilingual teacher demonstrates the ability to accurately use language in everyday communication.

(6) Speaking. In the Spanish language, the bilingual teacher understands and applies academic language related to the Texas Essential Knowledge and Skills (TEKS) during instruction as well as discussion of topics relevant to the school context.

(7) Reading. In the Spanish language, the bilingual teacher applies literal, inferential, and interpretive reading skills to authentic materials relevant to the school context.

(8) Reading. In the Spanish language, the bilingual teacher understands written materials that include academic vocabulary used to teach the TEKS in a variety of content areas.

(9) Writing. In the Spanish language, the bilingual teacher writes effective and coherent interpersonal discourse using accurate standard Spanish conventions, sentence structure, orthography, spelling, vocabulary, grammar, and syntax. (e.g., professional e-mail, parent communication, and other school documents).

(10) Writing. In the Spanish language, the bilingual teacher writes extended coherent professional discourse in an appropriate academic register using sentence structure, orthography, spelling, vocabulary, grammar, and syntax (e.g., newsletters, memos, special events).

(11) Writing. In the Spanish language, the bilingual teacher writes coherent instructional material using accurate standard Spanish conventions, sentence structure, orthography, spelling, vocabulary, grammar, and syntax (e.g., essays, exit tickets, exemplars).

(12) Writing. In the Spanish language, the bilingual teacher effectively models for students how to write to explain, narrate, and describe using accurate standard Spanish conventions, sentence structure, orthography, spelling, vocabulary, grammar, and syntax.

(c) Linguistically Sustaining Practices. The bilingual education teacher knows, understands, and uses major concepts, principles, theories, and research related to the nature and role of language development to build knowledge leveraging the experiences of emergent bilingual students. The bilingual teacher:

(1) uses knowledge of the nature and role of language variations to select instructional materials and methods and deliver techniques that facilitate learning for emergent bilingual students;

(2) builds on emergent bilingual students' prior knowledge, experiences, and academic background to connect new learning through linguistically sustaining practices;

(3) seeks to understand and value the surface and deep aspects of language variations;

(4) uses knowledge of the stages of language development to create a linguistically sustaining/sustainable environment;

(5) applies understanding that academic achievement is positively impacted by valuing the linguistic assets that emergent bilingual students bring into the classroom; and

(6) creates an effective learning environment that addresses the affective, linguistic, and cognitive needs of emergent bilingual students through second language acquisition methods.

(d) Instructional Practice. The bilingual education teacher understands and applies research-based components and processes of language acquisition and biliteracy development. The bilingual teacher:

(1) has a comprehensive knowledge of content-area instruction in both languages;

(2) knows and understands state educator certification standards in all content areas related to the certificate level;

(3) knows and understands the statewide curriculum in all content areas as specified in the TEKS;

(4) understands the alignment of and difference between the Spanish language arts and reading (SLAR) and English language arts and reading (ELAR) to internalize lesson plans that build biliteracy and facilitate language transfer and develop bilingualism in both languages;

(5) knows and understands how to integrate language development and content-area instruction to meet the cognitive, linguistic, and affective needs of students in accordance with Chapter 89, Subchapter BB, of Part 2 of this title (relating to Commissioner's Rules Concerning State Plan for Educating Emergent Bilingual Students);

(6) uses authentic children's literature and materials to promote biliteracy and content knowledge;

(7) understands and applies methodologies and strategies for teaching English as a second language (ESL) via an English language development block as well as through content areas (e.g., Total Physical Response (TPR), Content Based Language Instruction Methods pre-teaching vocabulary, and scaffolding strategies to make new information comprehensible);

(8) understands and applies research-based differentiation strategies to make content-area instruction comprehensible in order to meet the academic and linguistic needs of bilingual learners;

(9) identifies, selects, or designs appropriate and authentic materials, resources, and technology to facilitate learning in a bilingual classroom;

(10) uses prior knowledge, experiences, and academic background to build connections with new learning;

(11) understands and applies major language components in both languages (e.g., phonics, phonology, morphology, syntactic features, semantics, and pragmatics) and methodologies and strategies for integrating language and content instruction (Spanish and English) using sheltered instruction techniques in Spanish and English;

(12) applies research and evidence-based instructional strategies related to biliteracy, bi-directional transfer, use of cognates, contrastive analysis, and translanguaging;

(13) understands and applies differentiated methodologies and strategies for instructing a wide variety of learners (e.g., heritage language learners, simultaneous bilinguals, recent arrivals, long-term emergent bilingual students, and Spanish learners in a two-way program) within different school-based configurations and program models;

(14) establishes safe, positive, supportive, interactive, and effective learning environment that addresses the needs of all bilingual students; and

(15) promotes critical-thinking, problem-solving, and collaborative learning strategies to enhance bilingualism, biliteracy, and content knowledge.

(c) Development and Assessment of Biliteracy. The bilingual education teacher demonstrates a comprehensive knowledge of the development and assessment of literacy in the bilingual learners' primary/partner language and English and can design and deliver meaningful biliteracy experiences. The bilingual teacher:

(1) understands the components of biliteracy and strategically plans for language transfer and implements the ELAR TEKS, SLAR TEKS, and the English Language Proficiency Standards (ELPS) to develop literacy in both languages;

(2) utilizes assessments (formative and summative) in strategic ways and analyzes the data to guide instruction;

(3) uses informal and formal assessments to measure learners' bilingualism and proficiency level to guide instruction;

(4) uses knowledge of the connection between the ELPS in Chapter 120, Subchapter B, of Part 2 of this title and the Texas English Language Proficiency Assessment System (TELPAS) to evaluate and monitor the progress of bilingual learners identified as emergent bilingual students in their English language proficiency when planning and delivering data-driven instruction;

(5) assesses and monitors learners' Spanish proficiency level in listening, speaking, reading, and writing when planning and delivering data-driven instruction;

(6) understands that assessment is recursive and the need to use multiple data points to assess and monitor biliteracy development across language domains when planning and delivering instruction and when providing opportunities to develop biliteracy skills;

(7) understands and applies authentic methods for biliteracy instruction that reflect the unique characteristics of English and Spanish;

(8) creates authentic and purposeful, measurable learning activities and experiences in all content areas that promote bilingual learners' development of concepts and skills in both languages and recognizes the students' biliteracy trajectory; and

(9) identifies and/or develops assessments that are linguistically appropriate and authentic.

(f) Foundations of Bilingual Education. The bilingual education teacher demonstrates an understanding of the historical context of bilingual education in the United States and around the world; bilingual education program models approved in Texas in accordance with Chapter 89, Subchapter BB, of this title; the unique needs of bilingual learners; and laws pertaining to emergent bilingual students in bilingual education programs. The bilingual teacher:

(1) shares their knowledge of second language acquisition with general education, ESL education, and content-area colleagues and the school;

(2) knows and understands policies that impact effective program implementation;

(3) knows and understands the historical background, effects of demographic changes, pertinent legislation, and significant court cases;

(4) demonstrates awareness of regional language differences and the concept of bilingualism throughout the world;

(5) understands the models of bilingual education approved in Texas in accordance with Chapter 89, Subchapter BB, of this title, including the program model characteristics and goals; curriculum, assessment, and accountability; research findings on the effectiveness of the program models; and the critical components that contribute to effective program model implementation (e.g., systems approach, program model design, instructional methods, and family and community engagement);

(6) makes appropriate instructional decisions based on program model design, best practices according to research on language acquisition and bilingual learners, knowledge of classroom characteristics, and an understanding of linguistically appropriate materials and methodologies;

(7) understands mandated policies and statutes related to emergent bilingual students, including the roles, responsibilities, and processes for the Language Proficiency Assessment Committee (LPAC) in the identification, serving, and reclassification as emergent bilingual student in Texas;

(8) understands mandated policies and statutes related to programs for emergent bilingual student, including LPAC guidelines for program placement, reclassification, and monitoring in Texas;

(9) applies the appropriate mandated criteria and LPAC procedures for identification, recommendation of program services, reclassification, monitoring, and exit; and

(10) understands the role of the LPAC in coordinating with other special programs (e.g., special education, Section 504, gifted and talented) as applicable.

§235.131. Special Education Standards: Early Childhood-Grade 12.

(a) Special Education Standards. The standards identified in this section are targeted for teachers of students who receive special education services. The standards address the discipline associated with the theory and practice of teaching students who receive special education services. The standards inform appropriate teaching techniques, methods, and teacher actions, judgments, and decisions by taking into consideration philosophical, historical, and legal foundations of special education, characteristics of students who receive special education services, understandings of the needs and strengths of students who receive special education services, and the backgrounds and interests of individual students.

(b) Legal and Ethical Guidelines. The Early Childhood-Grade 12 special education teacher demonstrates knowledge of all applicable laws specific to students with disabilities. The Early Childhood-Grade 12 special education teacher must:

(1) demonstrate knowledge of legislation that has affected knowledge and practice of the education of individuals with disabilities;

(2) demonstrate knowledge of the Individuals with Disabilities Education Act (IDEA) 2004 eligibility categories;

(3) demonstrate knowledge of all required components of an Individualized Education Program (IEP) as outlined in law;

(4) demonstrate knowledge of all sections of the special education eligibility folder and where to store required documentation;

(5) demonstrate knowledge of the legal responsibility of all school staff to fully implement an IEP;

(6) demonstrate knowledge of the legal responsibility of all teachers and school staff to protect the confidentiality and dignity of students with disabilities;

(7) demonstrate knowledge of the special education teacher's roles and responsibilities regarding Child Find;

(8) demonstrate knowledge of the special education teacher's roles and responsibilities in creating and implementing the IEP with fidelity, including monitoring student IEP goal progress, implementing data collection of IEP goal progress, and reporting progress to the student and parents/guardians throughout the IEP year;

(9) use a variety of assessment data to write annual measurable goals and present levels of academic achievement and functional performance, identify appropriate accommodations (academic, behavior, state, and district testing) and modifications based on individual student needs, and contribute to drafting the IEP;

(10) maintain student eligibility folders and store ongoing documentation according to local educational agency (LEA) requirements and keep records to document receipt of the IEP by all required school staff;

(11) audit student class schedules to ensure compliance with least restrictive environment and schedule of services in the IEP;

(12) demonstrate knowledge of the role and responsibilities of the special education teacher in preparing for an Admission, Review, Dismissal (ARD) committee meeting, including collecting required data, interpreting the results of progress monitoring and classroom assessment data, and visually representing and interpreting data to show student progress;

(13) demonstrate knowledge of the roles and responsibilities of the required members of an ARD committee;

(14) demonstrate knowledge of the required components of a typical ARD committee meeting agenda;

(15) interpret the results of a variety of assessment data (i.e., classroom, state, and district transition assessment) in plain language to explain present levels of student academic achievement and functional performance, student progress on annual IEP goals, and mastery of grade level Texas Essential Knowledge and Skills (TEKS) to the ARD committee members;

(16) prepare and support students in leading ARD committee discussion regarding progress on IEP goals, mastery of grade level TEKS, appropriate accommodations (academic, behavior, state, and district assessment), transition needs and goals, and other supplements as needed;

(17) apply knowledge of individuals served through special education as well as special education laws and policies to encourage families' full participation in the education of their students;

(18) demonstrate understanding that students served through special education may also have other special populations identifiers (i.e., gifted and talented, Emergent Bilingual identification, classification as highly mobile or at risk);

(19) support students in their development of self-reliance and self-advocacy;

(20) support high academic and behavioral expectations for students with disabilities; and

(21) demonstrate understanding that individuals with high support needs deserve to be challenged with high expectations and provided with meaningful opportunities to develop the highest possible learning outcomes.

(c) Understanding and Addressing Each Individual's Developmental and Learning Needs. The Early Childhood-Grade 12 special education teacher must:

(1) demonstrate knowledge about relevant physical and emotional development from birth through early adulthood;

(2) demonstrate knowledge of how stress, protective factors, resilience, and supportive relationships may impact learning, behavior, and development in students with disabilities;

(3) demonstrate knowledge of how disabilities can interact with development and learning;

(4) demonstrate knowledge of the multiple biological, physical, psychological, and social influences that affect learning and development when working with individuals with high support needs;

(5) demonstrate knowledge of strategies to support students' development and independence given relevant grade level expectations for students from birth through early adulthood;

(6) apply a variety of evidence-based, age-appropriate classroom routines and procedures that support individual developmental and learning needs;

(7) demonstrate knowledge of a variety of assistive technologies to support individual developmental and learning needs;

(8) demonstrate knowledge of how developmental academic, social, and functional characteristics of individuals with high support needs impact levels of support needs;

(9) apply knowledge of evidence-based practices to identify and intervene when students are not making progress in functional, academic, or behavioral goals; and

(10) demonstrate the knowledge and ability to adapt instruction when students with high support needs do not meet milestones.

(d) Subject Matter Content and Specialized Curricular Knowledge. The Early Childhood-Grade 12 special education teacher must:

(1) understand how to identify a learner's preferred mode of communication;

(2) demonstrate a content-specific knowledge at a level necessary for students with disabilities to progress in their individualized programs toward completion of appropriate graduation requirements;

(3) apply content-specific knowledge to routinely collaborate, co-teach, modify, and adapt curriculum with general education teachers;

(4) demonstrate knowledge of how to integrate appropriate instructional and assistive technology for students;

(5) apply knowledge of individual learner characteristics and specialized curricula knowledge to accommodate, modify, and/or adapt the curricula across contexts;

(6) demonstrate knowledge of specialized curricula that may include curriculum for social skills, life skills, transition, orientation and mobility, independence, and self-advocacy;

(7) demonstrate knowledge of families and community when involving paraprofessionals, general educators, specialists, resources, and supports to create and incorporate strategies for making content and instruction accessible and challenging for students at all levels of support needs;

(8) demonstrate knowledge of how to provide modified access to subject-specific instructional materials to address individual learner needs in different contexts such as center-based, home-based,

and school-based classrooms, including specialized and general classrooms; and

(9) recognize barriers to accessibility and acceptance of individuals with high support needs and plan for ways to address those barriers through the implementation of specialized curricula.

(e) Assessment for Data-based Decision Making. The Early Childhood-Grade 12 special education teacher must:

(1) demonstrate knowledge of different forms, purposes, and applications of assessment to inform development of the IEP and plan instruction;

(2) assess students' learning, behavior, and the classroom environment in order to evaluate and support classroom and school-based problem-solving systems of intervention and instruction;

(3) use data from variety of formative and summative assessments to identify learning goals and plan and adapt instruction;

(4) demonstrate knowledge of how to implement, collect data from, and keep records of ongoing formative assessment;

(5) use the results of multiple assessments to determine if a student is making adequate progress toward measurable outcomes;

(6) use assessment results to design, adjust, plan, and inform instruction or intervention;

(7) accurately interpret the results of various forms of assessments, including state assessments and district benchmark assessments;

(8) accurately analyze, interpret, and discuss the results of a variety of evaluation data for an individual student;

(9) interpret a variety of evaluation data, including measures of student functioning and educational, physical, and medical needs;

(10) identify, recommend, and implement appropriate accommodations and/or modifications for classroom, behavior, state, and district testing or other assessments as determined by the ARD committee;

(11) provide feedback to stakeholders regarding student performance on assessments and interpret assessment results in plain language for parents and students;

(12) administer, interpret, and gather baseline data from screening instruments and diagnostic reading, mathematics, and behavior assessments;

(13) support students to understand and use their assessment data to self-monitor and self-regulate; and

(14) collaborate with professionals with additional expertise as needed (e.g., English as a second language specialists, bilingual specialists, translators, speech and language pathologists, behavior specialists) to ensure an appropriate and valid assessment process.

(f) Supporting Learning Using Effective Instruction. The Early Childhood-Grade 12 special education teacher must:

(1) demonstrate knowledge of how to plan instruction according to the requirements of an IEP, including supplements, assistive technology, and related services;

(2) demonstrate knowledge of the key differences between IEP accommodations and modified curriculum;

(3) design instruction to meet the needs of students based on information from various types of formative and summative assessments;

(4) plan for strategic integration of assistive technology into daily teaching practices based on student developmental and learning needs;

(5) use knowledge of the learning processes to select, adapt, and apply instructional strategies that meet the needs of individual students and support transition goals;

(6) use explicit, scaffolded, and systematic instruction to teach content, strategies, and skills;

(7) design individualized instruction that adapts instructional intensity and/or intervention to build on students' strengths and accommodate students' needs;

(8) provide specific, developmentally appropriate, and explicit feedback to students during instruction to engage, motivate, and support students toward mastery;

(9) plan and integrate transition-focused activities into classroom instruction;

(10) create opportunities for students to demonstrate their knowledge and skills using different modalities and allow every individual to advance as he or she demonstrates understanding;

(11) apply knowledge of developmentally appropriate instructional strategies to engage, motivate, and promote learning specific to the needs of students with disabilities;

(12) apply knowledge of the learning processes to select and use a variety of grouping strategies (e.g., whole group, small group, individual) to meet the learning needs of each student;

(13) promote the generalization of concepts and skills across content areas and educational settings;

(14) design visual supports to promote student mastery of curriculum, executive functioning, and classroom procedures;

(15) adapt instruction and make regular changes based on data from assessments;

(16) plan, adapt, and deliver learning experiences for individuals with high support needs that reflects an understanding of the continuum of instructional settings and an understanding of how to engage individuals with high support needs in meaningful learning activities across instructional settings;

(17) incorporate strategies for making content and instruction accessible and challenging for individuals with all support needs;

(18) apply knowledge of students, content, and pedagogy to develop, implement, evaluate, and revise instruction and interventions as needed;

(19) demonstrate a thorough knowledge of the learning processes of students from early childhood to early adulthood;

(20) use strategies to promote active student engagement;

(21) design appropriate learning and performance accommodations and modifications for students with exceptional learning needs in academic subject matter content of the general curriculum; and

(22) apply content-specific knowledge to modify and differentiate instruction as well as provide access to instructional materials for a wide range of student performance levels.

(g) Supporting Students' Non-academic Growth. The Early Childhood-Grade 12 special education teacher must:

(1) design effective and universally accessible environments and learning experiences appropriate for students in Prekindergarten-Grade 12;

(2) demonstrate knowledge of developmentally appropriate practices that contribute to a positive and safe learning environment;

(3) demonstrate knowledge of classroom and schoolwide systems of Positive Behavioral Intervention and Supports (PBIS);

(4) demonstrate knowledge of the key components and purposes of a Functional Behavioral Assessment (FBA);

(5) demonstrate knowledge of the key components and purposes of a Behavior Intervention Plan (BIP);

(6) create an environment in which expectations are clear and predictable and instructional routines and classroom procedures are used to support and engage students;

(7) use developmentally appropriate procedures and routines to facilitate safe and efficient transitions, promote independence, self-regulation, and executive functioning;

(8) use effective procedures and routines to create a physically safe, relationship-driven, and organized learning environment with access to materials, instruction, and content that facilitates social communication with peers and staff;

(9) establish, explicitly teach, and maintain clear expectations for student behavior;

(10) demonstrate knowledge of research-based de-escalation strategies to effectively address aggressive behavior;

(11) build positive relationships with students based on understanding of individual strengths and needs, high expectations, and mutual respect and rapport;

(12) create an atmosphere of safety that encourages the well-being of staff and students;

(13) use sources of data, such as the BIP, to identify or develop effective, evidence-based, and, whenever possible, function-based practices for class-wide or individual-level interventions;

(14) analyze progress monitoring data as defined in the BIP to evaluate the effects of behavioral interventions;

(15) consider multiple avenues of intervention and reinforcement techniques such as class-wide and/or individual-level interventions;

(16) use FBA to collect data and analyze and utilize the data to design behavior intervention;

(17) conform to legal and ethical guidelines for all behavioral interventions;

(18) demonstrate knowledge of the impact of behavior on the learning of students and classmates;

(19) understand how factors, including family, community, and disability impact student behavior in the learning environment;

(20) provide positive and constructive specific, developmentally appropriate, and explicit feedback to guide student behavior;

(21) demonstrate understanding of the importance of digital citizenship and the vulnerability of students with disabilities to social media influences;

(22) demonstrate knowledge and apply principles of Applied Behavior Analysis (ABA); and

(23) demonstrate knowledge of how to find appropriate school and community supports for students.

(h) Professional Learning and Collaboration. The Early Childhood-Grade 12 special education teacher must:

(1) demonstrate knowledge of the roles and responsibilities of the Early Childhood-Grade 12 special education teacher and of other professionals who deliver special education services, including related and instructional service providers;

(2) collaborate with paraprofessionals to identify and define the responsibilities, skills, and professional development needed for their roles;

(3) collaborate with families, paraprofessionals, and other professionals to lead effective meetings that address students' needs;

(4) consult with campus staff and/or colleagues about strategies, supports, and implementation of IEPs;

(5) coordinate with service providers and build student schedules;

(6) implement transition activities in the IEP that include community resources and service providers;

(7) mentor and supervise paraprofessionals;

(8) effectively collaborate with general education teachers to deliver, adapt, and differentiate instruction to meet the academic and non-academic needs of individual students;

(9) understand the strengths and limitations of various co-teaching models based on setting and the individual needs of students;

(10) effectively implement co-teaching models to deliver, adapt, and differentiate instruction to meet students' needs;

(11) collaborate and consult with multi-disciplinary teams to plan and implement instruction in accordance with a student's IEP;

(12) select and develop resources to improve communication and collaboration with family and community;

(13) coordinate with related service providers and community agencies to identify and access services, resources, and supports to meet the needs of individuals with disabilities;

(14) engage in ongoing self-reflection to design and implement professional learning activities;

(15) set short-term and long-term professional goals based on ongoing analysis of student learning, self-reflection, and professional standards; and

(16) demonstrate understanding of the barriers that exist for students with high support needs within educational settings and work with decision makers to design environments and select curriculum resources that include supports that address a range of student needs.

(i) Elementary Special Education Teachers (Early Childhood-Grade 6). In addition to the knowledge and skills listed in subsections (b)-(h) of this section, the Early Childhood-Grade 6 special education teacher must:

(1) demonstrate knowledge of the Emergent Literacy-Writing, Mathematics, Science, and Fine Arts domains of the Texas Prekindergarten Guidelines;

(2) demonstrate knowledge of the TEKS for English language arts and reading, mathematics, science, and fine arts (Kindergarten-Grade 6);

(3) demonstrate specific knowledge of early numeracy, early literacy, and pre-academic skills according to the TEKS and the Texas Prekindergarten Guidelines;

(4) apply content-specific knowledge to develop individualized goals and objectives that are aligned with the appropriate grade-level TEKS and the Texas Prekindergarten Guidelines;

(5) apply understanding of the subject matter TEKS, the Texas Prekindergarten Guidelines, and specialized curricula to inform programmatic and instructional decisions for students with high support needs; and

(6) demonstrate a foundational knowledge of the Individualized Family Service Plan (IFSP).

(j) Secondary Special Education Teachers (Grades 6-12). In addition to the knowledge and skills listed in subsections (b)-(h) of this section, the Grades 6- 12 special education teacher must:

(1) apply content-specific knowledge to develop individualized goals and objectives that are aligned with the appropriate grade-level TEKS;

(2) demonstrate knowledge of the TEKS for English language arts and reading, mathematics, science, and fine arts (Grades 6-12);

(3) apply understanding of the subject matter TEKS and specialized curricula to inform programmatic and instructional decisions for students with high support needs;

(4) demonstrate knowledge of transition requirements within the IEP;

(5) demonstrate knowledge of graduation options for students with disabilities receiving special education services according to §89.1070 of Part 2 of this title (relating to Graduation Requirements);

(6) demonstrate knowledge of requirements for transfer of rights at the age of majority;

(7) demonstrate knowledge of requirements for transition planning beginning at the age of 14;

(8) schedule and facilitate ongoing transition activities to prepare students for postsecondary living according to the IEP;

(9) support student participation in the IEP, ARD meetings, and transition plan;

(10) demonstrate knowledge of how specific developmental characteristics of the teenage brain impact learning (e.g., decision-making, problem-solving, impulse control, and relationships);

(11) demonstrate a foundational knowledge of content specific TEKS and College and Career Readiness Standards (CCRS) appropriate for students in Grades 6-12;

(12) apply content-specific knowledge to develop individualized goals and objectives that are aligned with the appropriate grade-level TEKS and CCRS;

(13) use the results of multiple assessments to determine students' transition needs;

(14) collaborate with community service providers to address transition needs in accordance with the IEP; and

(15) demonstrate knowledge of the key components of different employment models and how to provide access to community-based instruction, and vocational training.

§235.135. DeafBlind Standards: Early Childhood-Grade 12.

(a) DeafBlind Standards. The standards identified in this section are targeted for teachers of students who are DeafBlind. The standards address the discipline associated with the theory and practice of teaching students who are DeafBlind. The standards inform appropriate teaching techniques, methods, and teacher actions, judgments, and decisions by taking into consideration philosophical, historical, and legal foundations of DeafBlind education, characteristics of students who are DeafBlind, understandings of the needs and strengths of students who are DeafBlind, and the backgrounds and interests of individual students.

(b) Foundations. The teacher of students who are DeafBlind understands the philosophical, historical, and legal foundations of DeafBlind education. The teacher of students who are DeafBlind:

(1) understands interaction, communication, and language theories, approaches, and research that are applicable to teaching learners who are DeafBlind;

(2) understands the history of the practices, people, and events that have impacted people who are DeafBlind (congenital and acquired) and the relevance of those histories to educational practices;

(3) understands meaningful access from the visual, auditory, and tactile perspective of a person who is DeafBlind;

(4) understands specialized roles and responsibilities of the educational team members, including learners who are DeafBlind, teachers of students who are DeafBlind, other educators, related service personnel, and family members;

(5) understands the rights of learners who are DeafBlind and their family members;

(6) understands clinical, functional, and legal definitions for eligibility of services as students who are DeafBlind/Blind/Visually Impaired/Deaf/Hard of Hearing;

(7) accesses and evaluates current related research and practices in the field of DeafBlindness for their relevance in educational practices;

(8) educates, facilitates, and collaborates with all educational team members, including family members, to ensure that the student's unique needs are being supported by all necessary team members during evaluation and instruction in home, school, and/or community settings;

(9) ensures that the educational team considers proper eligibility criteria for the student who is DeafBlind;

(10) establishes reciprocal interactions with learners who are DeafBlind; and

(11) fosters effective individualized interaction, communication, and language development.

(c) Learner Characteristics. The teacher of students who are DeafBlind demonstrates understanding of the complex and unique effects of the combined vision and hearing loss as well as the strengths of the tactile sense of learners who are DeafBlind. The teacher of students who are DeafBlind:

(1) understands the positive perspective of the learner who is DeafBlind, including functional hearing and vision as well as the experience of touch;

(2) understands typical child development and methods for supporting a child who is DeafBlind throughout the various stages of development;

(3) understands the critical roles of vision, hearing, and touch in learning;

(4) understands the range of vision and hearing loss of learners who are DeafBlind;

(5) recognizes that each DeafBlind student is a unique individual;

(6) understands the implications of combined sensory loss and the importance of the tactile sense on access to information and the environment;

(7) understands the potential isolating effects of combined hearing and vision loss upon the learner who is DeafBlind;

(8) understands the potential impact of the combined effects of hearing and vision loss upon the learner's opportunities for incidental learning;

(9) understands the potential emotional implications of combined hearing and vision loss upon the learner who is DeafBlind, including the biological impact of stress;

(10) understands the potential impact of the combined effects of hearing and vision loss and the tactile experience upon the learner's personal relationships with others, including the importance of sensory-attuned reciprocal interactions, on bonding, attachment, and friendships;

(11) understands the potential and complex effects of additional disabilities upon learners who are DeafBlind;

(12) understands the potential and complex effects of additional sensory disabilities (e.g., touch, vestibular, proprioception, taste, smell) upon learners who are DeafBlind;

(13) understands the potential effects of the age of onset (congenital vs. acquired), degrees, and/or progression of hearing and vision loss upon learners who are DeafBlind;

(14) understands the major etiologies of DeafBlindness and the possible implications on the learner who is DeafBlind;

(15) understands the potential impact of the combined effects of vision and hearing loss and tactile accessibility upon the development of concrete and abstract concepts;

(16) understands dynamic forms/modes of communication used by learners who are DeafBlind (i.e., body movements, gestures, bodily emotional traces (BETS), Visual American Sign Language (VASL), VASL adaptations, Signing Exact English (SEE), Tactile American Sign Language (TASL), speech, other manual modes);

(17) understands static forms/modes of literacy, including real objects, tactile symbols, pictures, print, braille, and digital technology;

(18) understands the structure and function of the auditory, visual, and tactile systems;

(19) understands impairments in the structure and functions of the auditory and visual systems;

(20) understands the influence of vision and hearing loss on tactile and sensorimotor development;

(21) understands the learner's social history and its impact on the learner's current biology and physiology;

(22) effectively explains the impact of the combined effects of hearing and vision loss and tactile accessibility to the educational team in relation to typical development; and

(23) guides the educational team to ensure the development of communication-rich environments that support sensory-appropriate modes of social engagement within the context of developmentally-, age-, and grade-appropriate functional and meaningful activities.

(d) Evaluation and Assessment. The teacher of students who are DeafBlind understands the educational evaluation and assessment processes to identify learner strengths and needs and applies appropriate formal and informal evaluation strategies to support the continuous development of all students, from birth through age 22. The teacher of students who are DeafBlind:

(1) understands the legal protocol for administering evaluations relative to his or her certification as a teacher of students with visual impairments and/or teacher of students who are Deaf/Hard of Hearing;

(2) understands evaluation of communication modes/forms along a continuum from pre-intentional and pre-symbolic to formal communication and language used by learners who are DeafBlind;

(3) understands the importance of a functional sensory evaluation as a foundation for accommodations, adaptations, and strategies;

(4) understands how to interpret functional evaluations and clinical assessments of vision, hearing, and medical/neurological information with reference to etiology;

(5) understands the specialized tools needed to perform evaluations of hearing and vision;

(6) understands the child-guided approach for evaluation of learners who are DeafBlind;

(7) understands the evaluation of the Expanded Core Curriculum (ECC) for learners who have visual impairment, including those learners who are DeafBlind and with additional disabilities;

(8) understands how to identify a learner's preferred mode of communication;

(9) understands strategies for supporting the learner's educational team in determining appropriate modifications and accommodations of evaluations and state-mandated assessments and interpreting the assessment results based on individual learning characteristics;

(10) collaborates with the educational team using learner-centered evaluations and planning processes to determine appropriate program planning, instruction, and setting;

(11) conducts evaluations and ensures evaluations/assessments conducted by others are in the preferred mode(s) of communication for the individual learner who is DeafBlind;

(12) evaluates in co-active, child-guided, functional routines and motor sequences, as appropriate for the learner who is DeafBlind;

(13) evaluates or actively participates in conducting the functional vision evaluation, learning media assessment, communication evaluation, functional hearing evaluation, and ECC evaluation of the learner who is DeafBlind;

(14) evaluates or actively participates in evaluating the communicative intent related to observable behavior of the learner who is DeafBlind;

(15) assesses and adapts to learners' pace/timing of communication;

(16) evaluates or actively participates in evaluating communication along a continuum from pre-intentional and pre-symbolic to formal communication and language used by learners who are DeafBlind;

(17) evaluates and interprets or actively participates in determining the meaning and function of the learner's formal and informal literacy medium/media;

(18) evaluates, interprets, and affirms the meaning of the learner's communicative initiatives (e.g., natural gestures, affect, bodily movements, vocalizations);

(19) evaluates with consideration of physical environments, bio-behavioral states, and preferred/non-preferred sensory channels of the learner who is DeafBlind;

(20) actively participates in the evaluation of tactile, proprioceptive, vestibular, and kinesthetic systems of the learner who is DeafBlind;

(21) interprets evaluation results and explains current and future implications of combined vision and hearing loss of the learner to the educational team, including family members;

(22) determines appropriate modifications and accommodations of evaluations and state-mandated assessments and supports the interpretation of the results based on individual learning characteristics;

(23) recommends the learner for additional visual and auditory evaluations/assessments when necessary; and

(24) explains the effects of specific etiologies on all sensory systems.

(e) Planning for Instruction. The teacher of students who are DeafBlind plans for instructional opportunities in home, school, and community environments that are adapted to the unique needs of learners who are DeafBlind. The teacher of students who are DeafBlind:

(1) understands the pacing and structure of programming for short- and long-term objectives within the context of functional routines for learners who are DeafBlind;

(2) understands how to include or introduce novelty into familiar routines based on the individual needs of learners who are DeafBlind;

(3) understands the elements of planning for life-long learning in current and future environments for students who are DeafBlind;

(4) understands the importance of creating lesson plans that provide direct sensory experiences for learners who are DeafBlind;

(5) understands appropriate instructional accommodations and modifications for learners who are DeafBlind;

(6) understands the process for the development of a shared formal language with learners who are DeafBlind, based upon the learners' unique needs when planning instruction;

(7) understands the need for learners who are DeafBlind to have competent communication partners who are present and actively engaged in all activities and settings;

(8) understands how to incorporate appropriate assistive technology that enhances auditory, visual, and/or tactile functioning;

(9) understands how to select the visual, auditory, and tactile characteristics of materials needed by learners who are DeafBlind;

(10) understands how to incorporate student preferences to design motivating instructional activities;

(11) gathers, maintains, and shares descriptive records/portfolios of the learner's communication repertoire across all settings to assess strengths, challenges, and progress;

(12) plans additional time for tactual modeling and exploration;

(13) plans additional time for individual learner processing and response;

(14) based on learner needs, plans instruction that includes the appropriate literacy system(s);

(15) plans extra time for conversations that facilitate the learner's anticipation of a change in routine or schedule;

(16) creates opportunities for turn-taking and serve-and-return conversational exchanges in all interactions and instructional settings;

(17) plans time for choice-making opportunities in multiple instructional settings;

(18) acquires devices and materials that are required for each lesson;

(19) obtains, operates, and maintains assistive technology related to vision and hearing; and

(20) adapts materials to accommodate for multi-sensory needs.

(f) Learning Environment. The teacher of students who are DeafBlind understands individual and group motivation and behavior in order to create a positive learning environment that encourages social interaction, active engagement, and joy of learning. The teacher of students who are DeafBlind:

(1) understands the array of learning environments within different service delivery models;

(2) understands the importance of competent communication partners who can interact with the learner who is DeafBlind to match his/her mode of communication;

(3) understands how to facilitate a multi-modal learning environment by using the learner's functional hearing and/or vision, while also promoting the bodily/tactile sense, as prime components of information gathering and expression;

(4) understands the potential for elements in the environment to be perceived as stressful by the learner who is DeafBlind and the impact that may cause to his/her biology;

(5) assists others in the development of trusting relationships and in becoming competent communication partners with the learner who is DeafBlind;

(6) facilitates communication and interaction to provide social and environmental access for the learner who is DeafBlind;

(7) makes appropriate adaptations to enhance the learner's auditory, visual, and tactile functioning in a variety of environments;

(8) uses appropriate assistive technology to promote the learner's access, participation, and independence;

(9) selects, adapts, recommends, or implements classroom management strategies that reflect understanding of the individual learner's needs;

(10) promotes an environment that allows learners to orient themselves, move safely, and interact positively with peers;

(11) promotes an environment that feels predictable and safe for the learner who is DeafBlind;

(12) reduces or eliminates unnecessary visual, auditory, and tactile clutter in the learning environment; and

(13) adapts the learning environment by considering the impact of the elements of the learning environment (e.g., glare, lighting, auditory input, seating position) on the learner.

(g) Instructional Delivery. The teacher of students who are DeafBlind emphasizes individual student potential and uses a variety of instructional strategies to encourage the learner's feelings of connectedness, success, and independence in order to promote development of critical-thinking and problem-solving skills in both the academic and expanded core curriculum to the greatest degree possible. The teacher of students who are DeafBlind:

(1) understands how to create learning experiences to make content meaningful for each learner who is DeafBlind;

(2) understands co-active teaching principles and practices that support the competencies of the learner who is DeafBlind;

(3) understands attachment theories of human learning that support the importance of reciprocal emotional involvement and basic trust;

(4) understands the importance of learners who are DeafBlind having control and influence over their own lives as an essential aspect of well-being;

(5) understands the developmental phases of dyadic interaction between the adult and the learner who is DeafBlind;

(6) understands the developmental phases of triadic interaction in the shared partnership between the adult, the learner who is DeafBlind, and the external world;

(7) understands how to support the development of positive self-esteem in the learner who is DeafBlind;

(8) understands visual, auditory, and tactile adaptations that enhance social/communicative interactions between the learner who is DeafBlind and others;

(9) understands the use of augmentative communication devices and other assistive technology that are appropriate for the learner who is DeafBlind;

(10) understands various instructional strategies specific to and/or adapted for learners who are DeafBlind;

(11) understands the development of language and literacy in the communication mode(s) of learners who are DeafBlind;

(12) understands the basic principles of orientation and mobility for learners who are DeafBlind;

(13) understands how to adapt and scaffold the general education curriculum for learners who are DeafBlind;

(14) understands curricula specific to and/or adapted for learners who are DeafBlind, including all areas of the expanded core curriculum;

(15) applies co-active teaching strategies with the learner who is DeafBlind in daily routines, as appropriate;

(16) applies tactile learning strategies in functional and play activities, as appropriate;

(17) provides opportunities for the learner's increased proprioceptive and kinesthetic awareness during daily routines and planned activities;

(18) provides opportunities for the learner to develop confidence by making choices;

(19) provides the learner with opportunities for self-advocacy;

(20) creates opportunities for learners to initiate conversations in their preferred communication mode about their topics of interest;

(21) determines and uses optimal proximity for access between the learner and communication partner(s);

(22) determines optimal proximity of the learner in relation to others that will enhance participation in group activities;

(23) identifies him- or herself and uses salutation rituals in the mode appropriate to initiate and end interactions;

(24) acts as a bridge in order to provide access to information about the environment, other interactions, and events taking place around the learner who is DeafBlind;

(25) provides opportunities for the learner who is DeafBlind to observe (auditorily, visually, or tactually) conversations or interactions between others;

(26) provides opportunities for co-created topics of instruction based on the learner's mode of communication and interests;

(27) provides multi-modal opportunities in order to support the organization of events and the formation of mental images and holistic concepts for the learner who is DeafBlind;

(28) uses scaffolding within the context of academic and functional routines to provide consistent and predictable experiential instruction for the learner who is DeafBlind;

(29) develops and implements communication systems appropriate to the mode and developmental level of the learner who is DeafBlind;

(30) uses formal language and literacy systems, as appropriate, to provide visual, tactile, and/or auditory access;

(31) selects and prioritizes receptive and expressive vocabulary that is meaningful and motivating to the learner;

(32) develops strategies to encourage the learner to use multiple static and dynamic modes/forms of communication;

(33) provides multiple opportunities to use and expand vocabulary through frequent and natural conversations;

(34) modifies existing literacy materials to adjust for the learner's language level and reading media;

(35) designs and makes low-tech communication devices that are appropriate to the learner's needs;

(36) selects and/or adapts assistive technology devices as tools for communication or to meet other learner needs;

(37) provides opportunities for the learner to use augmentative communication devices in a variety of environments and with a variety of communication partners, as appropriate;

(38) uses naturally occurring events for the learner to use and practice communication skills;

(39) recommends appropriate positioning to optimize visual, auditory, and tactile functioning;

(40) implements strategies to accommodate for and to improve the learner's visual, auditory, and tactile functioning based upon evaluation results;

(41) supports spatial orientation strategies for the learner who is DeafBlind;

(42) supports mobility techniques appropriate to the learner who is DeafBlind;

(43) supports the learner who is DeafBlind to develop his/her awareness of kinesthetic and proprioceptive sensory systems as they relate to the body in the environment;

(44) based upon clinical and functional evaluations, uses and creates materials that will maximize the learner's use of vision, hearing, and touch in specific situations to meet the learner's visual, auditory, and tactile needs; and

(45) incorporates language and literacy as part of everyday activities, according to the learner's experiences and interests.

(h) Collaborative Consultation. The teacher of students who are DeafBlind has knowledge of effective written, verbal, and visual communication techniques to foster active inquiry, collaboration, instructional coaching, and supportive interaction among professionals, family members, interveners, paraeducators, and learners who are DeafBlind. The teacher of students who are DeafBlind:

(1) understands the importance of gathering and sharing the social history of each learner who is DeafBlind and the effect it has on biological and developmental needs, including bonding and attachment with family members and primary caregivers;

(2) understands the role of the intervener for individual learners who are DeafBlind to assure that the learner has optimal access to opportunities for receptive and expressive communication, peer-to-peer interactions, and the development of shared meanings;

(3) understands the effective use of instructional coaching strategies to support the educational team;

(4) understands how to access appropriate resources that provide technical assistance at the local, state, and national levels related to the field of DeafBlindness;

(5) understands how to access appropriate resources for home and community services and supports for learners who are DeafBlind and their families;

(6) interprets and explains evaluation results to the learner's educational team members, including the learner's stage of developmental communication and implementation of strategies that support positive interactions in order to build an environment that promotes bonding, attachment, and a sense of safety;

(7) provides information and education to educational team members, including family members, about the uniqueness of DeafBlindness;

(8) promotes family engagement opportunities to connect families with educational, social, and peer support within school and community settings;

(9) provides appropriate opportunities for peer-to-peer and group interactions with other individuals who are Deafblind;

(10) promotes the exchange of information about the learner's communication mode(s) and developmental stages with other educational team members to ensure consistency of interpretation and use of the learner's communication system;

(11) works with the educational team to ensure appropriate instruction is provided to peers and adults to communicate effectively with the learner in the learner's preferred communication mode;

(12) collaborates with educational team members to facilitate understanding of the roles and responsibilities of the intervener and to use the intervener model according to the needs of the learner in multiple environments;

(13) coaches the intervener and provides training to support the intervener's role and responsibilities related to the needs of the learner;

(14) recommends appropriate referrals to other specialists in collaboration with educational team members to assess the need for assistive devices or additional evaluations;

(15) collaborates with orientation and mobility specialists and other appropriate specialists in adapting strategies to support the learner in moving safely and independently;

(16) collaborates with the educational team to identify and provide support related to the learner's access to the general education curriculum;

(17) guides the educational team to consider appropriate modifications and accommodations needed for the learner who is DeafBlind;

(18) consults and collaborates with community partners and family organizations who provide care, education, early intervention services, and/or adult services to individuals who are DeafBlind;

(19) provides training to caregivers, school personnel, and peers that will improve the quality of their interactions/relationships with the learner who is DeafBlind;

(20) works with the learner's educational team to create a transition plan for the learner who is DeafBlind that includes opportunities for a high quality of life beyond the educational setting; and

(21) develops and implements communication systems appropriate to the mode and developmental level of the learner who is DeafBlind.

(i) Professional Conduct and Leadership. The teacher of students who are DeafBlind understands teaching as a profession, maintains standards of professional conduct, adheres to ethical practices, and provides leadership to improve students' learning and well-being. The teacher of students who are DeafBlind:

(1) understands special education laws as they relate to students who are DeafBlind;

(2) understands how appropriate placement and services are determined for students who are DeafBlind;

(3) understands how appropriate service intensity is determined;

(4) understands the professional code of ethics for special educators and how it applies to his/her role;

(5) facilitates access to early intervention to transition to adult services for learners who are DeafBlind and their families;

(6) serves as the team lead for the entire instructional team, including family members, to facilitate education, support, and collaboration in the areas unique to DeafBlindness; and

(7) demonstrates professional ethics and etiquette across all settings.

(j) **Reflection and Professional Growth.** The teacher of students who are DeafBlind is a reflective practitioner who has knowledge of systems, available resources, organizations, and services for students who are DeafBlind; who continually evaluates how teacher choices and actions affect learners, family members, and other professionals in the learning community; and who actively seeks ongoing opportunities to grow professionally. The teacher of students who are DeafBlind:

(1) understands initiatives related to the field of DeafBlindness;

(2) understands the role of communities of practice in enhancing professional growth;

(3) understands the professional organizations related to the field of DeafBlindness and the benefits of memberships therein;

(4) understands the importance of professional development and its positive impact on effective practice;

(5) understands the value of ongoing reflection as a practice to improve instructional effectiveness;

(6) connects with other professionals within the field of DeafBlindness through a variety of sources, including professional organizations that focus on DeafBlindness;

(7) participates in professional development opportunities and applies the information to his or her practice; and

(8) regularly utilizes self-evaluation and intentional reflection on instructional practices and adjusts strategies accordingly.

§235.137. Bilingual Special Education Standards: Early Childhood Grade 12.

(a) **Bilingual Special Education Standards.** The standards identified in this section are targeted for teachers of emergent bilingual students with disabilities. The standards address the discipline associated with the theory and practice of teaching emergent bilingual students who receive special education services, referred to throughout the standards as dually identified students. The standards inform appropriate teaching techniques, methods, and teacher actions, judgments, and decisions by taking into consideration philosophical, historical, and legal foundations of special education, characteristics of emergent bilingual students who receive special education services, understandings of the needs and strengths emergent bilingual students who receive special education services, and the backgrounds and interests of individual students.

(b) **Legal and Ethical Guidelines.** The bilingual special educator integrates bilingual and special education pedagogies to demonstrate knowledge of:

(1) major legislation and Supreme Court cases that provide and uphold the rights of students receiving special education and/or language-related services;

(2) the Individuals with Disabilities Education Act (IDEA) eligibility categories for special education and related services regarding the role of bilingual assessment in eligibility processes as well as considerations for emergent bilingual students in each category;

(3) policies and statutes related to emergent bilingual students, including the roles, responsibilities, and processes for participating in the Language Proficiency Assessment Committee (LPAC) for

identification, recommendation of program services, delivery of services, reclassification, and monitoring for a dually identified student in Texas;

(4) policies and procedures for providing families with all relevant special education and bilingual education documentation in the parent or guardian's native language in accordance with §89.1050 of Part 2 of this title (relating to The Admission, Review, and Dismissal Committee) and §89.1055 of Part 2 of this title (relating to Individualized Education Program);

(5) the confidentiality, components, and maintenance of special education eligibility and LPAC folders, including documentation of receipt of Individualized Education Programs (IEPs) by required staff, use of original home language survey, updated parental permission for current program, and storage of folders according to local and state requirements;

(6) the components of Individualized Family Service Plans (IFSPs) for dually identified students and procedures for developing, implementing, and amending IFSPs in collaboration with the Early Childhood Intervention team;

(7) the components of IEPs and procedures for developing, implementing, and amending IEPs for dually identified students in collaboration with the Admission, Review, and Dismissal (ARD) committee and the LPAC;

(8) auditing student class schedules to ensure compliance with least restrictive environment and schedule of services in the IEP as well as placement in appropriate courses to support language development;

(9) the roles and responsibilities related to preparing for an ARD and/or LPAC committee meeting, including collecting required data, interpreting the results of progress monitoring and classroom assessment data, visually representing and interpreting data to show student progress, and preparing LPAC data on linguistic growth and progress;

(10) the legal responsibility of all school staff to fully implement an IEP for the dually identified student, to provide instruction in the English Language Proficiency Standards (ELPS), and to incorporate linguistically accommodated instruction based on language proficiency level;

(11) applying legal requirements and ethical guidelines relevant to individualized behavioral interventions that consider individual student characteristics;

(12) roles and responsibilities related to implementing the IEP that addresses both linguistic and disability related needs with fidelity, including monitoring student linguistic progress, implementing data collection of IEP goal progress, and reporting progress to the student and parents/guardians throughout the school year in plain language, English, and the language of the program;

(13) the roles and responsibilities regarding Child Find obligations as outlined in 34 Code of Federal Regulations (CFR) §300.300-§300.306 and §89.1011 of Part 2 of this title (relating to Full and Individual Initial Evaluation);

(14) the roles and responsibilities of the required members of the LPAC as well as the roles and responsibilities of the ARD committee, including a representative of the LPAC;

(15) the required components of an LPAC meeting agenda and ARD committee meeting agenda for a dually identified student;

(16) the types and purposes of LPAC meetings throughout the school year;

(17) the local processes and supports to arrange for a home language interpreter/translator to attend the ARD meeting to ensure access for all stakeholders and to allow all LPAC/ARD committee members to have a single role, except in cases where a dual role is permissible under federal and state requirements; and

(18) the relevant special education and emergent bilingual laws and policies that facilitate families' full participation in their students' education.

(c) Knowledge of Students and Factors that Influence Learning. The bilingual special educator integrates bilingual and special education pedagogies in order to demonstrate knowledge of:

(1) relevant development from birth through adolescence for dually identified students;

(2) the impact disability, stress, trauma, protective factors, resilience, and supportive relationships may have on the learning, behavior, and development of dually identified students;

(3) evidence-based strategies to support dual identified students' development and independence given IEP and relevant grade level expectations for academic progress, language proficiency growth, and behavior from birth through adolescence;

(4) individual learner characteristics and specialized curricula knowledge to accommodate, modify, and/or customize the curricula across contexts for dually identified students;

(5) utilizing present levels of academic achievement and functional performance to select and implement appropriate specially designed instruction for dually identified students;

(6) barriers to accessibility and learning for dually identified students and evidence-based methods to mitigate those barriers;

(7) evidence-based, individualized student behavioral support theories and strategies based on local policies and student needs;

(8) leveraging the familial, educational, linguistic, and developmental experiences of dually identified learners to support learning across instructional settings;

(9) differences in language across various groups to design and implement appropriate instructional practices;

(10) the impact of behavior on student learning and the learning of their classmates, factors that impact dually identified student behavior, and application of this knowledge to create a safe and effective learning environment;

(11) applying the concept of funds of knowledge to improve academic outcomes for dually identified students;

(12) transition planning and available transition services aligned to student characteristics and needs; and

(13) leveraging student use of formal and informal registers to promote academic and linguistic development.

(d) Language and Literacy Development. The bilingual special educator integrates bilingual and special education pedagogies to demonstrate knowledge of:

(1) using children's or grade appropriate literature and high quality, authentic materials developed in the primary language and not translated or adapted;

(2) applying language components, including oracy, phonics, phonology, morphology, syntactic features, semantics, and pragmatics, authentic to English and the language of instruction;

(3) developing and customizing lesson plans that apply research and evidence-based instructional strategies related to biliteracy development including bi-directional transfer, use of cognates, contrastive analysis, translanguaging, and assessment for biliteracy;

(4) applying literal, inferential, and interpretive reading skills to text in the language of instruction and English;

(5) applying content-based language instruction (CBLI) practices in the language of instruction and English;

(6) creating and adapting lessons with both academic and linguistic objectives and differentiating based on the IEP of the dually identified student;

(7) relevant standards, with biliteracy and disability-related considerations for instruction and assessment (e.g., Science of Teaching Reading, ELPS, Spanish Language Arts and Reading);

(8) planning and delivering linguistically accommodated instruction and evaluating and monitoring the progress of dually identified students in their English language proficiency using connections between the ELPS and the Texas English Language Proficiency Assessment System (TELPAS);

(9) assessing and monitoring language proficiency levels in all four language domains--listening, speaking, reading, and writing;

(10) applying holistic linguistic practices to support learners' language and literacy development in English and the language of instruction;

(11) using oracy to improve comprehension through bilingual storytelling and content-based story retelling;

(12) the application of language and literacy development in the content areas to support targeted lesson planning across all areas of the curriculum; and

(13) the recursive nature of assessment and the need to use multiple data points to assess and monitor biliteracy development across language domains when planning and delivering instruction aligned with the student's IEP and when providing opportunities to develop biliteracy skills.

(e) Eligibility, Program Placement, and Assessment. The bilingual special educator integrates bilingual and special education pedagogies to demonstrate knowledge of:

(1) all aspects of special education services (Child Find, evaluation, identification, IEP development, ARD committee processes) and the role of language development throughout for purposes of eligibility, evaluation, assessment, and placement;

(2) all steps in the LPAC process and the role of disability-related needs throughout for purposes of identification, placement, services, review and reclassification, and monitoring;

(3) using data from a variety of formative, dynamic and summative assessments and language proficiency levels to inform pre-referral processes, appropriate placement, and ongoing appropriate evaluation for dually identified students;

(4) components and purposes of a Functional Behavioral Assessment and the collection, analysis and utilization of student data to design effective behavior interventions;

(5) the key components and purposes of a Behavior Intervention Plan (BIP) that takes into account individual student characteristics and variance and analyze progress monitoring data as defined in the BIP to evaluate the effects of behavioral interventions;

(6) research-based de-escalation strategies, trauma-related behavior, and positive behavioral supports, to effectively address individual student behavior;

(7) supporting students to use language proficiency development and academic progress data to articulate and communicate their academic and non-academic needs;

(8) using a variety of assessment data and language proficiency levels to write annual measurable IEP goals and present levels of academic achievement and functional performance, monitor linguistic development, and identify appropriate accommodations, designated supports (state testing) and modifications based on dually identified student needs, and contribute to developing the IEP;

(9) identifying, recommending, and implementing appropriate linguistic and disability related accommodations and/or modifications as determined by the LPAC and/or ARD committee;

(10) state testing requirements and criteria for participation and accommodation for dually identified students;

(11) utilizing and documenting ongoing formative and summative assessments for language development and academic and behavioral progress;

(12) collaboration with campus stakeholders to accurately analyze, interpret, and discuss the results of a variety of evaluation data for a dually identified student;

(13) accurately interpreting the results of various forms of assessment for an individual student to determine linguistic growth and academic progress toward measurable outcomes; and

(14) communicating present levels of student achievement and progress on IEP goals, progress in the ELPS, and mastery of grade-level TEKS to all relevant stakeholders.

(f) Content Knowledge and Instructional Practices. The bilingual special educator integrates bilingual and special education pedagogies to demonstrate knowledge of:

(1) all domains of the Texas Prekindergarten Guidelines and specific knowledge of early numeracy, early literacy, and pre-academic skills in the primary language of the program and English;

(2) developing individualized goals and objectives for IEPs aligned to appropriate grade-level TEKS, ELPS, and/or the Texas Prekindergarten Guidelines that identify appropriate language of instruction for the student as well as language(s) appropriate for the student to demonstrate mastery;

(3) integrating language development and content-area instruction to meet the needs of students in accordance with Chapter 89, Subchapter BB, of Part 2 of this title (relating to Commissioner's Rules Concerning State Plan for Educating Emergent Bilingual Students);

(4) applying second language acquisition methodologies (e.g., Total Physical Response, Sheltered Instruction Observation Protocol) and CBLI methodologies in language of instruction and English;

(5) differentiated methodologies and strategies for instructing a wide variety of learners, including heritage language learners, simultaneous bilinguals, recent arrivals, long-term emergent bilingual students, and program language learners in a two-way dual language immersion program, within different school-based configurations and program models;

(6) applying content-specific knowledge and language development knowledge to routinely collaborate, co-teach, modify, and

adapt curriculum with general education teachers, special education teachers and related service providers;

(7) using explicit, differentiated, scaffolded, and systematic instruction to teach content, strategies, and skills designed for the student's language proficiency level and aligned with IEP goals;

(8) providing linguistically appropriate access to subject-specific instructional materials to address individual learner needs in different contexts such as center-based, home-based, and school-based classrooms, including specialized and general classrooms;

(9) utilizing assessments and language proficiency levels to develop specially designed instruction, including accommodations, modifications, and adaptations, as well as appropriately differentiated lessons;

(10) planning instruction according to the requirements of an IEP, including supplementary aids, assistive technology, and related services;

(11) providing specific, appropriate, and explicit feedback to students during instruction to engage, motivate, and support students toward language proficiency development and content mastery;

(12) specialized curricula that may include curriculum for social skills, life skills, transition, orientation and mobility, independence, and self-advocacy;

(13) proficient use of various forms of assistive technology (low, mid-, and high-tech) and plan for the strategic integration of assistive technology into daily teaching practices based on student developmental, learning, and linguistic needs;

(14) planning for and the integration of school-to-school and school-to-community transition-focused activities into classroom instruction related to the student's post-secondary goals;

(15) using evidence-based practices to design and implement appropriate interventions when dually identified students are not making expected progress in linguistic, functional, academic, or behavioral goals;

(16) building positive relationships with students based on understanding of individual strengths and needs, high expectations, and mutual respect and rapport;

(17) appropriate accommodations, modifications, and differentiation strategies to meet the needs of dually identified students as well as providing, adapting, and/or creating appropriate instructional materials and resources;

(18) utilizing knowledge of language development and learning processes of dually identified students to select and use appropriate engagement strategies (bilingual pairs, language stations, strategic groupings, etc.) that meet the linguistic and learning needs of all students; and

(19) the key differences between accommodations (language and disability related) and modified curriculum.

(g) Student Support, Collaboration, and Professional Responsibilities. The bilingual special educator integrates bilingual and special education pedagogies in order to demonstrate knowledge of:

(1) the academic benefits of multilingualism and bilingualism for students with disabilities;

(2) misconceptions related to bilingualism and disability and practices based on these misunderstandings;

(3) providing rigorous learning opportunities that support the development of a student's first language and English and promote positive learning outcomes;

(4) effective communication with parents and guardians around all aspects of the LPAC and/or ARD process to support participation in activities designed to support student achievement and growth;

(5) supporting access to services for dually identified students and their families as well as programmatic considerations/practices, particularly those with high support needs, recognizing students' multiple identified linguistic and disability related needs and how needs may change over time;

(6) collaborating with general education teachers to deliver, adapt, and differentiate instruction to address students' academic and non-academic needs;

(7) collaboration strategies to support all relevant stakeholders to effectively serve dually identified students across instructional settings;

(8) coordination with related service providers and community agencies to identify and access services, resources, and supports to meet the needs of dually identified students;

(9) supervising and collaborating with paraprofessionals to identify the responsibilities and skills needed for their roles; and

(10) setting short-term and long-term professional goals based on ongoing analysis of student learning, self-reflection, advocacy, and professional standards.

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 May 19, 2025.

TRD-202501713

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER G. SPECIAL EDUCATION CERTIFICATE STANDARDS

19 TAC §§235.131, 235.133, 235.135

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires

the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate and specifies certification requirements for the certificate.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1), (2), and (4); and 21.04891.

§235.131. *Special Education Standards: Early Childhood-Grade 6.*

§235.133. *Special Education Standards: Grades 6-12.*

§235.135. *DeafBlind Standards: Early Childhood-Grade 12.*

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 May 19, 2025.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.1 concerning Board Seal and Headquarters.

Background, Justification and Summary

The staff is recommending that much of Rule 505.1 be repealed. The Board seal is not required to be a rule and any revision to the seal should be an administrative function of the Board and not be required to go through a rulemaking process.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will eliminate unnecessary matters in the rules.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.1. Board Seal and Headquarters.

[(a) The official seal of the board illustrated in paragraph (8) of this subsection shall consist of:]

[(1) a circle with a rope border;]

[(2) a five point star comprised of five diamond shapes, in the center, with the star placed so that one point is pointed directly at the top, with the remaining points spaced equidistant;]

[(3) the word "TEXAS" is spelled out placing one capital letter between each point of the star beginning on the left side of the star;]

[(4) the center star is itself bordered by a circle of dots;]

[(5) the words "TEXAS STATE" in capital letters appear at the top of the seal in the margin between the dot border and the rope border;]

[(6) the words "BOARD OF PUBLIC ACCOUNTANCY" in capital letters appear at the bottom of the seal in the margin between the dot border and the rope border;]

[(7) the background of the seal shall be black; and]

[(8) all features described in paragraphs (1) - (6) of this subsection shall be in gold.]
[Figure: 22 TAC §505.1(a)(8)]

(a) [(b)] The board seal may be embossed on a solid gold background to place official board records and documents under seal. The board may cause the board seal to be reproduced in other color schemes for use in official board business or board authorized functions or publications. The board seal may not be reproduced or used for non-board business without the express written consent of the board's executive director.

(b) [(e)] The headquarters and administrative offices of the board shall be at 505 E. Huntland Drive, Suite 380, Austin, Texas 78752

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 May 15, 2025.

TRD-202501666

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 305-7842



22 TAC §505.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.3 concerning Presiding Officer of the Board.

Background, Justification and Summary

The proposed rule revision clarifies that the Presiding Officer of the Board is responsible for official board business and then identifies in detail what constitutes official board business.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will help the public better understand the responsibilities of the board's Presiding Officer.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods

of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.3. *Presiding Officer of the Board.*

(a) When present, the presiding officer shall conduct all board meetings, and shall oversee the official business of the board. The presiding officer shall appoint such committees as the board may authorize under §505.10 of this chapter (relating to Board Committees) and may delegate the signing of official documents. The presiding officer may sign board orders on behalf of the board after the board has approved adoption of the order. The presiding officer shall serve as the official spokesman of the board and shall have such other responsibilities as assigned and such other authority as conferred by the board.

(b) Official board business is defined as board meetings, committee meetings, conferences or meetings where board business may be discussed, informal enforcement committee meetings, settlement conferences, swearing-in ceremonies, board matters involving litigation, speaking engagements pertaining to the board, consultation with board staff and/or the public regarding board matters, and meetings where legislation or board matters may be discussed or heard.

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 May 15, 2025.

TRD-202501667

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 305-7842



CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.2 concerning Staff.

Background, Justification and Summary

The proposed rule revision corrects the definition of nepotism to consist of the third degree of consanguinity and not the second degree.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no

estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will clarify what constitutes the prohibited degrees of nepotism in state government.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the

health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§507.2. Staff.

(a) The executive director shall employ such staff as is authorized and necessary for the conduct of the board's affairs. Applications for employment by the board shall notify prospective employees that no employee of the board may be employed in an executive, administrative or professional capacity, as that phrase is used for purposes of establishing an exemption to the overtime provisions of the Fair Labor Standards Act, and its subsequent amendments, if:

(1) the prospective employee is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy; or

(2) the prospective employee's spouse is acting in the capacity of an officer, executive board or executive committee member, manager or paid consultant of a Texas trade association in the field of public accountancy; or

(3) be related within the second degree of affinity or within the third [second] degree of consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the field of public accountancy.

(b) Each employee shall be hired without regard to race, color, handicap, sex, religion, age, or national origin. The executive director shall report at least annually to the board on compliance with this policy.

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 May 15, 2025.

TRD-202501668

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 305-7842



22 TAC §507.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.3 concerning Independent Contractors.

Background, Justification and Summary

Makes it clear that the board may contract with outside legal counsel with the approval of the Office of Attorney General.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in

effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make the public aware of the board's authority to contract with outside legal counsel.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§507.3. Independent Contractors.

The board may, pursuant to §901.151(c) of the Act (relating to General Powers and Duties of Board) and §472.107 of the Texas Government Code, employ independent contractors, including attorneys, investigators and consultants, to perform services prescribed by the board. The basis for compensation of independent contractors shall be stated in the contract of employment. The board will re-procure professional services contracts no later than every four years and provide documented justification for entering into a multiyear contract or to extend a contract beyond one year for professional services. The board may contract with outside legal counsel for legal services with approval from the Office of Attorney General for a specific period or assignment.

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 May 15, 2025.

TRD-202501669

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 305-7842



CHAPTER 509. RULEMAKING PROCEDURES

22 TAC §509.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §509.2 concerning Emergency Rulemaking.

Background, Justification and Summary

Proposes to add language that makes the public aware that the board, in an emergency, may adopt rules to address an emergency. In an emergency, the board is not required to seek public comment on the rule for 30 days prior to its adoption.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will help the public understand that the board may take action to address an im-

minent danger to public health, safety and welfare or a requirement of state or federal law.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§509.2. *Emergency Rulemaking.*

If a state or federal law so requires the board to do so or if there is an imminent peril to the public health, safety or welfare, the board may adopt, revise, or waive [repeal] board rules pursuant to §2001.034 of the Texas Government Code without prior notice. The emergency rule may be effective for no longer than 120 days and may be renewed once for up to 60 days.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 527. PEER REVIEW

22 TAC §527.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.1 concerning Establishment of Peer Review Program.

Background, Justification and Summary

The proposed rule revision makes it clear that the Peer Review Program is designed to address attest services.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will help the public understand the purposes of the Peer Review Program.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses be-

cause the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.1. Establishment of Peer Review Program.

(a) Pursuant to §901.159 of the Act (relating to Peer Review), the board establishes a peer review program to monitor CPAs' compliance with applicable accounting, auditing and other attestation standards adopted by generally recognized standard-setting bodies. The program may include education, remediation, disciplinary sanctions or other corrective action where attest services do [reporting does] not comply with professional or regulatory standards.

(b) This chapter shall not require any firm to become a member of any sponsoring organization and all sponsoring organization(s) shall charge the same administrative fee to all firms participating in peer review regardless of their membership or affiliation with a sponsoring organization.

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 May 15, 2025.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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22 TAC §527.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.2 concerning Definitions.

Background, Justification and Summary

The proposed rule revision is designed to better define the scope of an engagement review and be consistent with AICPA rules.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will clarify that an engagement review does not address quality management.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a

new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.2. Definitions.

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

(1) "Engagement Review" means a peer review evaluating engagements performed and reported on in conformity with applicable professional standards in all material respects and unless agreed to otherwise is performed off-site from the reviewed firm's office and does not provide a basis for expressing any assurance regarding the firm's system of quality management [eontrol] for its accounting practice.

(2) "Systems Review" means a peer review designed to provide a peer reviewer with a reasonable basis for expressing an opinion on whether, during the year under review:

(A) the reviewed firm's system of quality management [eontrol] for its accounting and auditing practice has been designed in accordance with quality management [eontrol] standards; and

(B) the reviewed firm's quality management [eontrol] policies and procedures were being complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(3) "Review Year" means the one-year (12-month) period covered by the peer review. Financial statement engagements selected for review normally would have periods ending during the year under review. Engagements related to financial forecasts or projections, or agreed upon procedures engagements, with report dates during the year under review would also be subject to selection for review.

(4) "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(5) "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(6) "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiencies, or fail. The peer review rating is clearly indicated in the peer review report. A peer review report with a rating of pass with deficiencies or fail is considered a deficient review.

(7) "Assigned review date" is the reporting due date to the board of an accepted peer review report.

(8) "Acceptance date" of a peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this chapter (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(9) "Completion date" of a peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this chapter, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(10) "AICPA Public File" is the file for firms that are members of AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center, Private Companies Practice Section, or other firms that voluntarily post their review information to this public file on AICPA's web site as a membership requirement. Information in the public file includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(11) "Facilitated State Board Access (FSBA)" is a secure website accessible only to the state board that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §527.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4 concerning Enrollment and Participation.

Background, Justification and Summary

To make it clear that failure to properly satisfy Peer Review requirements may subject the licensee to disciplinary action including sanctions. Other proposed revisions are helpful for purposes of clarification of the program requirements.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will assist the public in understanding who is subject to Peer Review and who may be exempt.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.4. Enrollment and Participation.

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest services as defined in §901.002 of the Act (relating to General Definitions) and §501.52(4), (11) and (23) of this title (relating to Definitions). A firm that performs attest services subject only to PCAOB inspection is not required to participate in the program. A firm whose highest level of service is preparation engagements under SSARS is not required to participate in the program.

(b) A firm that does not perform attest services as set out in subsection (a) of this section shall annually submit to the board a request for an [the] exemption from the peer review program [in writing to the board] with an explanation of the services offered by the firm. An exempt firm that [A firm which] begins providing attest services as set out in subsection (a) of this section shall notify the board of the change in its exemption status within 30 days [of the change in status, provide the board with enrollment information within 90 days of the date the services were first provided and have a peer review performed within 18 months of the date the services were first provided].

(c) Each firm required to participate under subsection (a) of this section shall enroll in the applicable peer review program [programs] of an approved sponsoring organization within 30 days of performing [from its initial licensing date or the performance of] services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the peer review due date within 30 days of its assignment. In addition,

a firm's subsequent peer review is due three years and six months after the year end of the previous peer review, or earlier as may be required by the sponsoring organization, a committee of the board or the board's executive director. It is the responsibility of the firm to anticipate its needs for peer review services in sufficient time to enable the reviewer to complete the peer review by the assigned review due date.

(d) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the successor firm. The successor firm shall retain its peer review status and the review due date.

(e) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 15 days of the date that an extension is granted.

(f) A firm that has been rejected by a sponsoring organization for any reason must make a request in writing to the board for authorization to enroll in a program of another sponsoring organization. Such request shall be made within 30 days of notification by the sponsoring organization.

(g) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act (relating to Practice by Certain Out-of-State Firms) and §517.1 and §517.2 of this title (relating to Practice by Certain Out of State Firms and Practice by Certain Out of State Individuals) must comply with the peer review program of the state in which the firm is licensed.

(i) An out-of-state firm practicing in this state pursuant to a practice privilege from a state without a peer review program must comply with §901.159 of the Act (relating to Peer Review) and Chapter 517 of this title (relating to Practice by Certain Out-of-State Firms and Individuals).

(j) An out-of-state firm practicing in this state pursuant to a practice privilege must submit its peer review (or equivalent) documentation upon request of the board.

(k) Failure to satisfy peer review requirements may subject the firm to disciplinary action as well as administrative penalties and costs under §519.9 of this title (relating to Administrative Penalty Guidelines).

(l) [(k)] Interpretive Comment. If a firm is subject to inspections pursuant to PCAOB and also performs attest work not subject to such inspections, the firm must enroll in a peer review program for review of its non-public company attest work in addition to the firm inspection program required by the PCAOB.

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 May 15, 2025.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842

22 TAC §527.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.6 concerning Reporting to the Board.

Background, Justification and Summary

The proposed rule revision identifies important documents to be submitted to the board for the board's access in evaluating peer review.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will definitively identify documents required for the board's review.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505

E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.6. Reporting to the Board.

(a) A firm must submit to the board:

(1) a copy of the peer review report and the FLOA from the sponsoring organization, if such report has a rating of pass;

(2) a copy of the peer review report, the firm's LOR, the CAL, and FLOA if the report has a rating of pass with deficiencies or fail; [or]

(3) any additional documents from or to the firm's administering entity related to the firm's peer review, including a letter of enrollment or reenrollment, a representation made by the firm to the administering entity representing that it has not performed attest engagements, identification of due dates for peer reviews and corrective action(s), a corrective action extension letter, the date the peer review was scheduled, and the estimated dates of the peer review commencement and presentation to a report acceptance body; or [a copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies and findings and the firm's response.]

(4) a copy of any report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies and findings and the firm's response.

(b) Any report or document submitted to the board under this section is confidential pursuant to the Act.

(c) Any report or document (collectively referred to as "documents") required to be submitted under subsection (a) of this section shall be filed with the board as provided below:

(1) Peer review documents will be made available by the reviewed firm granting access to the board in FSBA. A firm that does not grant access to the board in FSBA must complete the board's Peer Review Compliance Reporting form within 30 days of receiving any document under subsection (a) of this section and submit it to the board along with the required documents. [TXCPA for firms enrolled in the AICPA and TXCPA Peer Review Programs and administered by the TXCPA. Peer review documents will be made available by the TXCPA by posting such documents within 30 days of issuing its notice of ac-

ceptance to such firms on the FSBA web site. The reviewed firm must, within 10 days of receipt of the notice of completion from the TX-CPA, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.]

[(2) Firms otherwise enrolled in the AICPA peer review program (including those whose peer reviews are administered by the NPRC, and state CPA societies fully involved in the administration of the AICPA Peer Review Program) must, within 10 days of receipt of the notice of completion from the sponsoring organization, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents. However, this requirement may be met by allowing the firm's peer review documents to be posted on the FSBA web site, with access granted to the board within 30 days of issuing its notice of acceptance to such firms on the FSBA web site.]

(2) [(3)] Firms subject to the PCAOB permanent firm inspection program must, within 10 days of receipt of the notice of completion from the PCAOB, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(d) The information required under subsection (c) of this section must be filed with the board either by mail or electronically such as by fax, email, or FSBA web site.

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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J. Randel (Jerry) Hill

General Counsel

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22 TAC §527.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.7 concerning Peer Review Oversight Board.

Background, Justification and Summary

Removes the requirement that all PRRC meetings must be attended and reviewed by the Peer Review Oversight Board.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will be a reduction in agency costs while not compromising the effect of the Peer Review Program.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with

the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on June 30, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§527.7. Peer Review Oversight Board.

(a) The board shall retain the Peer Review Oversight Board (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported in accordance with the Standards promulgated by the AICPA Peer Review Board;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will be required to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) The PROB shall consist of active licensed Texas CPAs in a number sufficient to meet the objectives of this section as determined by the board. No member of the PROB shall be a current member of the board or one of its committees, the TXCPA's Peer Review or Professional Conduct Committee, or the AICPA Professional Ethics Executive Committees or Peer Review Board (including subcommittees). The members should have extensive experience in accounting and auditing and in the practice of public accountancy at the partner (or equivalent) level within the past five years. If a member is associated with a firm subject to peer review, the member's firm must have received a report with a rating of pass from its last peer review. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the AICPA/NPRC, state CPA societies other than Texas that are fully involved in the administering AICPA Peer Review Program, PROB shall review the published oversight reports of those entities or successors, to determine that there is an acceptable level of oversight;

(2) Where the sponsoring organization is other than those listed in paragraph (1) of this subsection, PROB shall perform the following functions:

(A) The Peer Review Committee members will determine which and how many Report Acceptance Bodies meetings and PRRC meetings the PROB members will attend each year in order to assure that the peer review program is meeting its objectives [At least one member of the PROB shall attend all meetings of each sponsoring organization's PRRC]. Certain PRRC meetings may be conducted via telephone or video conference. In those instances, the PROB may join the conference via telephone or video conference [eall].

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection or other criteria adopted by PROB, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's FLOA outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) the applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) the applicant has provided for the assessment of the results of the review; and

(E) the applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations' peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

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 May 15, 2025.

TRD-202501675

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 305-7842



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES OF CONTRACT FOR DEED AND [CONTRACTING] FINANCING FOR LAND

40 TAC §§175.1, 175.2, 175.4 - 175.15, 175.17 - 175.19, 175.21, 175.22

The Texas Veterans Land Board (Board) proposes amendments to Texas Administrative Code, Title 40, Part 5, Chapter 175, Subchapter A, §§175.1, 175.2, 175.4 - 175.15, 175.17 - 175.19, 175.21 and 175.22.

The Board identified the need for the proposed amendments during its review of this subchapter's rules, conducted pursuant to Section 2001.039 of the Texas Government Code, the adoption of which can be found in the Review of Agency Rules section of this issue. At its May 13, 2025 meeting, the Board unanimously approved the readoption of this subchapter with amendments.

The proposed amendments to §175.2. remove definitions for the Board and Veterans Land Program because they are provided for in Section 161.001 of the Texas Natural Resources Code (Code), specify that a veteran can hold only one loan originated for that veteran, update a reference to the definition of "missing/missing in action," update citations to the definition for "surviving spouse," relocate provisions on the determination of evidence of service in the Armed Forces of Vietnam to improve the rule's readability, and change provision pertaining to discharge status to limit eligibility for the loan benefits of the Veterans Land Program and other Board loan programs to those who received discharge types of honorable, general, or medical.

The proposed amendments to §175.3 make grammatical changes to improve the rule's readability.

The proposed amendments to §175.5 separate the provisions in a subsection into two subsection to improve the rule's readability.

The proposed amendments §175.8 remove outdated language.

The proposed amendments to §175.11 clarify provisions on interest rates pertaining to transferred contracts for sale and purchase.

The proposed amendments to §175.12 remove a subsection and relocated it to §175.13, which is the more appropriate rule because it contains all provisions on land improvements. The proposed amendments also update a reference to §175.4.

As mentioned, the proposed amendments to §175.13 add a subsection of §175.12 to bring all provisions in the chapter involving land improvements into one subsection and make references to the Chairman consistent with how the term is used throughout this chapter.

The proposed amendments to §175.15 update a reference to the Texas Department of Transportation.

The proposed amendments to §175.17 add a fee that the Board may charge for the costs of a credit report for processing a loan.

The proposed amendments to §175.18 update a reference to §175.2 of this chapter, update a reference to Chapter 161 of the Texas Natural Resources Code, makes references to the Chairman consistent with how the term is used throughout this chapter.

The proposed amendments to §175.22 remove three subsections because their provisions are located in Sections 161.013 and 161.062 of the Texas Natural Resources Code and Section 49-b(b) of the Texas Constitution and is thus superfluous, and updates a reference to the chairman.

In addition, the title of this subchapter is changed to "General Rules of Contract for Deed and Financing for Land" to specify the rules' subject matter.

Also, throughout this chapter, references to the Board are made lower-case to align with their occurrences throughout Chapters 161, 162, and 164 of the Code, references to this chapter are changed from "title" to "chapter," as the former is generally used throughout the Texas Administrative Code, citations are updated, language is updated, and grammatical and editorial changes to language are made to improve the rule's readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. John Barton, the Board's Director of Bond Funds Management, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for the state or local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Barton has determined that for each year of the first five years the proposal is in effect, there will be no economic effect on businesses or individuals.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Barton has determined that the proposal will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Barton provides the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposal will be in effect, the Board has determined the following:

- (1) the proposal will not create or eliminate a government program;
- (2) implementation of the proposal will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposal will not require an increase or decrease in future legislative appropriations to the Board;
- (4) the proposal will not require an increase or decrease in fees paid to the Board;
- (5) the proposal does not create a new regulation;
- (6) the proposal will not expand, limit, or repeal an existing regulation;
- (7) the proposal will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposal will not affect this state's economy.

Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Legal Assistant, Texas Gen-

eral Land Office, 1700 Congress Avenue, Austin, Texas 78701, or by email to walter.talley@glo.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed pursuant to:

Section 161.001 of the Natural Resources Code (Code), which allows the Board to change its definition of "veteran" in Chapter 161 to protect the best interests of the Veterans Land Program.

Section 161.063 of the Code, which allows the Board to adopt rules and procedures it considers necessary to ensure the integrity of the Program.

Section 161.232 of the Code, which requires the Board to adopt rules for land sales under the Program.

Section 161.236 of the Code, which allows the Board to set rules to determine the number of tracts of land a veteran may purchase under the Program.

Section 161.281 of the Code, which allows the Board to waive land inspection requirements by rule.

Section 161.284 of the Code, which allows the Board to require an on-site meeting between a land appraiser and a veteran purchaser by rule.

Section 161.362 of the Code, which allows the Board to adopt rules related to insurance requirements under the Program.

Section 161.504 of the Code, which allows the Board to set rules to determine the number of loans a veteran purchaser may receive under the Program.

Section 161.508 of the Code, which requires the Board to adopt rules relating to fees, charges, and interest rates that may be charged by Program-participating lending institutions

Section 161.512 of the Code, which allows the Board by rule to increase interest rates and accelerate repayments on loans.

Section 161.513 of the Code, which requires the Board to adopt rules setting land loan foreclosure proceedings.

The code affected by the proposed amendments is Chapter 161 of the Texas Natural Resources Code.

§175.1. Sale of Bonds.

Procedure for issuance and sale of bonds will be set by resolution of the board [~~Veterans' Land Board (hereinafter called board)~~]. The chairman of the board and the executive secretary of the board are authorized to work with the bond counsel selected by the board in ascertaining the elements of security permissible under the law, the maturities, option provisions, paying agency provisions, and any related elements [~~etc.~~], pertaining to the sale of bonds that are [~~bonds,~~] acceptable in the market to the end that such elements may be incorporated into the bonds and resolution. The chairman, executive secretary [~~of the board,~~] and bond counsel will prepare a draft of the official notice of sale of bonds for the approval of the Attorney General of Texas and subsequently by the board. After the notice of sale is approved, it will be published, either in full or abbreviated form, in the manner prescribed by law, and the board has the right to reject any and all bids received.

§175.2. Loan Eligibility Requirements.

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

{(1) Board--The Veterans Land Board of the State of Texas--}

(1) [(2)] Bona fide resident--An individual [actually] living within the State of Texas with the intention to remain.

(2) [(3)] Missing/Missing in Action--To have an official designation of "missing status" as provided by 37 USC §551 [Title 37, Chapter 40 of the United States Code relating to Payments to Missing Persons. The term "missing status" means the status of members of a uniformed service who are officially carried or determined to be absent in a status of missing; missing in action; interned in a foreign country; captured; beleaguered, or besieged by a hostile force; or detained in a foreign country against their will].

[(4) Program--The Veterans Land Program as authorized by Title 7, Chapter 161 of the Texas Natural Resources Code relating to Veterans Land Board.]

(3) [(5)] Surviving spouse--A person who satisfies the federal definition of "surviving spouse" contained in by 38 USC §101(3), [Title 38 USC Sec. 101(3),] as modified by the special provision in 38 USC §103, [Title 38 USC Sec. 103,] or any successor statutes, as amended from time to time. [The board's intent is to match the eligibility requirements for a surviving spouse to qualify for a home loan guaranteed by the USDVA.]

(4) [(6)] USDVA/VA--The United States Department of Veterans Affairs or any successor thereto.

(5) [(7)] Veteran--A person who satisfies the requirements of subsection (c)(1) of this section.

(b) The board [Board] shall be the final authority in defining and interpreting all eligibility requirements, and whether an applicant has actually satisfied those requirements. The board [Board] may by resolution prescribe the procedures and forms to be used by applicants to evidence eligibility, and may appoint a committee of qualified individuals to consider the evidence of eligibility and make recommendations to the board. [Board. Evidence of service in the Armed Forces of the Republic of Vietnam consists of:]

[(1) documents from said Armed Forces of the Republic of Vietnam;]

[(2) documents from a federal office, such as the Army, Navy, Air Force, Marine Corps, or the Bureau of Immigration and Customs Enforcement;]

[(3) documents from the People's Republic of Vietnam; or]

[(4) other proof of service deemed appropriate by the Board or the Board's designee.]

(c) To be eligible to participate in the program, an applicant must satisfy one of the following:

(1) be a person who:

(A) - (B) (No change.)

(C) satisfied one of the following service requirements after September 16, 1940, and [1940]:

(i) - (iv) (No change.)

[(D) is considered not to have been dishonorably discharged under subsection (h) of this section, if the person has been discharged from military service; and]

(D) [(E)] satisfies one of the following:

(i) - (iii) (No change.)

(2) is the surviving spouse of a veteran who died:

(A) as a result of a service-connected cause, as determined by the board [Board] or certified by the USDVA, or who is identified as missing in action, if the spouse satisfies the requirements of paragraph (1)(A) and (B) of this subsection, and the veteran satisfied the requirements of paragraph (1)(C) and (D) of this subsection and either paragraph (1)(E)(i) of this subsection or the veteran [Veteran] was a legal resident of Texas at the time of his or her death; or

(B) after filing an application and contract of sale with the board [Board], but before the transaction was completed, if he or she meets all other qualification requirements of the board [Board].

(C) For purposes of this subsection relating to surviving spouses, an individual assigned to a military installation in Texas, who is killed in Texas as the result of a terrorist attack as defined by the board [Board], will be considered to be a Texas resident as of the day of death.

(d) A person may only have one land loan at a time as a veteran for which the person applied [veteran]. However, once that land loan is paid in full, he or she may apply for another land loan as a veteran. The foregoing notwithstanding, an individual who is currently participating in the land program as a veteran may also, as a non-veteran:

(1) - (3) (No change.)

(e) The applicant must sign applications and contracts. An attorney in fact may not sign these documents for an applicant, except under limited conditions approved by the board [Board].

(f) No application shall be approved to purchase land under the program:

(1) which provides for or recognizes a second or subordinate lien as a part of the original purchase price for any tract except as provided for in §175.54(b)(1) of this chapter (Protection of Security Interests) [§175.54(b) (1)];

(2) (No change.)

(3) where there exists any other good and sufficient reason to refuse approval, as determined by the chairman of the board [Board].

(g) If both spouses are individually eligible to participate in the program, nothing herein shall be construed to prohibit them from applying for a loan to jointly purchase the same tract of land. The board [Board] may make a loan for the purchase of the same tract of land by two veterans who are spouses, but only if both spouses together satisfy the loan qualification requirements of the program. The total amount of this loan shall not exceed the maximum amount allowable for this type of loan.

(h) Any requirement of this section, or of any section within this chapter, which is not otherwise required by the constitution or statutes of this state, may be waived on a case-by-case [ease by ease] basis by the board [Veterans Land Board]. Any waiver request must be in writing and must describe the circumstances surrounding the request, including all of the reasons why the waiver is requested.

(i) For purposes of this section, evidence of service in the Armed Forces of the Republic of Vietnam consists of:

(1) documents from said Armed Forces of the Republic of Vietnam;

(2) documents from a federal office, such as the Army, Navy, Air Force, Marine Corps, or the Bureau of Immigration and Customs Enforcement;

(3) documents from the People's Republic of Vietnam; or

(4) other proof of service deemed appropriate by the board or the board's designee.

~~[(i) For purposes of this section, a person who has been discharged from the branch of the service in which the person served or from the reserve or National Guard is considered not to have been dishonorably discharged if the person:]~~

~~[(1) received an honorable discharge;]~~

~~[(2) received a discharge under honorable conditions; or]~~

~~[(3) received a discharge and provides evidence from the United States Department of Veterans Affairs, its successor, or other competent authority that indicates that the character of the person's duty has been determined to be other than dishonorable.]~~

(i) A person who has been discharged from the branch of the service in which the person served or from the reserve or National Guard with:

(1) a discharge type of honorable, general, or medical is eligible for a loan under the program and participation in the board's other loan programs.

(2) a discharge type of dishonorable is not eligible for a loan under the program and participation in the board's other loan programs.

(3) any other discharge type, including but not limited to, bad conduct, other than honorable, entry-level separation, or separation for convenience of the government is not eligible for a loan under the program or participation in the board's other loan programs unless the person provide a certificate of eligibility or similar documentation from the USVA demonstrating the person qualifies for a VA loan based on service history and duty status.

§175.4. Land Description.

(a) Land selected to be purchased by the board must be described by a legally sufficient metes and bounds description. The property description must:

(1) contain a general description of the land, specifying the acreage contained, the original survey(s) or grant(s) with abstract number(s), survey number(s) and block designation, if applicable, and the county in which the tract is located. ~~If [located (if)] the tract is divided by a county line, the appropriate abstract numbers and acreage on each side of the county line will be shown [shown].~~ The general description shall also contain the deed reference to the parent tract including grantor, grantee, date of instrument, and volume and page of recording. Additional references to other instruments in the chain of title may be referred to if appropriate;

(2) (No change.)

(3) be tied to a corner of an original grant or survey if such corner is locatable and if the tie is not impractical to obtain. If it is impossible or impractical to tie to a corner of an original grant or survey the tract should tie to a locatable corner of the parent tract or any of the adjoiners; and

(4) (No change.)

(b) If the tract selected is in a subdivision, a lot and block description of the tract may be substituted for the metes and bounds description. If a lot and block description is to be used, the board must be furnished a copy of the recorded subdivision plat. This plat must show the recording information and the required signatures of the governmental entity ~~[(commissioners court, city council, etc.)]~~ authorized to accept such subdivision plat. Easements as necessary for access to a public road from all tracts must be clearly shown on the subdivision

plat together with appropriate language dedicating such easement to the public or to the owners of tracts in the subdivision. All the data required in subsection (a) of this section should be shown on the face of the plat, including courses and distances for all lot lines and areas for each lot. All plats accepted subsequent to the adoption of this section shall identify the size and type of monument set at each corner of every lot. If a lot is part of a subdivision already of record where monumentation is not shown, a survey plat shall be furnished indicating monuments set or found at all corners of the tract together with sufficient ties to locate the lot within the subdivision.

(c) All metes and bounds descriptions and survey plats shall bear the seal and signature of the surveyor preparing the same. Any field notes or survey plat prepared for and used in any board ~~[Veterans Land Board]~~ transaction includes a license from the surveyor to the board and the veteran purchaser to copy and use the field notes in that transaction and in any future transactions involving the surveyed property.

(d) - (g) (No change.)

(h) The surveyor should be instructed to do a proper boundary survey of the land to be conveyed according to the record boundaries of the tracts involved. Any encroachments by existing perimeter fences into the subject tract or into adjacent tracts should be shown together with the area of any lands lying between the record boundaries and the existing occupation. Any occupation on the ground not conforming to the record boundaries should be shown on a plat of survey and fully explained in an accompanying surveyor's ~~[surveyors]~~ report.

(i) (No change.)

§175.5. Appraisal of Land.

(a) Before property is purchased it shall be appraised for the board by an appraiser approved by the board. The exclusive purpose of the appraisal is to assist the board in determining that its investment will be sufficiently secured. Any improvement existing on the land may be considered by the board in making the appraisal. If improvements are considered in determining the value of the property, the board may in accordance with §175.6(d) of this chapter ~~[title]~~ (relating to Commitment by the Board) require the purchase of an insurance policy covering fire and hazard losses.

(b) (No change.)

(c) Upon the request of the veteran, the appraiser shall meet with the veteran for a physical inspection of the land to be purchased. Except as provided in subsection (d) of this section, the board may not require that veterans accompany the appraiser. The board ~~[Board]~~ may, by resolution, establish a procedure for veterans to certify they have personally inspected the tracts they are purchasing. This resolution may also provide a procedure for granting a request to permit the veteran's personal representative to inspect the tract for the veteran.

(d) - (e) (No change.)

§175.6. Commitment by the Board.

(a) After reviewing the appraisal, and any other relevant information, the board shall issue a commitment showing the amount it will invest in the land selected. The veteran and seller shall be notified of the commitment amount in writing. The board shall not invest more than the least of the following options:

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

(3) the maximum loan amount as set by the board ~~[Board]~~ by resolution from time to time, as prescribed by law.

(b) Except for certain forfeited land sales ~~[Forfeited Land Sales]~~, the board requires the veteran to have at least a five percent

(5.0%) ~~[(5.0%)]~~ equity investment in the land. The equity investment is the difference between the commitment amount and the purchase price. The amount of equity required shall be the combination of the initial payment and the down payment(s), as applicable.

(c) If the commitment amount is less than 95% of the purchase price, one of the following should be done:

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

(3) The parties may amend the contract to increase the acreage to make up for the difference in value compared to price; or ~~[The veteran may cancel the loan application and purchase contract.]~~

(4) The veteran may cancel the loan application and purchase contract.

(d) - (f) (No change.)

(g) Each application will be considered as a wholly separate transaction, independent of any other agreement, transaction or contingency. The board will not consider an application which contains a provision making it contingent upon the success or completion of another agreement or transaction, except as provided for in §175.54(b)(1) of this chapter (relating to Protection of Security Interests).

§175.7. Title Examination.

(a) The board will designate an attorney or title company in the county where the land is located to serve as its closing representative. The veteran or seller may submit the name of a closing representative for the board's consideration. The representative will be paid \$25 for closing the transaction. The board will also pay up to \$30 to cover recording costs. The board will not pay a representative for preparing and filing application papers, drafting instruments, or for rendering services of a similar nature. If an attorney provides such services the attorney shall [he is to] be paid directly by the veteran or seller.

(b) The seller shall ~~[It is the seller's responsibility to]~~ obtain a commitment for title insurance and to provide copies of it to the closing representative and the board.

(c) The seller shall also provide the following, as applicable:

(1) - (5) (No change.)

(6) fees for recording all instruments other than the deed from the seller to the board and the contract of sale and purchase between the board and the veteran.

(d) The ~~[Among other things, the]~~ veteran shall ~~[will]~~ be required:

(1) (No change.)

(2) to execute an affidavit showing that the veteran [he] has taken possession of the land, has inspected the land, and has found no one in adverse possession and that the taxes have been prorated to the veteran's [his] satisfaction.

(e) The staff of the board will prepare a deed sufficient to convey title to the land from the seller to the board. If the seller wishes to have a deed prepared and furnishes it to the board, this deed must:

(1) - (3) (No change.)

(4) specify all easements, leases, or [and/or] other exceptions which might affect the property; and

(5) (No change.)

(f) (No change.)

(g) When the title insurance commitment has been completed and submitted, the closing representative shall forward it, along with

the original and one copy of the proposed deed, if any, to the board. The board must also be provided copies of all reservations and exceptions listed in the title insurance commitment or proposed deed. The staff of the board ~~[board's attorneys]~~ will examine the closing papers (and draft a warranty deed if needed). If all is in order, the board will request the state comptroller to issue a treasury warrant in the amount of the purchase price. When the warrant is received by the board, it will be forwarded with the other closing materials to the representative so that the transaction can be completed.

(h) When the closing representative is satisfied that all closing requirements have been met, the closing representative [he] shall require the seller to execute and tender the deed, and shall, on behalf of the board, tender the consideration to the seller. The closing representative shall also require the veteran to execute the contract of sale and purchase. The veteran must execute this personally, no other person is authorized to execute it for him.

(i) - (j) (No change.)

§175.8. Contract of Sale and Purchase.

(a) - (d) (No change.)

(e) Installment payments on a ~~[veteran-purchaser's]~~ contract of sale and purchase shall be made on a monthly basis with the dates specified in the contract. ~~[due and payable in the following manner:]~~

~~[(1) for transactions which have closed before January 1, 1984, installment payments will be made on a semiannual basis, unless the veteran-purchaser elects to change to a monthly payment schedule.]~~

~~[(2) for transactions which close after January 1, 1984, payments will be made on a monthly basis.]~~

~~[(3) the installment dates will be specified in the contract.]~~

(f) Advance payments may be made at any time. When making an advance payment the veteran should provide the board with written instructions as to the nature of the payment (i.e., whether it is an additional payment against principal or an advance installment payment). Making an additional payment against principal will not relieve the veteran of the ~~[his]~~ obligation to make each installment payment as it becomes due.

(g) All taxes ~~[(state, school, water district, city, or any other tax)]~~ shall be kept current. Evidence of their payment shall be submitted to the board by May 1 of each year.

(h) If there are any material errors in the contract, the chairman may execute a correction contract. This instrument will then be provided to the veteran for signing ~~[his signature]~~.

§175.9. Death of a Purchaser.

(a) Upon the death of the purchaser, if the account is insured under a ~~[the]~~ group life insurance plan, the board should be immediately notified ~~[at once]~~ and furnished with a certified copy of the death certificate and a deed fee, which is not paid under the group insurance plan.

(b) If the account is not insured at the time of the purchaser's death, the board should be furnished with:

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

(c) - (d) (No change.)

§175.10. Insurance Losses.

(a) (No change.)

(b) In the event a check jointly payable to the board and purchaser by the insurance company, the veteran shall ~~[Normally, when~~

there has been a loss the insurance company will issue a check jointly payable to the veteran and the board. The veteran should endorse the check and forward it to the board. The proceeds will be held in a special account until the damaged or destroyed improvement has been repaired or replaced, or until it has been determined that the proceeds are to be applied to the principal balance of the veteran's account.

(c) If there has been a partial loss, repairs shall be made in order to prevent further deterioration. If the loss is total, the veteran will have the option of rebuilding the improvement or applying the proceeds to the principal balance of the veteran's [his] account. If applying the proceeds to the principal balance of the account pays it in full, any unused funds will be refunded to the veteran, or his or her designee, as soon thereafter as practicable.

(d) - (e) (No change.)

(f) Reimbursement from the insurance proceeds may be made directly to the veteran or the veteran's [his] creditors. If reimbursement is to be made to the veteran, the itemized statements mentioned in subsections (d)(1) and (e)(1) of this section must show that payment has already been made by the veteran. If reimbursement is to be made to the creditors, the veteran must authorize the board in writing to pay the creditors.

(g) - (h) (No change.)

(i) The application of insurance proceeds to the principal balance of the veteran's account shall not relieve the veteran [him] of the obligation to make the regular installment payments.

§175.11. Transfer of Contract of Sale and Purchase.

(a) After the original veteran-purchaser has been in possession of the tract for at least three years from the date of closing, the contract of sale and purchase may be transferred in one of the following ways:

(1) it [the contract] may be assigned to an eligible veteran without any increase in the interest rate; or

(2) it [the contract] may be assigned to a non-veteran, a veteran who is currently participating [has previously participated] in the program or a firm or corporation with an increase in the interest rate. The new rate of interest shall be set by the board.

(b) The contract may be transferred before the expiration of the three-year [three year] period only if the veteran dies, becomes financially incapacitated, or in the event of an involuntary transfer by court order or proceedings, such as bankruptcy, sheriff's sale, or divorce. Affidavits, certified copies of proceedings, and other documentation may be requested by the board in connection with this exception.

(c) If the veteran attempts to transfer, sell, or convey the property before the three-year [three year] period has elapsed, the board may forfeit the account and order the property to be sold. In the alternative, the board may require that the account be paid in full and a penalty paid, or approve the unauthorized transfer upon the payment of the penalty and receipt of such other documentation as may be required. The penalty shall be the difference between the account's interest rate and the interest rate charged to non-veterans at the time the unacceptable transfer or conveyance is discovered.

(d) (No change.)

(e) Upon request, the board will furnish to the assignor, or to one designated by the assignor [him], the forms and information necessary to complete a transfer.

(f) - (g) (No change.)

(h) If the assignor wishes to reserve any interest in the property, the assignor [he] must obtain the approval of the board prior to

the assignment. An assignment will not be approved if the assignor attempts to reserve any interest in the contract of sale and purchase.

(i) The assignee, not the board, [board] is not responsible for the condition of title subsequent to the execution of the contract of sale and purchase with the original veteran-purchaser. [The assignee should satisfy himself as to condition of title before accepting an assignment.]

§175.12. Severances.

(a) A veteran may obtain a severance deed from the board for a portion of land the veteran purchases and for which the veteran wishes to have clear title as follows [If a veteran wishes to have clear title to a portion of the land he is purchasing, he may obtain a severance deed from the board for that portion. To accomplish this the following steps should be taken]:

(1) A current ground survey of the portion to be severed must be made by a qualified surveyor. The survey requirements of §175.4 of this chapter [title] (relating to Land Description [Descriptions]) must be met. The field notes and plat prepared from the ground survey must be submitted to the board.

(2) Both the tract to be severed and the remaining tract must have access to a public road. If the severed tract includes all of the road frontage, a 60-foot [60 foot] access easement to the portion remaining under contract must be conveyed to the board.

(3) (No change.)

(b) - (c) (No change.)

[(d) The chairman of the board is authorized to enter into, and execute on behalf of the board, an agreement recognizing that an improvement, when constructed, shall not attach to and become a part of the realty for the duration of any obligation incurred by a purchaser in connection with the erection of such improvement.]

§175.13. Sale of a Material Asset, and Improvements.

(a) Material Assets.

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

(3) At least one-half [1/2] of the proceeds from the sale of a material asset shall be paid to the board. This amount will be applied toward the principal balance of the veteran's account.

(b) Improvements.

(1) Before any improvements may be removed from the property the veteran must obtain written permission to do so from the chairman [chairman of the board].

(2) The veteran's request should be in writing and addressed to the chairman [chairman of the board], and advise the amount to be paid, if any, and the reasons for removal.

(3) The chairman is authorized to enter into, and execute on behalf of the board, an agreement recognizing that an improvement, when constructed, shall not attach to and become a part of the realty for the duration of any obligation incurred by a purchaser in connection with the erection of such improvement.

§175.14. Mineral Leases.

(a) When applicable, a veteran may execute mineral leases covering the land being purchased through the board. The following conditions must be met:

(1) - (3) (No change.)

(4) At least one-half [1/2] of all proceeds, including bonus, rentals and royalties received under the terms of such leases, shall be paid to the board and applied toward the principal balance of the account. If an account is delinquent, the board will require that additional

payments of bonus, rental and royalty be paid until the delinquency is satisfied. Payments made in this manner will not relieve the veteran of the veteran's [his] obligation to make the regular installment payments.

(5) - (6) (No change.)

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

§175.15. Approval of Easements.

(a) A contract holder may, with the approval of the board, grant easements or rights of way [way. These are of four general types]:

(1) A right of way granted to the state or county for roads, channels, and similar projects [ete]. The forms to be used in granting such an easement may be obtained from the board or the Texas [State Highway] Department of [Highways and Public] Transportation.

(2) Utility easements for pipelines, electric lines, and similar projects [ete]. The board requires use of its form when granting such an easement, except when an easement for a waterline is to be granted. In that case the Federal Housing Administration (FHA) [FHA] form may be used. If an FHA form is used, a course and distance description of the waterline must be attached.

(3) - (4) (No change.)

(b) If a board [VLB] form is not used, the following paragraph must be inserted into the grant of easement. This paragraph more fully explains the conditions of ownership of the tract of land: "The land herein described is under Contract of Sale and Purchase to grantor herein who will receive a deed to said lands from the Veterans Land Board when all the terms of said contract have been complied with. Grantor executes this instrument with the approval of the Veterans Land Board in accordance with the regulations of said board, which approval is signified by the signature hereon of its chairman." A signature block must be provided at the conclusion of the instrument, as follows: Approved this _____ day of _____, 20__ Veterans Land Board of the State of Texas by: _____ Chairman, Veterans Land Board.

(c) - (g) (No change.)

(h) If payment is made for permanent damage to or depletion of the land, such as the cutting of timber [land (such as the cutting of timber)], one half of that amount must be paid to the board. This amount is to be applied to the principal of the veteran's account.

(i) If the easement is to be donated, the grant of easement should so state [state].

§175.17. Fees and Deposits.

(a) Notwithstanding any other references to fees in this chapter to the contrary, the only fees collected by the board shall be those described in this section.

(1) The board shall from time-to-time adopt by resolution a schedule describing the services for which it charges fees. The board's resolution adopting a schedule shall set the specific fee for each service described in the schedule, provided that no fee shall exceed the maximum amounts described in this section. The schedule will be made available to any person upon request and will be published on the board's website [Internet site-].

(2) - (3) (No change.)

(b) The board shall collect the following fees when they are applicable:

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

(3) a \$2 per acre fee for a subdivision pre-appraisal and consultation [consultation fee -- \$2 per acre], calculated on the gross acreage in the subdivision, with a minimum of \$250; and

(4) a fee not to exceed \$25 for a returned check for non-sufficient funds; [(NSF)-]

(5) [The board shall collect] a fee not to exceed \$150 for the preparation, review, or approval of any document, including but not limited to the following:

(A) - (C) (No change.)

(D) transfer of contract and sale and purchase; and

(E) deed issued when a portion of a tract is severed prior to the full payment of its loan;

(6) a fee for a deed issued when a loan is paid in full, not to exceed:

(A) \$150 if the contract incorporates this chapter by reference, or includes a general reference to the rules or [and/or] regulations of the board; or

(B) the amount of the fee that was in effect on the date the contract was executed if the contract contains no reference to the rules or [and/or] regulations of the board.

(c) The board may collect a fee to cover the cost of a credit report. Any fee for this purpose cannot exceed the actual cost of obtaining such a report from a third-party vendor. [No fee may be charged in connection with the program to a loan applicant by a third party that has not been approved by the board-]

(d) No fee may be charged in connection with the program to a loan applicant by a third party that has not been approved by the board.

§175.18. Resale of Forfeited Land.

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

(c) Sale of forfeited tracts.

(1) Qualified purchasers.

(A) Type I tracts shall be first offered for sale or lease only to veterans who meet the eligibility requirements of §175.2 of this chapter [title] (relating to Definitions and Loan Eligibility Requirements [Application/Eligibility]). Bids on Type I tracts shall be submitted to the board on or before the bid deadline set by the board. These bids shall be reviewed by the board and the board may, in its discretion, award any Type I tract to the highest bidder.

(B) Any Type I tract not awarded by the board on the bid deadline date shall be immediately reclassified as Type II land. Type II tracts may be offered for sale or lease to both non-veterans [nonveterans] and eligible veterans. Bids on Type II tracts may be reviewed by the chairman who may, in his or her sole discretion, award any Type II tract to the highest bidder.

(2) - (4) (No change.)

(5) Additional terms and conditions. Each contract of sale and purchase or note and deed of trust shall conform to the provisions of the Texas Natural Resources Code, Chapter 161, and shall be in such form, and contain such terms and conditions, as the chairman of the board may prescribe.

(6) Bid rejection. The board may reject any and all bids on Type I tracts. The chairman [of the board] may reject any and all bids on Type II tracts.

(7) Forfeiture. If a successful bidder refuses to execute a contract of sale and purchase or a note and deed of trust, the money

submitted with the [his] bid may be forfeited and shall be deposited in the state treasury and credited to the fund.

(d) Bids.

(1) (No change.)

(2) Bid deadline.

(A) (No change.)

(B) The board may elect to set no specific time and date on which bids pertaining to any tract must be submitted. In such event, the chairman ~~[of the board]~~ shall be authorized to review bids when and as received, and accept the first acceptable bid on any such tract.

§175.19. Subdivision Loan Processing.

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

(c) Those sellers who qualify for subdivision loan processing may request the board to perform a preliminary appraisal of the subdivision. This preliminary appraisal process will include:

(1) Establishing high and low per acre values for the subdivision. The board will use these valuations in determining how much it will loan for the purchase of tracts in the subdivision; ~~[subdivision.]~~

(2) Advising the seller, when appropriate, of the best subdivision plan, so as to maximize land values of the gross acreage for sale; and ~~[sale.]~~

(3) (No change.)

(d) (No change.)

(e) After the preliminary appraisal has been completed and the seller indicates that tracts within a subdivision are ready for sale to veterans, the seller may make arrangements with the board for appraisals of specific tracts. The board will commit itself to a loan value based upon these appraisals even though a specific veteran purchaser has not yet been identified. To obtain these appraisals, the seller must:

(1) Supply a ground survey of each tract of land by a registered surveyor; ~~[surveyor.]~~

(2) Submit to the board a certified copy of a recorded subdivision plat, if the tracts are to be sold by lot and block numbers. This plat must contain evidence that it has been approved and accepted by the county commissioners; ~~[commissioners.]~~

(3) (No change.)

(4) Request a field appraisal of each tract by the board. A fee is charged in advance for each appraisal. This fee will be refunded to the seller if the tract is sold to a veteran through the program ~~[Veterans Land Program]~~; and

(5) (No change.)

(f) (No change.)

(g) - (i) (No change.)

(j) Due to the nature and purpose of the subdivision loan processing program, it is the seller's responsibility to work with the veteran and the board to expedite the processing of the loan. For this reason it is suggested that the seller designate one individual to serve as a contact person with the board. This person should be familiar with the board's forms, rules, procedures, and any other requirements necessary for successful processing of the loan. In this regard it is also suggested that the contact person ~~[familiarize himself and]~~ maintain regular contacts with the board's field staff, local veterans' service officers, and the title company providing insurance.

§175.21. Prizes and Inducements.

(a) So that a veteran has ~~[The Texas Natural Resources Code, §161.222(a) requires veterans to make an initial payment in an amount set by the board's rules. Sections 161.233(a) and 161.283(b) require that Veterans make additional down payment(s) under certain circumstances. In order to carry out the intent of the requirement that veterans have] equity in a [any] tract purchased through the program, the board shall not [it is the policy of the board Veterans Land Board to] approve a [no] transaction, the net effect of which involves the seller, realtor, or any party to the transaction other than the veteran directly or indirectly paying the initial payment or down payment(s). This includes inducements such as zero coupon bonds and [bonds,] savings bonds [bonds, etc].~~

(b) (No change.)

(c) Subsection (a) of this section shall not be construed to prohibit privileges incidental to the ownership of land and available to all purchasers in the same subdivision and/or joint ownership of recreational areas such as parks and lakes ~~[parks, lakes, etc].~~

§175.22. Duties and Responsibilities of Chairman, Executive Secretary, and Assistant Executive Secretary.

~~[(a) The commissioner of the General Land Office is chairman of the board and administrator of the Veterans Land Program as provided in the Texas Constitution, Article III, §49-b, as amended, the Natural Resources Code, Chapter 161, as amended, and shall perform the duties and functions of the board prescribed by law except for those duties and functions reserved to the board as provided in the Natural Resources Code, §161.061 which shall be performed by the board.]~~

~~[(b) The chief clerk of the General Land Office may perform any of the duties of the chairman if the chairman is sick, absent, dies, or resigns.]~~

~~[(c) The board shall select an executive secretary and may select an assistant executive secretary, each of whom shall be nominated by the chairman and approved by a majority of the board. The executive secretary and assistant executive secretary shall perform all duties required of them by the board.]~~

(a) ~~[(1)]~~ The chairman of the board may delegate any of the chairman's [his] nondiscretionary responsibilities to the executive secretary and the assistant executive secretary, including the execution of veterans' purchase contracts, easements, and deeds when loans are paid in full.

(b) ~~[(2)]~~ The assistant executive secretary may perform any of the duties of the executive secretary, when and as requested by the chairman or executive secretary.

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 May 18, 2025.

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Jennifer Jones

Chief Clerk and Deputy Land Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 475-1859



SUBCHAPTER B. LAND MORTGAGE FINANCING

40 TAC §§175.51 - 175.56, 175.58, 175.59, 175.61, 175.62

The Texas Veterans Land Board (Board) proposes amendments to Texas Administrative Code, Title 40, Part 5, Chapter 175, Subchapter B, §§175.51 - 175.56, 175.58, 175.59, 175.61, and 175.62

The Board identified the need for the proposed amendments during its review of this chapter's rules, conducted pursuant to Section 2001.039 of the Texas Government Code, the adoption of which can be found in the Review of Agency Rules section of this issue. At its May 13, 2025 meeting, the Board unanimously approved the readoption of this subchapter with the proposed amendments.

The proposed amendments to §175.51 remove definitions for "lending institution" and "loan" or "mortgage" loans because these terms are provided for near verbatim in Section 161.502 of the Texas Natural Resources Code and update the name of Subchapter A of this chapter.

The proposed amendments to §175.54 remove language from a subsection requiring that certain interests secure approved loans because this requirement is provided for in Section 161.505 of the Code.

The proposed amendments to §175.56 remove language from a subsection giving the Board authority to approve third party loan fees and a subsection giving the Board authority to set loan interest rates because they are provided for in Section 161.508 of the Code.

In addition, the title of this subchapter is changed to "Land Mortgage Financing" to specify the type of mortgage financing under this chapter.

Also, throughout this chapter, references to the Board are made lower-case to align with their occurrences throughout Chapters 161, 162, and 164 of the Texas Natural Resources Code, and references to this chapter are changed from "title" to "chapter," as the former is generally used throughout the Texas Administrative Code.

Furthermore, editorial changes are made throughout this chapter to correct grammar, update and correct citations, remove superfluous or outdated language, and improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Raul Gonzales, the Board's Director of Land and Housing, 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 local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Gonzales has determined that for each year of the first five years the proposed amendments are in effect, there will be no economic effect on businesses or individuals.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Gonzales has determined that the proposed amendments will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis,

as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Gonzales provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Board has determined the following:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Board;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the Board;
- (5) the proposed amendments do not create a new regulation;
- (6) the proposed amendments will not expand, limit, or repeal an existing regulation;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposed amendments will not affect this state's economy.

Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Legal Assistant, Texas General Land Office, 1700 Congress Avenue, Austin, Texas 78701, or by email to walter.talley@glo.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed pursuant to:

Section 161.063 of the Texas Natural Resources Code (Code), which gives the Board broad rulemaking authority under Chapter 161 of the Code, i.e., the Board's enabling statute that also provides for the Veterans Land Program (Program);

Section 161.503 of the Code, which requires the Board to adopt rules necessary to implement Chapter 161, Subchapter K, which pertains to loans issued under the Program;

Section 161.504, which allows the Board to determine the number of loans a person may receive under Subchapter K by rule; and

Section 161.508 of the Code, which requires the Board to adopt rules relating to and limiting fees, charges, and interest rates collected or charged by a lending institution in connection with financing land related to the Program.

The Code affected by the proposed amendments is Texas Natural Resources Code, Chapter 161.

§175.51. Construction of Subchapter B.

(a) The purpose of this subchapter is to implement the authority granted to the board by the Texas Natural Resources Code, Chapter 161, Subchapter K. The board shall only make loans under this subchapter that are secured by mortgages, deeds of trust, or other liens.

(b) The rules of the board set forth in Subchapter A of this chapter (relating to General Rules of Contract for Deed and Financing for Land) [Unless otherwise provided in this subchapter, the rules of the

Veterans Land Board set forth in TAC, Title 40, Part 5, Chapter 175, Subchapter A, relating to General Rules and Contract Financing,] shall apply to all loan transactions made by the board that are secured by a mortgage, deed of trust, or other lien on the land to be purchased unless otherwise provided by this subchapter. When applying any provision of Subchapter A to a mortgage loan transaction, those provisions shall be construed as necessary and appropriate for a mortgage loan transaction rather than a contract of sale transaction. The board may, by resolution, clarify the construction of any provision of Subchapter A in its application to a mortgage loan transaction.

(c) (No change.)

(d) Definitions.

(1) "Borrower" means a person presently obligated to make payments to the board:

(A) (No change.)

(B) For a purchase of land from the board under a contract of sale as provided by Subchapter A [~~relating to General Rules and Contract Financing,~~] of this chapter; or

(C) For a loan or contract of sale that the person assumed from the original borrower with board approval [~~the written consent of the board,~~].

(2) "Contract of sale" means those transactions described in Subchapter A of this chapter, [~~relating to General Rules and Contract Financing,~~] in which the board takes fee title to property as security and sells to the borrower on a contract of sale and purchase. Title is conveyed to the borrower when all terms and conditions of the contract of sale have been satisfied.

[(3) "Lending institution" means a bank, savings bank, savings and loan association, credit union, trust company, mortgage bank, mortgage company, life insurance company, or other financial institution that customarily provides service or aids in the financing of mortgages on single-family residential housing, or a holding company for one of those institutions.]

[(4) "Loan" or "mortgage loan" means a veterans' land loan made or acquired by the board under Natural Resources Code, Chapter 161, Subchapter K, relating to Land Loans, secured by a mortgage, deed of trust, or other lien on the land purchased with the proceeds of the loan.]

§175.52. Borrower's Eligibility and Number of Loans.

(a) The board [Board] shall be the final authority in defining and interpreting all eligibility requirements, and whether a prospective borrower has actually satisfied those requirements. The board [Board] may by resolution prescribe the procedures and forms to be used in mortgage loan transactions.

(b) A person is eligible to apply for a loan under the provisions of this subchapter if he or she satisfies the requirements of §175.2(c) of this chapter (relating to Loan Eligibility Requirements). [~~§175.2(e), relating to Loan Eligibility Requirements,~~]

(c) A person may only have one land loan at a time as a veteran. However, once that land loan is paid in full he or she may apply for an additional land loan as a veteran. The foregoing notwithstanding, an individual who is currently participating in the program as a veteran may assume a land loan, or take an assignment of a contract of sale as a non-veteran, and may bid on a tract or tracts at a forfeited land sale as a non-veteran.

(d) Notwithstanding anything to the contrary in this chapter, a purchaser under an executory board contract of sale and purchase [Veterans Land Board Contract of Sale and Purchase] may refinance

the obligation represented by the contract of sale and purchase [Contract of Sale and Purchase] by substituting a purchase money board [Veterans Land Board] mortgage loan. No additional funds may be advanced except for expenses incident to the transaction, as provided in the Texas Natural Resources Code, [Tex. Nat. Res. Code] §161.508(b). The chairman may establish procedures, documents, and policies to accomplish transactions authorized by this section. To the maximum extent possible, the substitute loans must retain the terms of the original contracts of sale and purchase [Contracts of Sale and Purchase] and must comply with the requirements for new board [Veterans Land Board] mortgage loans. All liens securing the substitute loans relate back to the date of the original contracts of sale and purchase. [~~Contracts of Sale and Purchase,~~]

§175.53. Eligibility and Description of Land.

(a) The board shall only make, or purchase, loans under this subchapter that are secured by tracts of land that meet all the requirements of §175.3 of this chapter (relating to Land Selection). [~~§175.3, relating to Land Selection, of this chapter,~~]

(b) For every loan made under this subchapter, the board must be furnished a survey and legal description for its review that satisfies all the requirements set forth in §175.4 of this chapter (relating to Land Description). [~~§175.4 relating to Land Description, of this chapter,~~]

(c) For every loan made under this subchapter, the board must be furnished an appraisal that conforms to the requirements of §175.5 of this chapter (relating to Appraisal of Land). [~~§175.5, relating to Appraisal of Land, of this chapter,~~]

(d) (No change.)

§175.54. Protection of Security Interests.

(a) [An approved loan must be secured by a mortgage, deed of trust, or other lien on the land prior to any disbursement of funds.] All paperwork associated with the note and lien shall be deposited for safekeeping with the board, or as the board may direct.

(b) - (c) (No change.)

§175.55. Loan Approval.

(a) - (c) (No change.)

(d) The board may, by resolution, establish general exceptions to the provisions of §175.6(g) of this chapter (relating to Commitment by the Board). [~~§175.6(g), relating to Commitment by the Board, of this chapter,~~] pertaining to contingent transactions. These exceptions shall be limited to those transactions described in the Texas Natural Resources Code, Chapter 161, Subchapter K [~~relating to Land Loans,~~].

§175.56. Fees, Loan Amount, Interest Rate, and Down Payment.

(a) In addition to the fees described in §175.17 of this chapter (relating to Fees and Deposits), [~~§175.17, relating to Fees and Deposits, of this chapter,~~] the board shall collect a fee for the preparation, review, or approval of any document relating to a loan made under this subchapter, including but not limited to the following:

(1) - (5) (No change.)

(b) [No fee may be charged in connection with a loan made under this subchapter to a borrower by a third party that has not been approved by the board.] Fees and expenses approved by the board may be made a part of the borrower's loan installment payments.

(c) (No change.)

[(d) Each loan shall bear a rate of interest designated by the board.]

(d) [(e)] Each loan shall not exceed 30 years in duration.

(e) [(f)] The chairman, in compliance with §175.6 and §175.55 of this chapter, (relating to Commitment by the Board and Loan Approval), shall set the amount of the down payment required of borrowers. This down payment shall be paid to the closing agent at or before closing.

§175.58. Removal of Material Assets, Releases, and Payment in Full.

(a) (No change.)

(b) If a borrower wishes to obtain a partial release of lien to clear title to a portion of the land, the borrower shall submit a request in writing to the board. The procedures for granting a partial release are identical to those for obtaining a severance as provided in §175.12 of this chapter (relating to Severances), [~~§175.12, relating to Severances, of this chapter,~~] except that the board will issue a partial release of lien, instead of a deed, for a portion of the tract.

(c) (No change.)

§175.59. Easements and Mineral Leases.

A borrower may grant easements or rights of way, or execute mineral leases over or covering the land being purchased with a loan from the board. The borrower [~~Borrower~~] is liable to the board for any decrease in value of the land due to any grant of easement or lease of minerals by the borrower.

§175.61. Delinquencies, Acceleration and Foreclosures.

(a) (No change.)

(b) The terms of each note and deed of [~~for~~] trust or any other lien document shall determine acceleration and foreclosure requirements and procedures, unless modified under section (a) of this section.

(c) (No change.)

§175.62. Trustee's Sale.

(a) The chairman may bid for the land at any trustee's sale for any amount that the chairman deems to be in the best interest of the program. All land purchased by the board [~~Board~~] at a foreclosure sale shall be resold by private sale according to the practices prevalent in the mortgage industry, or, in the same manner as forfeited land under §175.18 of this chapter (relating to Resale of Forfeited Land). [~~title.~~]

(b) - (c) (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 May 18, 2025.

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Jennifer Jones

Chief Clerk and Deputy Land Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 475-1859



SUBCHAPTER C. PROCEDURES FOR ALTERNATIVE DISPUTE RESOLUTION

40 TAC §§175.100 - 175.108, 175.110, 175.111

The Texas Veterans Land Board proposes amendments to Texas Administrative Code, Part 5, Chapter 175, Subchapter C, §§175.100 - 175.108, 175.110, and 175.111.

The Board identified the need for the proposal during its review of this chapter's rules, conducted pursuant to Section 2001.039

of the Texas Government Code, the adoption of which can be found in the Review of Agency Rules section of this issue. At its May 13, 2025 meeting, the Board unanimously approved the readoption of this subchapter with amendments.

The proposed amendments to §175.100 update citations to the Administrative Procedures Act and the Texas Civil Practice and Remedies Code and make references to the Governmental Disputes Resolution Act and Alternative Disputes Resolutions Act consistent with §175.101.

The proposed amendments to §175.101 remove unnecessary definitions for the Board, the Commissioner, and the Executive Secretary, as those terms are defined in Chapter 161 of the Texas Natural Resources Code (Code); remove a redundant section for the definition of Alternative Dispute Resolution in Section 2009.005 of the Texas Government Code; add a definition for "ADR Coordinator" to account for its frequency in this subchapter; update a definition for the Commissioner to reflect the position's responsibilities; and update citations.

The proposed amendments to §175.103 make qualifications for selection as an ADR Coordinator or Impartial Third Party disjunctive to reflect the rule's meaning.

The proposed amendments to §175.104 correct a reference to ADR Coordinator training requirements.

The proposed amendments to §175.105 revise a citation to Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009, change references to the Board from "agency" to "board," and remove three responsibilities of the ADR Coordinator that are already provided for in the ADR Coordinator's responsibilities under Section 161.036 of the Texas Natural Resources Code.

The proposed amendments to §175.107 revise a citation to the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009.

The proposed amendment to §175.108 removes a reference to a nonexistent form used to request use of the alternative dispute resolution process to replace it with a request to the Board's ADR coordinator.

The proposed amendments to §175.111 specify a reference to the Public Information Act.

In addition, throughout this chapter, references to the General Land Office and Commissioner are changed to the Board and chairman, respectively, as these rules pertain to the Board.

Also, throughout this chapter, references to the Board, the Commissioner, and the Executive Secretary are made lower-case to align with their occurrences throughout Chapters 161, 162, and 164 of the Code. Also, editorial changes are made throughout this chapter to correct grammar, remove superfluous or outdated language, and improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Anthony Dale, the Board's Executive Secretary, 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 local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Dale has determined that for each year of the first five years the proposed amendments are in effect, there will be no economic effect on businesses or individuals.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Dale has determined that the proposed amendments will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Dale provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Board has determined the following:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Board;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the Board;
- (5) the proposed amendments do not create a new regulation;
- (6) the proposed amendments will not expand, limit, or repeal an existing regulation;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposed amendments will not affect this state's economy.

Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Legal Assistant, Texas General Land Office, 1700 Congress Avenue, Austin, Texas 78701, or by email to walter.talley@glo.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed under:

Section 161.036 of the Texas Natural Resources Code (Code), which requires the Board to develop a policy to encourage the use of ADR procedures under Chapter 2009 of the Texas Government Code and in accordance with to any guidelines issued by the State Office of Administrative Hearings;

Section 161.063 of the Code, which gives the Board general rule-making authority for Chapter 161; and

Section 2009.051 of the Texas Government Code, which allows state agencies subject to Chapter 2001 of the Code to develop ADR procedures by rule.

The codes affected by the proposal are Chapter 161 of the Texas Natural Resources Code and Chapter 2009 of the Texas Government Code, Chapter 2009.

§175.100. *Applicability.*

(a) This subchapter applies to internal and external disputes before the board, [~~Texas Veterans Land Board (VLB)~~], including those that may be referred by the State Office of Administrative Hearings. [~~Hearings (SOAH), which is subject to the Administrative Procedures Act (APA), Chapter 2001, Texas Government Code.~~]

(b) This [~~Sections 175.100 - 175.111 of this~~] subchapter supplements [~~supplement~~] the procedures required by the Administrative Procedure Act (APA), [~~APA~~], Chapter 2001 of the [~~2001~~], Texas Government Code.

(c) In accordance with the Government Dispute Resolution Act, Chapter 2009 of the Texas Government Code, [~~Code~~] and it is the board's [~~VLB's~~] policy that disputes with the board [~~VLB~~] be resolved as fairly and expeditiously as possible. To encourage this policy, the board [~~VLB~~] has adopted the use of ADR. [~~Alternative Dispute Resolution (ADR)~~].

(d) All Alternative Dispute Resolution [~~ADR~~] procedures shall be consistent with the APA and GDRA [~~Chapters 2001 and 2009 of the Texas Government Code~~] and Chapter 154 of the Texas Civil Practice and Remedies Code. [~~Chapter 2009 of the Texas Government Code is referred to as the Governmental Dispute Resolution Act or "GDRA".~~]

(e) ADR procedures developed and used by the board [~~VLB~~] do not limit other dispute resolution procedures available for the board. [~~VLB~~].

(f) Consistent with this ADR policy, the board [~~VLB~~] shall endeavor to educate its staff and persons who are subject to the board's [~~VLB's~~] jurisdiction concerning the availability of ADR to resolve disputes.

(g) The use of ADR may not be applied in a manner that denies a person a right granted under other state or federal law including a right to an administrative or judicial hearing that is allowed or mandated by the board [~~VLB~~] or by laws of more general application.

(h) Any resolution reached as a result of the ADR procedure should be [~~achieved~~] through the voluntary agreement of the parties.

§175.101. *Definitions.*

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

(1) Alternative Dispute Resolution (ADR)--A procedure or combination of procedures that uses an impartial third party to assist individuals in voluntarily resolving disputes, including procedures described in [§§154.023 - 154.027,] Civil Practice and Remedies [~~Code~~] Code, §§154.023 - 154.027. [~~The GDRA does not grant the GLO authority to engage in binding arbitration.~~]

(2) ADR Coordinator--The board-designated, trained person who performs the ADR-related duties provided for in Texas Natural Resources Code, §161.036.

[(2) Board (VLB)--The Veterans Land Board of the State of Texas.]

[(3) Commissioner--The Commissioner and also chairman of the Veterans Land Board.]

(3) [(4)] Contested case--Shall have the same meaning as such term is defined in the Administrative Procedure Act (APA), Chapter 2001 of the Texas Government Code. [~~(Texas Government Code, Chapter 2001).~~]

[(5) Executive Secretary--The executive secretary of the board.]

(4) [(6)] GDRA--The Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code. [Code, Chapter 2009:]

(5) [(7)] Impartial Third Party (ITP)--A person who meets the qualifications and conditions of the GDRA, §2009.053. [Texas Government Code §2009.053; GDRA:]

(6) [(8)] Party--Shall have the same meaning as such term is defined in the APA. [Administrative Procedure Act (Texas Government Code, Chapter 2001):]

(7) [(9)] Person--Shall have the same meaning as such term is defined in the APA. [Administrative Procedure Act (Texas Government Code, Chapter 2001):]

(8) [(40)] Rule--Shall have the same meaning as such term is defined in the APA. [Administrative Procedure Act (Texas Government Code, Chapter 2001):]

(9) [(44)] State Agency--Shall have the same meaning as such term is defined in the APA. [Administrative Procedure Act (Texas Government Code, Chapter 2001):]

§175.102. Referral of Pending Disputes for ADR.

The chairman, [Commissioner,] the ADR Coordinator, or a beneficiary of a board program [a Texas veteran or an assignee of VLB land] may seek to resolve an internal or external dispute through any ADR procedure. Such procedures may include, but are not limited to, those applied to resolve matters pending in the state's district courts.

§175.103. Required Training for ADR Coordinator and Impartial Third Party.

Eligibility for designation as an ADR Coordinator or appointment as an ITP depends upon the following qualifications being met:

(1) completion of a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution approved by the board or; [VLB; and]

(2) in appropriate circumstances the board [VLB] may waive the training required in this section if a person has professional training or experience in dispute resolution processes related to a particular matter.

§175.104. Appointment of ADR Coordinator.

(a) In the absence of [The Commissioner shall appoint] an ADR [Coordinator] Coordinator, the chairman shall appoint one as soon as practicable. [practicable following:]

[(1) initial adoption of this subchapter; or]

[(2) an ADR Coordinator's vacation of this office.]

(b) The ADR Coordinator shall, as soon as practicable after appointment, complete the minimum training standards set forth in the Texas Civil Practice and Remedies Code, §154.052. [§154.052 of the GDRA:]

§175.105. Responsibilities of ADR Coordinator.

The ADR Coordinator shall have the following responsibilities:

(1) Establish a method of choosing ITPs who possess the minimum qualifications described in the GDRA, §154.052; [§154.052 of the GDRA:]

(2) (No change.)

[(3) Coordinate the implementation of the ADR policies and procedures:]

(3) [(4)] Provide information about available ADR processes to board [agency] employees, and to both potential and current users of the ADR program; and

[(5) Serve as a resource for any training and education needed to implement procedures and processes for the ADR program:]

[(6) Establish a system and collect data concerning the effectiveness of the ADR program in order to evaluate the ADR program and the ITPs that the VLB has used; and]

(4) [(7)] Maintain necessary board [agency] records while maintaining the confidentiality of participants.

§175.106. Selection and Payment of Impartial Third Parties.

(a) For each matter referred for ADR procedures, the ADR Coordinator shall assign an ITP selected by the parties from the board's [GLO's] list of potential ITPs unless the parties agree upon the use of a private ITP.

(b) A private ITP may be hired for commission of ADR procedures provided that:

(1) (No change.)

(2) the private ITP agrees to be subject to the direction of the board's [GLO's] ADR Coordinator and to all time limits imposed by the chairman, [Commissioner,] the ADR Coordinator, the judge, or by statute or agency rule.

(c) - (d) (No change.)

§175.107. Responsibilities of Impartial Third Parties.

(a) The ITP shall complete the minimum training standards set forth in the GDPRA, §154.052, [§154.052 of the GDRA,] prior to starting any ADR procedure for the board [VLB] through programs approved by the ADR Coordinator, unless the required training is waived by the ADR Coordinator.

(b) (No change.)

§175.108. Commencement of the ADR Process and ADR Procedures.

(a) To initiate the ADR process, a party to a contested matter must submit a written ADR request [proposal form] to the ADR Coordinator. The request must [ADR proposal form can be found on the VLB's website at www.glo.state.tx.us/vlb/. Upon completion of the form, it should] be submitted to the ADR Coordinator [at the website address or fax number listed] with copies sent to any other parties to the dispute.

(b) ADR procedures under this subchapter may begin, at the discretion of the ADR Coordinator, at any time [anytime] after a party to a contested matter submits a written ADR proposal requesting the use of ADR procedures to resolve a dispute with the board. [VLB:]

(c) The ADR Coordinator shall provide the chairman [Commissioner] a copy of the ADR proposal for review, discuss it with the interested parties, as appropriate, and assess whether ADR would assist in fairly and expeditiously resolving the dispute.

(d) If the parties, [including] the chairman, [Commissioner] and the ADR Coordinator, cannot agree on whether the ADR procedure should be used or on the particulars of the ADR procedure, the ADR Coordinator will notify the affected parties of that outcome and the proposal will be dismissed without opportunity for resubmission to the ADR Coordinator. [Coordinator in the future.]

(e) (No change.)

§175.110. Complete Settlement Agreements through ADR.

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

(c) The chairman [Commissioner] will abide by an agreed upon resolution to the dispute and either approve the agreement or offer the recommendation to the board, [VLB;] if board [Board] authorization is needed.

(d) (No change.)

(e) Each party to a resolution resulting from ADR must execute a written agreement reflecting the resolution. The agreement is enforceable in the same manner as any other written agreement of the same nature with the state. [State;]

(f) The chairman [Commissioner] must approve a written agreement, to which the board's executive secretary [VLB Executive Secretary] or [the VLB Board] members are signatories resulting from the ADR procedure and it is subject to the Public Information Act, Chapter 552 of the [552;] Texas Government Code.

§175.111. *Confidentiality of Communications in ADR Procedures.*

(a) - (d) (No change.)

(e) The ITP may not, directly or indirectly, communicate with anyone on any aspect of ADR negotiations made confidential by this section unless all the parties consent to the disclosure, or upon issuance of an opinion from the Office of the Attorney General that the evidence is subject to the Public Information Act, Chapter 552 of the Texas Government Code. [Act;]

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 May 18, 2025.

TRD-202501695

Jennifer Jones

Chief Clerk and Deputy Land Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 475-1859



CHAPTER 176. STATE VETERANS HOMES

The Texas Veterans Land Board ("Board") proposes amendments to Texas Administrative Code, Title 40, Part 5, Chapter 176, §§176.1, 176.3 - 176.7, and 176.9, and the repeals of §§176.2, 176.8, 176.10, and 176.11 (collectively, "the proposal").

The Board identified the need for the proposal during its review of this chapter's rules, conducted pursuant to Section 2001.039 of the Texas Government Code, the adoption of which can be found in the Review of Agency Rules section of this issue. At its May 13, 2025 meeting, the Board unanimously approved the readoption of this chapter with the proposal.

The proposed amendments to §176.1 remove definitions for the Board and "chairman," as these terms are already defined in the Chapter 161 of the Texas Natural Resources Code, i.e., the Board's enabling statute; remove a definition for "bona fide resident" to facilitate access for out-of-state veterans to Veterans Homes so that they might be closer to in-state relatives; remove a definition for the non-existent Texas Department of Aging and Disability Services; and changes a definition for "surviving spouse" to align with its federal definition pertaining to the U.S. Department of Veterans Affairs. In addition, the proposed

amendments revise the definition of State Veterans Home to i) align with that in Section 164.002 of the Code, ii) incorporate licensure requirements in §176.8 to allow for that rule's repeal, and iii) to incorporate the State Veterans Homes Program requirements.

The proposed amendments to §176.5 update a reference to the Texas Department of Health and Human Services and add language to account for any State or federal agency that may require access to a Veterans Home's records and related documentation for auditing or review purposes and add language on certification and licensure requirements to account for any future Veterans Homes dedicated exclusively to Alzheimer's/dementia care.

The proposed amendments to §176.7 revise the admissions requirements to State Veterans Homes by removing a section outlining requirements that pertain to eligibility for per diem payments under 38 C.F.R. §51.50- not requirements- and remove unnecessary language provided for in 38 C.F.R. § 51.120. The proposed amendments further remove requirements that spouses and surviving spouses are bona fide residents to align with the removal of the term, as addressed above. In addition they change the requirements for parent eligibility to reflect current Gold Star qualifications

The repeal of §176.2 is proposed because its provisions are provided for in Section 164.004 and 164.005 of the Code.

The repeal of §176.8 is proposed because its provisions are unnecessary. Chapter 164 of the Code and related federal regulations for the construction and acquisition of SVHs under 38 C.F.R. Part 59 indicate any would-be State Veterans Homes would be newly constructed or located in an existing structure. Also, that State Veterans Homes must adhere to any applicable laws, regulations, and requirements is evident. In addition, the Board's authority to adopt requirements related to State Veterans Homes is provided for in Section 164.005 of the Code. As stated above, provisions related to licensure requirements are relocated to the definition of State Veterans Home in §176.001.

The repeal of §176.10 is proposed because its provision is unnecessary: the Board sets its rules; it is the final authority on their interpretation and application.

The repeal of §176.11 is proposed because its provisions are obsolete. They were proposed in 1997 as a framework for procedures for awarding contracts related to SVHs. Current procurement and contracting laws in the Texas Government Code to include, but not limited to those in Chapters 2155, 2156, and 2269- more adequately provide for these procedures; the Board follows these laws in its State Veterans Home-related procurements.

In addition, the title of this chapter is changed to "State Veterans Homes" to more accurately reflect its subject matter.

Also, throughout the chapter, references to the Board are made lower-case to align with their occurrences throughout Chapters 161, 162, and 164 of the Code, citations are updated, and editorial and grammatical changes are made to improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Bobby Breeden, the Board's Director of Texas State Veterans Homes, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for the state or local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Breeden has determined that for each year of the first five years the proposal is in effect, there will be no economic effect on businesses or individuals.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Breeden has determined that the proposal will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Breeden provides the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposal will be in effect, the Board has determined the following:

- (1) the proposal will not create or eliminate a government program;
- (2) implementation of the proposal will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposal will not require an increase or decrease in future legislative appropriations to the Board;
- (4) the proposal will not require an increase or decrease in fees paid to the Board;
- (5) the proposal does not create a new regulation;
- (6) the proposal will not expand, limit, or repeal an existing regulation;
- (7) the proposal will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposal will not affect this state's economy.

Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Legal Assistant, Texas General Land Office, 1700 Congress Avenue, Austin, Texas 78701, or by email to walter.talley@glo.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

40 TAC §§176.1, 176.3 - 176.7, 176.9

The amendments are proposed pursuant to Section 164.004 of the Texas Natural Resources Code, which allows the Board to adopt rules concerning the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, furnishing, and equipping Veterans Homes.

The code affected by the proposed amendments is Chapter 164 of the Texas Natural Resources Code.

§176.1. Definitions.

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

- ~~[(1) Board--The Veterans Land Board of the State of Texas.]~~
- ~~[(2) Bona fide resident--An individual living within the State of Texas, with the intent to remain in Texas.]~~

~~[(3) Chairman--The commissioner of the General Land Office who is also chairman of the Veterans Land Board.]~~

~~[(1) [(4)] Covenants--The bond covenants undertaken by the board [Veterans Land Board] in association with the sale of bonds.~~

~~[(2) [(5)] Fund--The State Veterans Home Fund, which is comprised of the proceeds from the sale of bonds issued for the purpose of acquisition, construction, operation, and maintenance of SVHs [a state veterans home or homes], revenues derived from the operation of one or more SVH, [state veterans homes,] and the proceeds from other sources which are used for the acquisition, construction, operation and maintenance of a SVH. [state veterans home or homes.]~~

~~[(3) [(6)] Operator--The entity under contract with the board [Board] to manage a SVH. [State Veterans Home or Homes.]~~

~~[(4) [(7)] Spouse --Means a person of the opposite sex who is a wife or husband.~~

~~[(5) [(8)] Surviving spouse--A person who satisfies the federal definition of "surviving spouse" contained in by 38 USC §101(3), as modified by the special provision in 38 USC §103, or any successor statutes, as amended from time to time. [of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.]~~

~~[(6) [(9)] State Veterans Home (SVH)--A veterans home as defined under the Texas Natural Resources Code, §164.002, that is licensed as a nursing home, and may be licensed as a long term or acute care facility, and falls under the State Veterans Homes Program. [Retirement home, retirement village, home for the aging, or other facility that furnishes shelter, food, medical attention, nursing services, medical services, social activities, or other personal services or attention to veterans.]~~

~~[(10) DADS--Texas Department of Aging and Disability Services.]~~

~~[(7) [(44)] USDVA--The United States Department of Veterans Affairs or any successor thereto.~~

§176.3. Sale of Bonds.

The procedure for the issuance and sale of bonds will be set by resolution of the board. ~~[Board.]~~ The chairman and the executive secretary of the board ~~[Board]~~ are authorized to work with the bond counsel and financial advisor selected by the board ~~[Board]~~ in ascertaining the elements of security permissible under the law, maturities, option provisions, paying agency provisions, and all other matters pertaining to the bonds which affect the bonds' acceptability in the market, to the end that such elements may be incorporated into the bonds and resolution. The chairman, executive secretary of the board, ~~[Board,]~~ and bond counsel will prepare a draft of the official notice of sale of bonds. After the notice of sale is approved, it will be published, either in full or abbreviated form, in the manner prescribed by law. The board ~~[Board]~~ has the right to reject any and all bids received.

§176.4. Administration of the State Veterans Home Fund.

(a) The proceeds from each bond sale shall be part of the fund ~~[State Veterans Home Fund]~~ and shall first be used for the following purposes:

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

(b) After the requirements of subsection (a) of this section have been satisfied, the board [Board] shall monitor the cash flow requirements of the program and shall administer the fund to:

(1) (No change.)

(2) make money available as needed to construct, equip and/or maintain state veterans homes as provided by Chapter 164 of the Texas Natural Resources Code[, Chapter 164.00 et seq.] and this chapter.

(c) The board [Board] may use money in the fund attributable to bonds issued and sold to pay:

(1) expenses incidental and necessary to the sale and delivery of the bonds, including, but not limited to, the following:

(A) - (C) (No change.)

(D) the expense of delivering the bonds, including the costs of travel, lodging, and meals of officers or employees of the board, [Board,] the state comptroller, and the attorney general, that are necessary in the opinion of the board [Board] to effectuate the delivery of bonds;

(E) remuneration to any agent employed by the board [Board] to pay the principal and interest on the bonds; and

(F) any other expenses deemed by the board [Board] to be reasonable and necessary;

(2) capital expenditures by the operator which involve items not described in the board's [Board's] contract with the operator and which are not part of the operator's standard services. These additional expenses must not be in conflict with any existing covenants or any board [Board] resolutions affecting the sale of bonds or administration of the fund. All such additional expenditures must also be authorized and requested by a resolution of the board. [Board.]

(d) Any money in the fund not immediately needed for the purposes described in subsections (b) and (c) of this section nor immediately committed to paying principal of and interest on the bonds, nor the payment of expenses, may be invested in bonds or obligations as determined by the board. [Board.]

(e) The board [Board] may, by resolution, make provisions for the administration of the fund. [Fund.]

§176.5. Appointment of Operator.

(a) The board [Board] will appoint an operator who will be responsible for maintenance and operation of a TSVH. [veterans home or homes built under the provisions of this chapter.] An operator may be an individual, partnership, corporation, or other business entity, as well as a state or federal agency.

(b) The board [Board] will set qualifications, requirements, terms and conditions, and all contract specifications to be met by the operator. No appointment of an operator shall be effective until a contract has been awarded and duly executed by the board [Board] and the operator. The functions of the operator will be provided for in the [their] contract. These functions shall include, but are not limited to, the following:

(1) to manage and operate [management and operation of] the TSVH [Texas state veterans home(s)] in compliance with all applicable federal, state and local laws, rules, regulations, standards, and policies; [standards and policies.]

(2) to develop, implement, and maintain policies and procedures for all aspects of the management and operation of the TSVH. [state veterans home(s-)] All such policies and procedures shall be reviewed and approved by the board. [Board.] All such policies and

procedures shall remain the property of the board [Board] in the event of cancellation or termination of the contract for any reason; [reason.]

(3) to secure and retain all licenses and certifications required to operate the TSVH [state veterans home] as a skilled nursing care facility with an Alzheimer's/dementia care unit or a skilled nursing care facility dedicated exclusively to Alzheimer's/dementia care. The operator shall ensure [Ensure] that all personnel employed at the TSVH [state veterans home(s)] are properly licensed or certified for the work they are performing. The operator shall secure [Secure] and retain such other licenses and certifications as may be required by the board; [Veterans Land Board.]

(4) to be fully responsible for the management and supervision of the daily operations of the home, including the development, implementation, and operation of all necessary administrative systems, including, but not limited to, accounting, personnel, reporting, administrative records, medical records, and purchasing; [purchasing.]

(5) to provide [providing] annual operating statements and budget estimates to the board; [Board.]

(6) to make [making] available at reasonable times and for reasonable periods books, records, and supporting documents kept current by the operator pertaining to the TSVH [state veterans home] for purposes of inspecting, monitoring, auditing, or evaluating by the board [Board] and its representatives, and representatives of the Texas Department of Health and Human Services, [TDHS,] USDVA, the state auditor, [and] the comptroller of public [accounts-] accounts, and other applicable agencies; and

(7) to notify the board, [Veterans Land Board,] immediately following notifications required by law, of any abuse or suspected abuse of a resident, any unexpected or unexplained injury or death of a resident, or any immediate threat to the health or safety of a resident.

(c) The contract between the operator and the board [Board] shall contain guidelines and standards for assessing the performance of the operator. The contract will also describe the circumstances and conditions under which the board [Board] may dismiss the operator. The operator's performance may be subject to an annual review by the board's [Board's] staff.

§176.6. Operator Qualifications.

An operator:

(1) [(a) An operator] may be a person, partnership, corporation, or other business or governmental entity; [entity.]

(2) [(b) The operator] must be duly organized, validly existing, and in good standing under the laws governing its creation and existence, and must be duly authorized and qualified to transact all business contemplated by these rules, and any contract with the board; [Board.]

(3) [(c) must] [Must] be in compliance with the nondiscrimination provision of the Civil Rights Act of 1964 and the regulations pursuant to it [such act], and the Americans with Disabilities Act; and [Act (ADA).]

(4) [(d) shall] [Shall] satisfy any other qualification requirements which the board [Board] may adopt by resolution. [resolution from time to time.]

§176.7. Admissions Requirements.

[(a) The purpose of this section is to set forth the requirements for admittance of applicants to a SVH. USDVA requires that the program only admit to a SVH those applicants who satisfy all medical, financial, and military service requirements set forth in USDVA regulations, as they are amended from time-to-time.]

(a) [(b)] For purposes of this section, the term "veteran" means a person who satisfies the requirements of [Title 40, Part 5, Chapter 175,] §175.2(c)(1) of this title (relating to Loan Eligibility Requirements), [the Texas Administrative Code relating to Loan Eligibility Requirements,] as amended from time-to-time.

(b) [(e)] To be eligible for admission to a SVH, an applicant must satisfy one of the following:

(1) be a veteran who satisfies the USDVA guidelines and regulations relating to the need for nursing home care; [who:]

[(A) satisfies the USDVA guidelines and regulations relating to the need for nursing home care; and]

[(B) is in one of the following categories:]

[(i) veterans with service-connected disabilities;]

[(ii) veterans who are former prisoners of war;]

[(iii) veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;]

[(iv) veterans who receive disability compensation under 38 U.S.C.A. §1151;]

[(v) veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;]

[(vi) veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C.A. §1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C.A. §1151;]

[(vii) veterans who USDVA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C.A. §1722(a);]

[(viii) veterans of the Mexican border period or of World War I;]

[(ix) veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C.A. §1710(e); or]

[(x) veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C.A. §1710(f) and §1710(g).]

(2) is a spouse, or surviving spouse, of a veteran if the spouse is at least eighteen (18) years of age; [age and has been a bona fide resident of Texas continuously for at least one (1) year immediately before applying for admission; or]

(3) is a parent, whose child [all of whose children] died while serving in the armed forces of the United States, and who has resided in Texas continuously for at least one year immediately before applying for admission; or [admission.]

(4) (No change.)

(c) [(d)] The board [Board] may establish, by resolution from time-to-time, procedures for processing applications for admission to each SVH. Based on the availability of space, the board [Board] may also establish a priority system for admitting applicants according to one or more factors, including, but not limited to:

(1) the priority of a veteran over the spouse or parent of a veteran;

(2) the necessity to comply with USDVA regulations governing a SVH; [SVH, including, but not limited to, the requirement that 75 percent (75%) of a SVH's residents be veterans. However, if the facility was constructed or renovated solely with State funds, only 50 percent (50%) of the residents must be veterans;]

(3) whether an applicant meets the eligibility criteria in [40 TAC, Part 5, Chapter 175,] §175.2, [relating to Loan Eligibility Requirements,] and is thereby eligible for other Board benefits;

(4) - (8) (No change.)

(9) such other criteria as the board [Board] may determine are in the best interest of the program.

§176.9. Fees and Expenses.

(a) All fees, expenses and charges to be paid by a resident of a SVH [state veterans home] must be approved by the board. [Board.] The imposition and amount of any fee or charge shall be consistent with or lower than industry standards.

(b) Within a reasonable period of time, the board [Board] shall either approve or disapprove all fees and expenses to be charged. The operator shall incorporate in its guidelines the maximum fees and expenses which may be charged.

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 May 18, 2025.

TRD-202501696

Jennifer Jones

Chief Clerk and Deputy Land Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 475-1859



40 TAC §§176.2, 176.8, 176.10, 176.11

The repeals are proposed pursuant to Section 164.004 of the Texas Natural Resources Code, which allows the Board to adopt rules concerning the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, furnishing, and equipping Veterans Homes.

The code affected by the proposed repeals is Chapter 164 of the Texas Natural Resources Code.

§176.2. Authority.

§176.8. Qualifying Homes.

§176.10. Rights of Board.

§176.11. Construction Requirements.

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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Jennifer Jones

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Texas Veterans Land Board

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CHAPTER 177. VETERANS HOUSING ASSISTANCE PROGRAM AND VETERANS HOME IMPROVEMENT PROGRAM

The Texas Veterans Land Board ("Board") proposes amendments to Texas Administrative Code, Title 40, Part 5, Chapter 177, §§177.1, 177.3 - 177.5, 177.7, 177.8, 177.10, 177.12 and 177.13, and the repeal of §177.14 (collectively, "the proposal").

The Board identified the need for the proposal during its review of this chapter's rules, conducted pursuant to Section 2001.039 of the Texas Government Code, the adoption of which can be found in the Review of Agency Rules section of this issue. At its May 13, 2025 meeting, the Board unanimously approved the readoption of this chapter with the proposal.

The proposed amendments to §177.1 remove definitions for the Board, the veterans housing assistance fund, and the Veterans Housing Assistance Program ("Program") as these terms are already defined in Section 162.001 of the Texas Natural Resources Code, ("Code"); remove definitions for "bona fide resident" and "missing/missing in action" as the terms are not used in this chapter; and update the definition for "VA guaranty" to reflect the current entity guaranteeing mortgage loans for the U.S. Department of Veterans Affairs.

The proposed amendments to §177.3 change a reference to the State to align with how it is referred to in those chapters of the Code pertaining directly to the Board, i.e., Chapters 161, 162, and 164, and update a reference to the Texas Constitution.

The proposed amendments to §177.4 update a reference to the Texas State Auditor's Office.

The proposed amendments to §177.5 update references to 40 Tex. Admin. Code §175.2 and change a reference to the Veterans Land Program to reflect its usage in Chapter 161 of the Code.

The proposed amendments to §177.8 update references to Section 1201.003 of the Texas Occupations Code and relocate a provision requiring the Board to set loan amounts for home improvement loans from §177.14.

The repeal of §177.14 is proposed because its provisions on home loans are accounted for in Section 162.011 of the Texas Natural Resources Code.

In addition, the title of the chapter is changed to "Veterans Housing Assistance Program and Veterans Home Improvement Program" to reflect the types of loans to which the chapter pertains.

Also, throughout this chapter, references to Chapter 162 of the Code are updated, references to the Board are made lowercase to align with their occurrences throughout Chapters 161, 162, and 164 of the Code, and references to this chapter are changed from "title" to "chapter," as the former is generally used throughout the Texas Administrative Code. Furthermore, editorial changes are made throughout this chapter to correct grammar, remove superfluous or outdated language, and improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Raul Gonzales, the Board's Director of Land and Housing, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for the state or local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Gonzales has determined that for each year of the first five years the proposal is in effect, there will be no economic effect on businesses or individuals.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Gonzales has determined that the proposal will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Gonzales provides the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposal will be in effect, the Board has determined the following:

- (1) the proposal will not create or eliminate a government program;
- (2) implementation of the proposal will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposal will not require an increase or decrease in future legislative appropriations to the Board;
- (4) the proposal will not require an increase or decrease in fees paid to the Board;
- (5) the proposal does not create a new regulation;
- (6) the proposal will not expand, limit, or repeal an existing regulation;
- (7) the proposal will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposal will not affect this state's economy.

Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Legal Assistant, Texas General Land Office, 1700 Congress Avenue, Austin, Texas 78701, or by email to walter.talley@glo.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

40 TAC §§177.1, 177.3 - 177.5, 177.7, 177.8, 177.10, 177.12, 177.13

The amendments are proposed pursuant to:

Section 162.003 of the Texas Natural Resources Code (Code), which requires the Board to adopt rules governing the administration of the veterans housing assistance fund and the Veterans' Housing Assistance Program, the creation of Program-related loans, the criteria for approving lending institutions, the use of insurance on these loans and homes financed under the Program, the verification of occupancy of such homes, and the terms and conditions of any contracts made with lending institutions related to such loans;

Section 162.011 of the Code, which allows the Board to determine the number of loans a veteran may receive through the Program;

Section 162.013 of the Code, which requires the Board to set interest rates for Program loans and to adopt rules regarding fees, charges, and interest rates charged by lending institutions on financing homes through the Program with money other than from the fund;

Section 162.016 of the Code, which allows the Board to create rules for the escalation of interest rates on loans and the acceleration of principal and interest on loans, or other appropriate remedies if a home secured by lien under the Program is transferred, leased, sold, or conveyed within three years of purchase; and

Section 162.017 of the Code requires the Board to adopt rules related to the foreclosure and resale of homes financed with a loan under the Program.

The Code affected by the proposed amendments is Chapter 162 of the Texas Natural Resources Code.

§177.1. Definitions.

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

(1) Administrator--The entity appointed by the board to assist the board in administering the processing of loan applications under these sections.

~~[(2) Board--The Veterans Land Board of the State of Texas.]~~

~~[(3) Bona fide resident--An individual actually living within the State of Texas with the intention to so remain.]~~

(2) ~~[(4)]~~ Chairman--The commissioner of the General Land Office who is also chairman of the board. ~~[Veterans Land Board.]~~

(3) ~~[(5)]~~ Covenants--The bond covenants undertaken by the board ~~[Veterans Land Board]~~ in association with the sale of bonds.

(4) ~~[(6)]~~ FHA--The Federal Housing Administration of the Department of Housing and Urban Development of the United States of America or any successor thereto.

(5) ~~[(7)]~~ FHLMC--Federal Home Loan Mortgage Corporation or any successor thereto.

(6) ~~[(8)]~~ FNMA--Federal National Mortgage Association or any successor thereto.

(7) ~~[(9)]~~ FSLIC--The Federal Savings and Loan Insurance Corporation.

~~[(10) Fund--The veterans housing assistance fund.]~~

(11) Missing/Missing in Action--To have an official designation of "missing status" as provided by Title 37, Chapter 10 of the United States Code. The term "missing status" means the status of members of a uniformed service who are officially carried or determined to be absent in a status of missing; missing in action; interned in a foreign country; captured, beleaguered, or besieged by a hostile force; or detained in a foreign country against their will.]

(8) ~~[(42)]~~ Participating lending institution--Any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution that customarily provides services or aids in the financing of mortgages on single-family residential housing, including a holding company for any of the foregoing, which has sought and received approval to participate in the ~~[Veterans Housing Assistance]~~ Program.

~~[(13) Program--The Veterans Housing Assistance Program.]~~

(9) ~~[(44)]~~ VA--The United States Department of Veterans Affairs or any successor thereto.

(10) ~~[(45)]~~ VA guaranty--A guaranty of a mortgage loan under [by] the VA Home Loan Guaranty Program. ~~[under the Serviceman's Readjustment Act of 1944 as amended.]~~

§177.3. Administration of Fund.

~~[(a) The veterans housing assistance fund is defined by Natural Resources Code, §162.002, and Subchapter C (§§162.031-162.050).]~~

(a) ~~[(b)]~~ The proceeds from each bond sale shall be part of the fund and shall first be used for the following purposes:

(1) to satisfy the reserve requirements of the particular covenants associated with each [the] sale; and

(2) to set up the initial debt repayment associated with each sale.

(b) ~~[(e)]~~ After the requirements of subsection (a) ~~[(b)]~~ of this section have been satisfied, the board, with the assistance of the administrator, shall monitor the cash flow requirements of the program and shall administer the fund to:

(1) meet all bond repayment requirements; ~~[and]~~

(2) make money available as needed by the program to make or acquire home loans as provided by the Texas Natural Resources Code, (Code) Chapter 162, and this chapter ~~[Chapter]~~; and

(3) make money available as needed by the program to make home improvement loans as provided by § 177.8 of this chapter ~~[title]~~ (relating to Qualifying Homes).

(c) ~~[(d)]~~ Any money in the fund not immediately needed for the purposes described in subsections (a) ~~[(b)]~~ and (b) ~~[(e)]~~ of this section, nor immediately committed to paying principal of and interest on the bonds, nor the payment of expenses as provided in the ~~[Natural Resources]~~ Code, Chapter 162, or this chapter, may be invested in bonds or obligations of the United States or in any other way not in conflict with the covenants or the Texas Constitution and laws of the state ~~[State of Texas]~~ until needed for these purposes.

(d) ~~[(e)]~~ The board may use money in the fund attributable to bonds issued and sold to pay:

(1) expenses incidental and necessary to the sale and delivery of the bonds, including but not limited to the following:

(A) fees for legal and financial advice;

(B) the expense of publishing notice of sale of an installment of bonds;

(C) the expense of printing the bonds;

(D) the expense of delivering the bonds, including the costs of travel, lodging, and meals of officers or employees of the board, the state comptroller, the state treasurer, and the attorney general, that are necessary in the opinion of the board to effectuate the delivery of bonds;

(E) remuneration to any agent employed by the board to pay the principal and interest on the bonds; and

(F) any other expenses deemed by the board to be reasonable and necessary.

(2) expenses and fees of the administrator for any additional services requested by the board which are not described in the

board's contract with the administrator as part of the administrator's standard services. These additional services must not be in conflict with any existing covenants or any board resolutions affecting the sale of bonds or administration of the fund. All such additional services must be authorized and requested by a resolution of the board.

(e) [(f)] Money in the fund that is not spent for the purposes provided in the [Natural Resources] Code, Chapter 162, or this chapter, shall remain in the fund until there is sufficient money to retire fully bonds issued and sold by the board.

(f) [(g)] The board may by resolution make provisions for the administration of the fund. In the event of any conflict between these rules and the provisions of a resolution of the board pertaining to the administration of the fund, the provisions of the board's resolution shall control.

§177.4. *Appointment of Administrator.*

(a) The board will set qualifications and requirements, terms, and conditions, and all contract specifications to be met by the administrator. No appointment of an administrator shall be effective until a contract has been awarded by sealed bid and duly executed by the board and the administrator. The functions of the administrator may include, but are not limited to, the following:

(1) - (3) (No change.)

(4) maintaining a list of all approved participating lending institutions and updating this list by the first day of each quarter [January, April, July, and October] of each year and making this list available upon request to any interested party for the actual cost of reproducing and mailing said list;

(5) - (12) (No change.)

(13) making available at reasonable times and for reasonable periods books, records, and supporting document kept current by the administrator pertaining to the program for purposes of inspecting, monitoring, auditing, or evaluating by the board, its representatives, and representatives of the Texas State Auditor's Office. [of the State Auditor.]

(b) The contract between the administrator and the board shall contain guidelines and standards for assessing the performance of the administrator. The contract shall also describe [described] the circumstances and conditions under which the board may dismiss the administrator. The administrator's performance may be subject to an annual review by the board's staff.

§177.5. *Loan Eligibility Requirements.*

(a) The board [Board] shall be the final authority in defining and interpreting all eligibility requirements, and whether an applicant has [actually] satisfied those requirements. The board [Board] may by resolution prescribe the procedures and forms to be used by applicants.

(b) For purposes of this program a veteran is a person who satisfies the requirements of [Title 40, Part 5, Chapter 175,] §175.2(c)(1) of this title (relating to Loan Eligibility Requirements). [the Texas Administrative Code relating to Loan Eligibility Requirements, as amended from time-to-time.] The unmarried surviving spouse of a veteran shall be eligible to participate in this program if he or she satisfies the requirements of [Title 40, Part 5, Chapter 175,] §175.2(c)(2) of this title. [relating to Loan Eligibility Requirements, as amended from time-to-time.]

(c) A veteran may be able to obtain more than one housing assistance loan under this chapter, provided that all previous program [Veterans Housing Assistance Program] loans have been repaid in full and that only one home may be financed by a veteran at any time

through the program. However, for purposes of this chapter, an eligible veteran may obtain both a purchase money loan and a home improvement loan under the program. [Veterans Housing Assistance Program.] An eligible veteran may also receive a loan under the Veterans Land Program. [land program.]

(d) If both spouses [a husband and wife] are individually eligible to participate in the program, nothing herein shall be construed to prohibit them from applying for a loan to jointly purchase the same home. The board [Board] may make a loan for the purchase of the same home by two veterans who are spouses, [husband and wife,] but only in the event that both spouses together satisfy the loan qualification requirements of the participating lending institution. The total amount of this loan shall not exceed the maximum amount allowable for a home mortgage loan through the VA. [United States Department of Veterans Affairs or any successor agency.]

§177.7. *Qualifying Lending Institutions.*

(a) (No change.)

(b) No application shall be approved unless the applicant:

(1) is duly organized, validly existing, and in good standing under the laws governing its creation and existence and is duly authorized and qualified to originate and service residential housing loans in the State of Texas and transact all business contemplated by this chapter [Chapter 177 of this title] and the Texas Natural Resources Code, Chapter 162;

(2) is, at the time of the origination of any conventional mortgage loan, an FNMA or FHLMC-approved [FHLMC approved] seller and servicer of conventional mortgages, or an institution, the deposits of which are insured by FDIC or FSLIC, and will continue to be so approved at all times thereafter, so long as the applicant shall continue to serve in the capacity contemplated by the program;

(3) is, at the time of origination of any mortgage loan which has FHA insurance, an FHA-approved mortgagee and an FNMA or FHLMC-approved [FHLMC approved] seller and servicer of FHA-insured [FHA insured] mortgages, and will continue to be so approved at all times thereafter, so long as the applicant shall continue to serve in the capacity contemplated by the program;

(4) is, at the time of origination of any mortgage loan which has a VA guaranty, an eligible lender for mortgages guaranteed by the VA and an FNMA or FHLMC-approved [FHLMC approved] seller and servicer of VA guaranteed mortgages, and will continue to be so approved at all times thereafter, so long as the applicant shall continue to serve in the capacity contemplated by the program;

(5) - (7) (No change.)

(c) - (d) (No change.)

§177.8. *Qualifying Homes.*

(a) (No change.)

(b) In addition to other qualification requirements, the home must be occupied by the veteran within 60 days of closing and must be maintained as the veteran's principal residence for three consecutive years from date of purchase. [purchase, except as hereinafter provided.] The administrator and the participating lending institution servicing the veteran's loan will verify that the three-years [three years] residency requirement is satisfied and report any violation to the board. In the event of a violation, the board may increase the interest rate on its loan to a higher rate or may accelerate all principal and interest on its loan. The board may, in its discretion, adopt any other remedy it deems appropriate.

(c) (No change.)

(d) In addition to any requirements or specifications placed on the type and quality of home by the participating lending institution, the home must be on a permanent foundation that is part of the real estate. "HUD-code manufactured homes," as defined by the Texas Occupations Code (Code), §1201.003, [Texas Civil Statutes, Article 5221f, §3,] are eligible under the program if they meet FNMA or FHLMC guidelines; however, "mobile homes," as defined by that same section of the Code, [Texas Civil Statutes, Article 5221f, §3,] are not eligible. Any other type of home will be considered on a case-by-base [ease by ease] basis by the administrator under guidelines approved by the board.

(e) The home in which a veteran actually resides may be eligible for a home improvement loan [~~as such loans are commonly defined in the real estate lending industry~~] if the home and the veteran meet the qualification requirements established by the board for a home improvement loan. The board will adopt guidelines setting forth the requirements for obtaining a home improvement loan through the program, whether FHA Title I or other. The guidelines will be provided to all participating lending institutions. The board shall establish the maximum loan amounts for home improvement loans by resolution.

§177.10. Loan Security.

(a) (No change.)

(b) The security for the board's loan will be provided by:

(1) (No change.)

(2) mortgage insurance providing for repayment of at least 50% of the total outstanding principal balances of all loans, or repayment of at least 50% of all anticipated losses, based upon the administrator's analysis and forecast of potential losses shown by the actual experience of the mortgage lending industry on similar types of loans. The board may contract with a mortgage insurance company for pooled coverage or with individual companies for insurance on each loan, or the board may elect to be self-insured [self insured] in part or in whole in order to meet the requirements of the Texas Natural Resources Code, §162.011(d); and

(3) (No change.)

(c) - (d) (No change.)

§177.12. Assumptions.

(a) A loan under this program may be assumed after obtaining approval of the board and the participating lending institution in writing and by complying with the following requirements: [~~requirements.~~]

(1) The original veteran borrower must have occupied the home as a principal residence for at least three years from the date of purchase;[.]

(2) All mature interest, principal, and taxes must have been paid;[.]

(3) The party wishing to assume the loan must meet the qualification requirements of the participating lending institution; and[.]

(4) The assumption agreement must be on forms approved by the administrator and the board and must be executed by the chairman [~~of the board~~].

(b) The board may in its discretion waive the requirement that the original veteran occupy the home as a principal residence for three consecutive years if it deems a waiver to be in the best interests of the program or upon receiving and approving evidence of one of the following circumstances:

(1) - (3) (No change.)

(4) forced sale of the home due to:

(A) (No change.)

(B) move required by change in the employment of the veteran or veteran's spouse; or

(C) (No change.)

(c) (No change.)

(d) The veteran shall not make any other attempt to sell, convey, rent, or lease the property purchased under this program except in the manner prescribed in this chapter [~~these rules~~] and the Texas Natural Resources Code (Code), Chapter 162. Any attempt to sell, assign, transfer, convey, rent, or lease the property purchased under this program without the express written approval of the board shall be deemed a violation of this chapter and Chapter 162 of the Code [~~these rules and the Veterans Housing Assistance Act~~] and will be subject to the provisions of the [Natural Resources] Code, §162.016(d).

§177.13. Rights of Board.

The board may reject any veteran's loan application and shall not be liable for any loss resulting from such rejection. [~~The board is the final authority is determining the interpretation and application of these rules on a case by case basis.~~]

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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Jennifer Jones

Chief Clerk and Deputy Land Commissioner

Texas Veterans Land Board

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For further information, please call: (512) 475-1859



40 TAC §177.14

The repeal is proposed pursuant to Section 162.003 of the Texas Natural Resources Code (Code), which requires the Board to adopt rules governing the administration of the veterans housing assistance fund and the Veterans' Housing Assistance Program, the creation of Program-related loans, the criteria for approving lending institutions, the use of insurance on these loans and homes financed under the Program, the verification of occupancy of such homes, and the terms and conditions of any contracts made with lending institutions related to such loans;

The Code affected by the proposed repeal is Chapter 162 of the Texas Natural Resources Code.

§177.14. Loan Amounts.

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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Chief Clerk and Deputy Land Commissioner

Texas Veterans Land Board

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For further information, please call: (512) 475-1859

CHAPTER 178. TEXAS STATE VETERANS CEMETERIES

The Texas Veterans Land Board ("Board") proposes amendments to Texas Administrative Code, Title 40, Part 5, Chapter 178, §§178.1, 178.5, and 178.6, and the repeals of §§178.2 - 178.4 (collectively, "the proposal").

The Board identified the need for the proposal during its review of this chapter's rules, conducted pursuant to Section 2001.039 of the Texas Government Code, the adoption of which can be found in the Review of Agency Rules section of this issue. At its May 13, 2025 meeting, the Board unanimously approved the readoption of this chapter with the proposal.

The proposed amendments to §178.1 remove a definition for the Board because it is already defined in Section 164.002 of the Texas Natural Resources Code (Code), revise a definition for Veterans Cemeteries to align with Section 164.002 of the Code and to incorporate the Veterans Cemetery Grants Program ("Program") requirements, remove definitions for Chairman of the Board and the Veterans Cemetery Committee because the terms are not used in this chapter, update citations to rules for the Program in Title 38, Chapter 39 of the Code of Federal Regulations outlining eligible relatives for interment related to the Program, and update the definition of veteran to include members of the Space Force, as provided for in 38 U.S.C. §101(2).

The proposed amendments to §178.6 limit those interred in TSVCS for whom the Board will seek plot allowance reimbursements to those meeting USDVA eligibility requirements.

The repeal of §178.2 is proposed because it outlines the Board's authorities related to TSVCS provided for in Chapter 164 of the Code.

The repeal of §178.3 is proposed because its provisions are similar to Section 164.004 of the Texas Natural Resources Code.

The repeal of §178.4 is proposed because its provisions are unnecessary. Chapter 164 of the Code and related federal regulations for TSVCS under 38 C.F.R. Part 39 indicate that any would-be TSVCS must be newly constructed. Also, that TSVCS must adhere to any applicable laws, regulations, and requirements pertaining to their establishment, operations, and funding is evident.

In addition, throughout the chapter, references to the Board are made lower-case to align with their occurrences throughout Chapters 161, 162, and 164 of the Code and editorial and grammatical changes are made to improve the rules' readability.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Dr. John Kelley, the Board's Director of Veterans Cemeteries, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for the state or local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Dr. Kelley has determined that for each year of the first five years the proposal is in effect, there will be no economic effect on businesses or individuals.

LOCAL EMPLOYMENT IMPACT STATEMENT: Dr. Kelley has determined that the proposal will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Dr. Kelley provides the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposal will be in effect, the Board has determined the following:

- (1) the proposal will not create or eliminate a government program;
- (2) implementation of the proposal will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposal will not require an increase or decrease in future legislative appropriations to the Board;
- (4) the proposal will not require an increase or decrease in fees paid to the Board;
- (5) the proposal does not create a new regulation;
- (6) the proposal will not expand, limit, or repeal an existing regulation;
- (7) the proposal will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposal will not affect this state's economy.

Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Legal Assistant, Texas General Land Office, 1700 Congress Avenue, Austin, Texas 78701, or by email to walter.talley@glo.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

40 TAC §§178.1, 178.5, 178.6

The amendments are proposed pursuant to Section 164.004 of the Texas Natural Resources Code, which allows the Board to adopt rules concerning the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, furnishing, and equipping Veterans Cemeteries.

The code affected by the proposed amendments is Chapter 164 of the Texas Natural Resources Code.

§178.1. Definitions.

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

- [(1)] Board--The Veterans Land Board of the State of Texas.}]
- [(2)] Chairman--The commissioner of the General Land Office who is also chairman of the Veterans Land Board.}]
- [(3)] Committee--Veterans Cemetery Committee, consisting of the Board, the Chairman of the Texas Veterans Commission, and two members of the veteran's community appointed by the Chairman of the Texas Veterans Committee.}]

(1) [(4)] Eligible Relative--As defined by the USDVA rules governing the Veterans [State] Cemetery Grants Program [Grants], 38 C.F.R. §39.10, [§39.2(a)] to include a veteran's spouse [wife, husband],

surviving spouse, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.

(2) ~~[(5)]~~ TSVC--A veterans cemetery, as defined under the Texas Natural Resources Code, §164.002 that falls under the Veterans Cemetery Grants Program ~~[Texas State Veterans Cemetery, a burial ground operated solely for the burial of veterans and the eligible relatives].~~

(3) ~~[(6)]~~ USDVA--The United States Department of Veterans Affairs or any successor thereto.

(4) ~~[(7)]~~ Veteran--As defined by ~~[defined]~~ 38 U.S.C. §101(2) and ~~[the USDVA rules governing State Cemetery Grants,]~~ 38 C.F.R. §39.2, ~~[(39-1(h))]~~ meaning a person who served in the active military, naval, ~~[or air]~~ air, or space service and who died while in service or was discharged or released therefrom under conditions other than dishonorable.

§178.5. Burial Eligibility Criteria.

For each TSVC, the board ~~[Board]~~ will allow for the interment of veterans and eligible relatives as defined by the USDVA laws and regulations. In addition, the board ~~[Board]~~ will allow for the interment of Texas military forces members killed on state active duty or during state training and other duty, as defined in Chapter 437 of the Texas Government Code.

§178.6. Fees.

(a) The board ~~[Board]~~ must approve all fees, expenses and charges for interment, disinterment, and related services for a ~~[the]~~ TSVC.

(b) (No change.)

(c) Each TSVC shall seek reimbursement from the USDVA of the plot allowance for interment of veterans meeting USDVA eligibility requirements ~~[veterans]~~. A TSVC shall apply no additional charges for interment, disinterment, or related services for veterans.

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 May 18, 2025.

TRD-202501700

Jennifer Jones

Chief Clerk and Deputy Land Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: June 29, 2025

For further information, please call: (512) 475-1859

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40 TAC §§178.2 - 178.4

The repeals are proposed pursuant to Section 164.004 of the Texas Natural Resources Code, which allows the Board to adopt rules concerning the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, furnishing, and equipping Veterans Cemeteries.

The code affected by the proposed repeals Chapter 164 of the Texas Natural Resources Code.

§178.2. Authority.

§178.3. Funding.

§178.4. Requirements.

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 May 18, 2025.

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