



GOVERNOR GREG ABBOTT

To: Frank Denton, Chair
Lisa Hill, Executive Director
Helen Kelley, General Counsel
Texas State Board of Plumbing Examiners

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: November 3, 2021

Subject: Proposed Title 22 Texas Administrative Code Section 365.5 (RCD Rule Review #2021-009), and Proposed Title 22 Texas Administrative Code Sections 365.22 and 365.24 (RCD Rule Review #2021-014)

I. Syllabus

The Texas State Board of Plumbing Examiners (“board”) filed an intent to review 22 TAC Chapter 365 pursuant to Section 2001.039, Texas Government Code.¹ The board simultaneously proposed the repeal and replacement of 22 TAC §365.5, which establishes the requirements to renew a license, registration, or endorsement, and proposed new 22 TAC §365.24, which creates exemptions from continuing education and training requirements for certain individuals.² Pursuant to Section 57.106(g), Texas Occupations Code, the Regulatory Compliance Division (“division”) initiated a review of proposed §§365.5 and 365.24, as well as §365.22, which relates to licensing procedures for military spouses. The board submitted to the division for review proposed §365.5 on September 28, 2021, and §365.22 and proposed §365.24 on October 1, 2021.³ The division invited public comments on the rules for periods ending October 29 and November 1, 2021, respectively, and received one comment in support of the rules.

Having completed its review of proposed §§365.5 and 365.24, the division has determined that those proposed rules are consistent with state policy and may be adopted. However, during the course of the review, the board provided information to the division indicating its intent to

¹ 46 Tex. Reg. 4861 (2021) (notice of intent to review 22 TAC ch. 365) (published Aug. 6, 2021) (Tex. State Bd. Plumbing Exam’rs.).

² 46 Tex. Reg. 4818 and 4829 (2021) (to be codified at 22 TAC §§365.5 and 365.24) (proposed Aug. 6, 2021) (Tex. State Bd. Plumbing Exam’rs.).

³ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Sept. 28, 2021), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); and Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Oct. 1, 2021), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

substantially amend §365.22.⁴ Subsequent to learning of the board's intent, the division withdrew its review of that rule on the condition that the board publishes amendments to the rule in the *Texas Register*. Once published, the board is required to resubmit the amendments to the division as a new submission.⁵

II. Analysis

Following significant changes to Chapter 1301, Texas Occupations Code, by House Bill 636 during the 87th Regular Legislative Session, the board proposed rulemaking to implement the new annual renewal requirement for endorsements, as well as to update exemptions to continuing education and training requirements.⁶ Because conditions on renewal, including continuing education and training requirements, can create barriers to ongoing market participation and may increase the cost of compliance for licensees, proposed §§365.5 and 365.24 may affect competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code.

A. The renewal requirements in proposed §365.5 are consistent with state policy.

Section 1301.401(a) provides that all licenses, registrations, and endorsements renew on an annual basis, subject to payment of the required fee, which reflects the alignment of renewals for endorsements with those for licenses.⁷ Additionally, Sections 1301.404 and 1301.405 require licensees and registrants to complete annual continuing education or training prior to renewing their credentials with the board. Proposed §365.5(a) simply reiterates these requirements. Subsection (b) provides that incomplete applications for renewal could subject a plumber to late fees, as authorized by Section 1301.403(b) and (c). Finally, proposed §365.5(c) clarifies the period during which a plumber is unlicensed due to a late renewal for the purpose of prohibiting unlicensed plumbing work, consistent with Sections 1301.351(a) and 1301.403(a). Thus, the general requirements to annually renew credentials with the board, the potential for late fees, and the period in which a plumber is considered unlicensed, as set forth in proposed §365.5, are consistent with state policy.⁸

⁴ Agency Response to Request for Additional Information (Oct. 8, 2021), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

⁵ The division received one comment regarding §365.22, which will be considered during the re-review of that rule.

⁶ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Sept. 28, 2021), at 1; Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Oct. 1, 2021), at 1.

⁷ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Sept. 28, 2021), at 1; Acts of 2021, 87th Leg., R.S., ch. 137 (H.B. 636), Sec. 18.

⁸ Language similar to current §365.5(g), exempting military service members from paying late renewal fees, is not included in the proposed rule language. Current §365.5(g) reflects Section 55.002, Texas Occupations Code, which requires state agencies to exempt military service members from increased fees or other penalties incurred for late renewals incidental to their military service. The board has indicated that it intends to incorporate this language into a rule separate from proposed §365.5. Agency Response to Request for Additional Information (Oct. 8, 2021), at 1.

B. The exemptions to continuing education and training requirements in proposed §365.24 are consistent with state policy.

Section 55.003(1), Texas Occupations Code, requires regulatory agencies to provide military service members with two additional years to complete continuing education requirements. Additionally, Section 1301.404(f) allows the board to exempt certain persons from continuing education requirements, and Section 1301.405(c) from training requirements, if doing so is in the public interest. Pursuant to that authority, proposed §365.24(1) completely exempts military service members from continuing education and training requirements as long as documentation establishes active duty during the relevant time period. The board points out that the two additional years guaranteed under Section 55.003(1) may be insufficient for plumbers on active duty to catch up on continuing education courses, as the accrual of past due courses can impose burdens on military service members transitioning into civilian life, and may result in a break in continuity of licensure.⁹ Thus, because the exemption exceeds the flexibility required in Section 55.003, proposed §365.24(1) is consistent with state policy.

Proposed §365.24(2) and (3) maintains the exemptions in current 22 TAC §365.5(h) for board employees who review course materials or monitor courses, and for approved course instructors. Because those plumbers will have reviewed or taught continuing education or training courses, the board asserts that “having [those individuals] take continuing education courses would provide limited additional value to them or the public.”¹⁰ Sections 1301.404(f) and 1301.405(c) grant the board authority to determine groups of individuals for whom continuing education or training requirements would not serve a public interest, and the board provides a rational explanation for exempting employees and instructors who are already exposed to significant continuing education or training material. Thus, the exemptions in proposed §365.24(2) and (3) are also consistent with state policy.

III. Determination

Based on the above analysis, proposed §§365.5 and 365.24 are approved by the division and may be adopted.

⁹ The board also considers the accumulation of continuing education requirements that may be past due from years in which an individual was serving as a military service member to constitute a “penalty” under Section 55.002, and considers proposed §365.24(1) as carrying out that statute’s directive to adopt rules to exempt military service members from penalties for failure to renew a license. Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Oct. 1, 2021), at 1-2.

¹⁰ *Id.*, at 1.