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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter B, Quarantine Requirements, §20.13 and §20.14; and amendments to Subchapter C, §20.21, relating to Cotton Producer Advisory Committees.

The proposed amendments to §20.13 and §20.14 were requested by the Texas Boll Weevil Eradication Foundation (the Foundation). The Foundation's Technical Advisory Committee (TAC) recommended a change in the quarantine status of the Northern Blacklands (NBL) and Southern Blacklands (SBL) boll weevil eradication zones, from functionally eradicated to eradicated, to the Foundation Board of Directors at their annual meeting on November 13, 2019, in Abilene, Texas, and the Foundation Board of Directors agreed with their recommendation.

Proposed amendments change the boll weevil quarantine status of the NBL and SBL boll weevil eradication zones from functionally eradicated to eradicated. The proposed amendments are necessary to prevent the re-infestation of boll weevils in the NBL and SBL from areas in Texas currently capturing boll weevils. The proposed amendments will provide protection to the NBL and SBL eradication zones by regulating the movement of articles that could transport boll weevil and re-infest the NBL and SBL.

The proposed amendment to §20.21 modifies the term length of producer members of the Cotton Producer Advisory Committee (CPAC) of Pest Management Zones from two years to four years. Producer members of the CPAC are most often re-appointed to subsequent terms without contest. The proposed amendment to extend the term length of producer members of a CPAC from two years to four years increases the effective enforcement and administration of the cotton pest program.

Dale Scott, Director of Environmental & Biosecurity Programs, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government.

Mr. Scott has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed rules will be the continued eradication of cotton boll weevil in Texas. There will be minimal economic impact on small businesses or persons required to comply with the proposed rules.

Mr. Scott has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

1. no new or current government or Department programs will be created or eliminated;
2. no employee positions will be created, nor will any existing Department staff positions be eliminated; and
3. there will not be an increase in future legislative appropriations to the Department.

Additionally, Mr. Scott has determined that for the first five years the proposed rules are in effect:

1. there will not be an increase in fees paid to the Department;
2. there will be no new regulations created by the proposal;
3. there will be no expansion, limitation or repeal of existing regulations;
4. there will be an increase to the number of individuals subject to the proposed rule's applicability, as there are additional restrictions on the movement of regulated articles to the NBL and SBL; and
5. the proposal will have a positive impact on the Texas economy, as it will reduce the potential of boll weevil re-infestation in the NBL and SBL.

Written comments on the proposal may be submitted to Dale Scott, Director of Environmental & Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: RuleComments@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.13, §20.14

The amendments are proposed under §74.009 of the Texas Agriculture Code, which requires the Department employ all constitutional methods to control and eradicate cotton pests that scientific research demonstrates to be successful; §74.122, which authorizes the Department to adopt rules relating to quarantining areas of this state that are infested with the boll weevil; §74.003, which authorizes the Department to appoint cotton producers to an administrative committee that shall govern each pest management zone; and §74.006, which authorizes the Department to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program.
Chapter 74 of the Texas Agriculture Code is affected by the proposal.

§20.13. Functionally Eradicated Areas.
(a) (No change.)
(b) The [Northern Blacklands (NBL), Southern Blacklands (SBL)], Upper Coastal Bend (UCB) and South Texas Winter Garden (STWG) Boll Weevil Eradication Zones, as defined in the Texas Agriculture Code, §74.1021, have been declared as functionally eradicated by the Commissioner.
(c) - (d) (No change.)

(a) (No change.)
(b) The West Texas Maintenance Area, as provided in §3.702 (relating to West Texas Maintenance Area), the Northern Blacklands (NBL) Boll Weevil Eradication Zone, as provided in §3.116 (relating to Northern Blacklands Boll Weevil Eradication Zone), and the Southern Blacklands (SBL) Boll Weevil Eradication Zone, as provided in §3.114 (relating to Southern Blacklands Boll Weevil Eradication Zone), have been declared as eradicated by the Commissioner.
(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on March 16, 2020.
TRD-202001133
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.21
The amendments are proposed under §74.009 of the Texas Agriculture Code, which requires the Department employ all constitutional methods to control and eradicate cotton pests that scientific research demonstrates to be successful; §74.003, which authorizes the Department to appoint cotton producers to an administrative committee that shall govern each pest management zone; and §74.006, which authorizes the Department to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program.

Chapter 74 of the Texas Agriculture Code is affected by the proposal.

(a) (No change.)
(b) The commissioner shall appoint the producer members of the Cotton Producer Advisory Committee for a term of four [two] years expiring on December 31 of the fourth [second] year. Appointees may be selected from a pool of nominees submitted by a certified cotton producer organization within the pest management zone, or nominees may be submitted for each individual county by: a County Extension Agriculture Committee; a county FSA Committee; an established agriculture business that is representative of the entire county; or any other established business or non-profit organization as designated by the department.
(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.

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TRD-202001134
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 463-7476

TITLE 22. EXAMINING BOARDS
PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS
CHAPTER 1. ARCHITECTS
The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §1.5 and §1.65.
This proposed rulemaking action would implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out the licensing agency's duties under the previous law. Pursuant to these requirements, the board adopted §1.65(d), which identified the procedures used by the Board to implement the requirement in former Education Code §57.491. The Board also adopted definitions in §1.5 for Texas Guaranteed Student Loan Corporation and TGSLC.
However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Therefore, §1.65(d) is obsolete and it is necessary to engage in rulemaking to implement SB 37.

The proposed rule would repeal §1.65(d). This subsection identifies the process used by the Board to deny registration renewal for an architect registrant who has defaulted on the repayment of a loan guaranteed by the TGSLC. Since the Board is no longer required to deny the renewal of such individuals, and is in fact prohibited from doing so, these provisions are obsolete and contrary to the amended law. Additionally, the proposed rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §1.5. Since reference to these terms within the
board's rules is limited to §1.65(d), continued definition of these terms would be unnecessary under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislation's adoption of Senate Bill 37 has removed a barrier to licensure renewal for individuals who are in default on loans guaranteed by TGSLC. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in Senate Bill 37.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since 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.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rule and the proposed rule does 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 rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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


PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

STATUTORY AUTHORITY

The amendment of §1.5 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§1.5. Terms Defined Herein.

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

(1) - (68) (No change.)

(69) [Texas Guaranteed Student Loan Corporation (TGSLC)--A public, nonprofit corporation that administers the Federal Family Education Loan Program.]

(70) [TGSLC--Texas Guaranteed Student Loan Corporation.]

(69)(44) Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board's presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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

Filed with the Office of the Secretary of State on March 12, 2020.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners

Earliest possible date of adoption: April 26, 2020

For further information, please call: (512) 305-8519

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION.

22 TAC §1.65

STATUTORY AUTHORITY

The amendment of §1.65 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities
from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE
The proposed amendments do not affect any other statute.

§1.65. Annual Renewal Procedure.

(a) - (c) (No change.)

[(d)] If the Board receives official notice that an Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Architect's registration unless:

[(1)] (the renewal is the first renewal following the Board's receipt of official notice regarding the default;)

[(2)] [the Architect presents to the Board a certificate from TGSLC certifying that the Architect has entered into a repayment agreement for the defaulted loan; or]

[(3)] [the Architect presents to the Board a certificate from TGSLC certifying that the Architect is not in default on a loan guaranteed by TGSLC.]

[(d)(e)] If the Board receives official notice that an Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Architect's registration.

[(e)(f)] If a registration is not renewed within 2 years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §1.21 of this title (relating to Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §1.22 of this title (relating to Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least 2 years immediately preceding the date of the application.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-8519

CHAPTER 1. ARCHITECTS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §§1.26, 1.27, 1.149, and 1.153.

This proposed rulemaking action would implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action on certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of architects. The board proposes the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board proposes the amendment of §1.26, relating to Preliminary Evaluation of Criminal History for certain interested persons. The proposed rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as an architect.

The board proposes the amendment of §1.27, relating to Provisional Licensure. The proposed amendment addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Currently, §1.27 distinguishes between crimes that were and were not committed within five years of the filing of an application in determining whether the board is required to issue an architectural registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §1.27.

Therefore, the proposed amendment would eliminate the rule's reference to this factor. Additionally, the board proposes to replace an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §1.27(a)(3) with the updated reference to "Article 42A.054" of the same. Lastly, the board proposes to correct an error in the last sentence of §1.27(e) by replacing the word "provide" with "provide."
dresses implement deferred may to decisions. Since nesses, The legislature's proposed actions are in effect, the amendments will not have any significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rules are in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rules are in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will not have any significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rules are in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rules are in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will not have any significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rules are in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will not have any significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rules are in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will not have any significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.
(1) is not directly related to the Practice of Architecture as determined by the executive directory under §1.149 of this chapter (relating to Criminal Convictions);

(2) was committed earlier than five (5) years before the date the Candidate filed an application for registration;

(3) is not an offense listed in Article 42A.054 [§3g, Article 42-12], Code of Criminal Procedure; and

(4) is not a sexually violent offense, as defined by Article 62.001( 1 ), Code of Criminal Procedure.

(b) - (c) (No change.)

(d) A provisional Registrant who is subject to community supervision, mandatory supervision, or parole shall provide the Board name and contact information of the probation or parole department to which the provisional Registrant reports. The Board shall provide notice to the department upon the issuance of the provisional Certificate of Registration, as well as any terms, conditions or limitations upon the provisional Registrant's practice.

(3) (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.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-8519

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.149, §1.153

STATUTORY AUTHORITY

The amendments to §§1.149, and 1.153 are proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§1.149. Criminal Convictions.

(a) Pursuant to Chapter 53, Texas Occupations Code and §2005.052, Texas Government Code, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, issue a provisional license subject to the terms and limitations of §1.27 of this chapter (relating to Provisional Licensure), or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction for committing an offense if:

(1) the offense directly relates to the duties and responsibilities of an Architect;

(2) the offense does not directly relate to the duties and responsibilities of an Architect and was committed within five (5) years before the date the person applied for registration as an Architect;

(3) the offense is a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure.

(b) The following procedures will apply in the consideration of an application for registration as an Architect or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration.

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) The executive director may contact an Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. If the executive director intends to pursue revocation or suspension of a registration, or denial of a registration or opportunity to be examined for a registration because of a person's prior conviction of an offense, the executive director must: [The executive director shall allow the Applicant or Registrant no less than 30 days to provide a written response in sufficient detail to allow the executive director to determine whether the conduct at issue appears to directly relate to the duties and responsibilities of an Architect.]

(A) provide written notice to the person of the reason for the intended denial; and

(B) allow the person not less than 30 days to submit any relevant information to the Board.

(4) The notice provided by the executive director under this subsection must contain:

45 TexReg 2108  March 27, 2020  Texas Register
(A) a statement that the person is disqualified from being registered or being examined for registration because of the person's prior conviction of an offense specified in the notice; or

(B) a statement that:

(i) the final decision of the Board to revoke or suspend the registration or deny the person a registration or the opportunity to be examined for the registration will be based on the factors listed in subsection (d) of this section; and

(ii) it is the person's responsibility to obtain and provide to the Board evidence regarding the factors listed in subsection (d) of this section.

(5)(4) If the executive director determines the conviction might be directly related to the duties and responsibilities of an Architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Registrant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) In determining whether a criminal conviction is directly related to the duties and responsibilities of an Architect, the executive director and the Board shall consider each of the following factors:

1. the nature and seriousness of the crime;

2. the relationship of the crime to the purposes for requiring a license to practice architecture;

3. the extent to which architectural registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; and

4. the relationship of the crime to the ability or capacity assumed or fitness required to perform the duties and discharge the responsibilities of an Architect.

5. any correlation between the elements of the crime and the duties and responsibilities of an Architect.

(d) If the executive director or the Board determines under subsection (c) of this section that a criminal conviction directly relates to the duties and responsibilities of an Architect, in addition to the factors that may be considered under subsection (c) of this section, the executive director and the Board shall consider the following in determining whether to suspend or revoke a registration, disqualify a person from receiving a registration, or deny to a person the opportunity to take a registration examination:

1. the extent and nature of the Applicant's or Registrant's past criminal activity;

2. the age of the Applicant or Registrant at the time the crime was committed and the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

3. the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

4. the conduct and activity of the Applicant or Registrant prior to and following the criminal activity;

5. evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort while incarcerated or after release;

6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

7. other evidence of the Applicant's or Registrant's fitness to practice as an Architect, including letters of recommendation from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and

[6] proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.]

(e) - (g) (No change.)

(h) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

1. the reason for rejecting the application or taking action against the Registrant's certificate of registration, including any factor considered under subsections (c) or (d) of this section that served as the basis for the action;

2. notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final; and

3. the earliest date the person may appeal.

(i) (No change.)

§1.153. Deferred Adjudication.

(a) (No change.)

(b) Notwithstanding subsection (a) of this section, the executive director or the Board may consider a person to have been convicted of a criminal offense regardless of whether the proceedings were dismissed and the person was discharged as described by subsection (a) of this section if:

1. the person was charged with:

   (A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

   (B) any offense other than an offense described by subparagraph (A) of this paragraph if:

   (i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for registration; or

   (ii) a conviction for the offense would make the person ineligible for registration by operation of law; and

2. after consideration of the factors described by §1.149(c) or (d) of this chapter, the executive director or the Board determines that:

   (A) the person may pose a continued threat to public safety;

   (B) employment of the person as an Architect would create a situation in which the person has an opportunity to repeat the prohibited conduct;

   (C) the person may pose a continued threat to the public; or
(2) registration would create an opportunity for the person to engage in the same type of criminal activity as that for which the person pled guilty or nolo contendere.

(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.

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Lance Brenton
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CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §3.5 and §3.65.

This proposed rulemaking action would implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out the licensing agency's duties under the previous law. Pursuant to these requirements, the board adopted §3.65(d), which identified the procedures used by the Board to implement the requirement in former Education Code §57.491. The Board also adopted definitions in §3.5 for Texas Guaranteed Student Loan Corporation and TGSLC.

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Therefore, §3.65(d) is obsolete and it is necessary to engage in rulemaking to implement SB 37.

The proposed rule would repeal §3.65(d). This subsection identifies the process used by the Board to deny registration renewal for a landscape architect registrant who has defaulted on the repayment of a loan guaranteed by the TGSLC. Since the Board is no longer required to deny the renewal of such individuals, and is in fact prohibited from doing so, these provisions are obsolete and contrary to the amended law. Additionally, the proposed rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §3.5. Since reference to these terms within the board's rules is limited to §3.65(d), continued definition of these terms would be unnecessary under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature's adoption of Senate Bill 37 has removed a barrier to licensure renewal for individuals who are in default on loans guaranteed by TGSLC. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature's mandate enacted in Senate Bill 37.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since 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.

TAKINGS IMPACT ASSESSMENT

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

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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


PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

STATUTORY AUTHORITY

The amendment of §3.5 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person’s default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§3.5. Terms Defined Herein.

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

(1) - (60) (No change.)


[61] [63a] Vice-Chair--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair, serves as the Board’s presiding officer. If necessary, the Vice-Chair succeeds the Chair until a new Chair is appointed.

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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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8519

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.65

STATUTORY AUTHORITY

The amendment of §3.65 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate the practice of landscape architecture and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person’s default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§3.65. Annual Renewal Procedure.

(a) - (c) (No change.)

[64] If the Board receives official notice that a Landscape Architect has defaulted on the repayment of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), the Board may not renew the Landscape Architect’s registration unless:

(1) the renewal is the first renewal following the Board’s receipt of official notice regarding the default;

(2) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect has entered into a repayment agreement for the defaulted loan; or

(3) the Landscape Architect presents to the Board a certificate from TGSLC certifying that the Landscape Architect is not in default on a loan guaranteed by TGSLC.

[65] If the Board receives official notice that a Landscape Architect has failed to pay court ordered child support, the Board may be prohibited from renewing the Landscape Architect’s registration.

[66] If a registration is not renewed within 2 years after the specified registration expiration date, the registration shall be cancelled by operation of law on the two-year anniversary of its expiration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §3.21 of this title (regarding Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §3.22 of this title (regarding Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the application.

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 B. ELIGIBILITY FOR REGISTRATION

22 TAC §§3.26, §3.27

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §§3.26, 3.27, 3.149, and 3.153.
This proposed rulemaking action would implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action on certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of landscape architects. The board proposes the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board proposes the amendment of §3.26, relating to Preliminary Evaluation of Criminal History for certain interested persons. The proposed rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as an landscape architect.

The board proposes the amendment of §3.27, relating to Provisional Licensure. The proposed amendment addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Currently, §3.27 distinguishes between crimes that were and were not committed within five years of the filing of an application in determining whether the board is required to issue a landscape architect registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §3.27. The proposed amendment would eliminate the rule's reference to this factor. Additionally, the board proposes to replace an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §3.27(a)(3) with the correct reference to "Article 42A.054" of the same.

The board proposes the amendment of §3.149, related to Criminal Convictions. Subsection (a) is proposed for amendment to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession if it was committed less than five years before the filing of an application. Subsection (a) would also be amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Proposed amendments to subsections (b)(3)&(4) would implement changes to Tex. Occ. Code §§53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Proposed amendments to subsections (c) and (d) would implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (f) is proposed for amendment to implement changes to Tex. Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board proposes the amendment of §3.153, relating to Deferred Adjudication. These amendments are proposed to implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature’s adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board’s rules and the legislature’s mandate enacted in House Bill 1342.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, microbusinesses, 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.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rule and the proposed rule does 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 rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare

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


PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

STATUTORY AUTHORITY

The amendments to §3.26 and §3.27 are proposed under Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.


(a) - (b) (No Change.)

(c) Within 90 days after receiving a request which complies with subsection (b) of this section, the executive director shall issue a criminal history evaluation letter which states:

(1) a determination that a ground for ineligibility based upon criminal conduct does not exist; or

(2) a determination that the requestor is ineligible due to criminal conduct and a specific explanation of the basis for that determination, including any factor considered under §3.149(c) or (d) of this chapter (relating to Criminal Convictions) that served as the basis for the determination [the relationship between the conduct in question and the practice of Landscape Architecture].

(d) - (g) (No Change.)

§3.27. Provisional Licensure.

(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Candidate who has been convicted of an offense that:

(1) is not directly related to the Practice of Landscape Architecture as determined by the executive director under §3.149 of this chapter (relating to Criminal Convictions);

(2) was committed earlier than five (5) years before the date the Candidate filed an application for registration;

(3) is not an offense listed in Article 42A.054 §§3g, Article 42A.12, Code of Criminal Procedure; and

(4) is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) - (e) (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.

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Lance Brenton
General Counsel

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.149, §3.153

STATUTORY AUTHORITY

The amendments to §3.149 and §3.153 are proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §§§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code §§53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§3.149. Criminal Convictions.

(a) Pursuant to Chapter 53, Texas Occupations Code and §2005.052, Texas Government Code, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, issue a provisional license subject to the terms and limitations of §3.27 of this chapter (relating to Provisional Licensure), or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction for committing an offense if:

(1) the offense directly relates to the duties and responsibilities of a Landscape Architect;

(2) the offense does not directly relate to the duties and responsibilities of a Landscape Architect and was committed within five (5) years before the date the person applied for registration as a Landscape Architect;

(3) the offense is listed in Article 42A.054 §§3g, Article 42A.12, Texas Code of Criminal Procedure; or

(4) the offense is a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure.

(b) The following procedures will apply in the consideration of an application for registration as a Landscape Architect or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose
of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration.

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) The executive director may contact the Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. If the executive director intends to pursue revocation or suspension of a registration, or denial of a registration or opportunity to be examined for a registration because of a person's prior conviction of an offense, the executive director must: [The executive director shall allow the Applicant or Registrant no less than 30 days to provide a written response in sufficient detail to allow the executive director to determine whether the conduct at issue appears to directly relate to the duties and responsibilities of a Landscape Architect.]

(A) provide written notice to the person of the reason for the intended denial; and

(B) allow the person not less than 30 days to submit any relevant information to the Board.

(4) The notice provided by the executive director under this subsection must contain:

(A) a statement that the person is disqualified from being registered or being examined for registration because of the person's prior conviction of an offense specified in the notice; or

(B) a statement that:

(i) the final decision of the Board to revoke or suspend the registration or deny the person a registration or the opportunity to be examined for the registration will be based on the factors listed in subsection (d) of this section; and

(ii) it is the person's responsibility to obtain and provide to the Board evidence regarding the factors listed in subsection (d) of this section.

(5) [45] If the executive director determines the conviction might be directly related to the duties and responsibilities of a Landscape Architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) In determining whether a criminal conviction is directly related to the duties and responsibilities of a Landscape Architect, the executive director and the Board shall [will] consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice Landscape Architecture;

(3) the extent to which landscape architectural registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; [and]

(4) the relationship of the crime to the ability or['] capacity[,] or fitness needed to perform the duties and discharge the responsibilities of a Landscape Architect; and

(5) any correlation between the elements of the crime and the duties and responsibilities of a Landscape Architect.

(d) If the executive director or the Board determines under subsection (c) of this section that a criminal conviction directly relates to the duties and responsibilities of a Landscape Architect [In addition to the factors that may be considered under subsection (c) of this section, the executive director and the Board shall consider the following in determining whether to suspend or revoke a registration, disqualify a person from receiving a registration, or deny to a person the opportunity to take a registration examination:

(1) the extent and nature of the Applicant's or Registrant's past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed;

(3) [and] the amount of time that has elapsed since the Applicant's or Registrant's last criminal activity;

(4) [(3)] the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(5) [(4)] evidence of the Applicant's or Registrant's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) [(5)] other evidence of the Applicant's or Registrant's [present] fitness to practice as a Landscape Architect, including letters of recommendation, [from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and]

[(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.]

(e) - (g) (No Change.)

(h) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant's certificate of registration, including any factor considered under subsections (c) or (d) of this section that served as the basis for the action;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court.
§3.153. Deferred Adjudication.

(a) (No Change.)

(b) Notwithstanding subsection (a) of this section, the executive director or the Board may consider a person to have been convicted of [for committing] a criminal offense regardless of whether the proceedings were dismissed and the person was discharged as described by subsection (a) of this section if [upon a finding that]:

(1) the person was charged with:
   (A) any offense described by Article 62.001(5), Code of Criminal Procedure; or
   (B) an offense other than an offense described by subparagraph (A) of this paragraph if:
      (i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for registration; or
      (ii) a conviction for the offense would make the person ineligible for registration by operation of law; and
(2) after consideration of the factors described by §3.149(c) or (d) of this chapter, the executive director or the Board determines that:
   (A) [+] the person may pose a continued threat to the public; or
   (B) [+] employment of the person as a Landscape Architect [registration] would create a situation in which the person has an opportunity to repeat the prohibited conduct [an opportunity for the person to engage in the same type of criminal activity as that for which the person pled guilty or nolo contendere].

(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.

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Lance Brenton
General Counsel

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §5.5 and §5.75.

This proposed rulemaking action would implement Senate Bill 37 (86th Regular Session, 2019), which amends the law relating the effect of student loan default on the renewal of a professional license in Texas. Under former Texas Education Code §57.491, licensing agencies were prohibited from renewing the license of a person who was in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC). Additionally, licensing agencies were required to adopt rules to carry out the licensing agency's duties under the previous law. Pursuant to these requirements, the board adopted §5.75(d), which identified the procedures used by the Board to implement the requirement in former Education Code §57.491. The Board also adopted definitions in §5.5 for Texas Guaranteed Student Loan Corporation and TGSLC.

However, under SB 37, the legislature repealed Education Code §57.491. Furthermore, SB 37 enacted Occupations Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal. Therefore, §5.75(d) is obsolete and it is necessary to engage in rulemaking to implement SB 37.

The proposed rule would repeal §5.75(d). This subsection identifies the process used by the Board to deny registration renewal for a registered interior designer who has defaulted on the repayment of a loan guaranteed by the TGSLC. Since the Board is no longer required to deny the renewal of such individuals, and is in fact prohibited from doing so, these provisions are obsolete and contrary to the amended law. Additionally, the proposed rule repeals the definitions for "Texas Guaranteed Student Loan Corporation" and "TGSLC" in §5.5. Since reference to these terms within the Board's rules is limited to §5.75(d), continued definition of these terms would be unnecessary under the proposed rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature’s adoption of Senate Bill 37 has removed a barrier to licensure renewal for individuals who are in default on loans guaranteed by TGSLC. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board's rules and the legislature’s mandate enacted in Senate Bill 37.
Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since 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.

**TAKINGS IMPACT ASSESSMENT**

The agency has determined that no private real property interests are affected by the proposed rule and the proposed rule does 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 rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**LOCAL EMPLOYMENT IMPACT STATEMENT**

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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


**PUBLIC COMMENT**

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

**SUBCHAPTER A. SCOPE; DEFINITIONS**

**22 TAC §5.5**

**STATUTORY AUTHORITY**

The amendment of §5.5 is proposed under Tex. Occ. Code §1051.202, which authorizes the board to adopt reasonable rules as necessary to regulate registered interior design and Tex. Occ. Code §56.003, which prohibits licensing authorities from taking disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including denying renewal.

**CROSS REFERENCE TO STATUTE**

The proposed amendments do not affect any other statute.

§5.5. Terms Defined Herein.

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

(1) - (54) (No change.)

[(55)] Texas Guaranteed Student Loan Corporation (TGSLC) — A public, nonprofit corporation that administers the Federal Family Educational Loan Program.
ration without an opportunity for a formal hearing. If a registration is cancelled pursuant to this subsection, the registration may not be reinstated. In order to obtain a new certificate of registration, a person whose registration was cancelled pursuant to this subsection must:

(1) submit an application for registration and satisfy all requirements for registration pursuant to §5.31 of this title (relating to Registration by Examination), including the successful completion of the registration examination;

(2) submit an application for registration by reciprocal transfer and satisfy all requirements for registration by reciprocal transfer pursuant to §5.32 of this title (relating to Registration by Reciprocal Transfer); or

(3) submit an application for registration and demonstrate that he/she moved to another state and is currently licensed or registered and has been in practice in the other state for at least the 2 years immediately preceding the date of the application.

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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Lance Brenton
General Counsel
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For further information, please call: (512) 305-8519

CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (the board) proposes the amendment of Texas Administrative Code Part 1, Title 22, §§5.36, 5.37, 5.158, and 5.162.

This proposed rulemaking action would implement House Bill 1342 (86th Regular Session, 2019). HB 1342 amended Chapter 53 of the Texas Occupations Code, which addresses the consequences of criminal actions with respect to occupational licenses. In summary, the HB 1342 amendments to Chapter 53 eliminated the authority of licensing authorities to take licensure action on certain criminal offenses and supplemented the procedural requirements for an agency considering licensure action as a consequence of criminal history.

Previously, the board adopted rules implementing Occupations Code Chapter 53 as it pertains to the registration and regulation of registered interior designers. The board proposes the following amendments to these rules in order to implement the changes imposed by HB 1342.

The board proposes the amendment of §5.36, relating to Preliminary Evaluation of Criminal History for certain interested persons. The proposed rule implements amended Tex. Occ. Code §53.051(1) by requiring the executive director to identify the statutorily-required factors that served as the basis for a determination that a person requesting an evaluation is ineligible for registration as a registered interior designer.

The board proposes the amendment of §5.37, relating to Provisional Licensure. The proposed amendment addresses the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession, provided it had been committed less than five years before the filing of an application. Currently, §5.37 distinguishes between crimes that were and were not committed within five years of the filing of an application in determining whether the board is required to issue an interior design registration to a candidate. Since this distinction is no longer relevant under amended Tex. Occ. Code §53.021, it is unnecessary for this distinction to be made in §5.37. The proposed amendment would eliminate the rule’s reference to this factor. Additionally, the board proposes to replace an obsolete reference to "§3g, Article 42.12, Code of Criminal Procedure," in §5.37(a)(3) with the correct reference to "Article 42A.054" of the same.

The board proposes the amendment of §5.158, related to Criminal Convictions. Subsection (a) is proposed for amendment to implement the loss of authority in Tex. Occ. Code §53.021(a) for a licensing authority to take licensure action based on a conviction not directly related to the profession if it is committed less than five years before the filing of an application. Subsection (a) would also be amended to include an updated reference to Article 42A.054, Code of Criminal Procedure, as discussed above. Proposed amendments to subsections (b)(3) & (4) would implement changes to Tex. Occ. Code §§53.0231, 53.051(1), and 53.104(b) that require licensing authorities to observe certain procedures when considering licensure action for criminal history. Proposed amendments to subsections (c) and (d) would implement amended Tex. Occ. Code §§53.022 and 53.023, which clarifies and amends the factors that licensing authorities are required to consider in determining whether a conviction is directly related to the duties and responsibilities of a licensed occupation and, if so, whether licensure action should be taken. Subsection (h) is proposed for amendment to implement changes to Tex. Occ. Code §53.051, relating to information that must be provided to a person subject to suspension, revocation, or denial of licensure.

The board proposes the amendment of §5.162, relating to Deferred Adjudication. These amendments are proposed to implement previous legislative changes to §53.021(d), which addresses the limited circumstances in which a licensing authority may consider deferred action criminal proceedings in licensing decisions. The proposed amendments adopt the limitations imposed under the law.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. The proposed rules directly implement legislative policy. The legislation underlying this rulemaking action does not create new regulation; rather it modifies or eliminates existing regulations. The legislature’s adoption of House Bill 1342 has imposed substantive and procedural limits on the authority of licensing authorities to impose licensure action as a result of criminal convictions. As such, the statute constitutes an easing of regulatory burdens, and this rulemaking action is an implementation of that policy. The adoption of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the pro-
posed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule would not increase fees paid to the board. The proposed rule is not expected to have any significant impact on the state’s economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be consistency between the board’s rules and the legislature’s mandate enacted in House Bill 1342.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since 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.

TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rule and the proposed rule does 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 rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rule will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

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


PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.36, §5.37

STATUTORY AUTHORITY

The amendments to §5.36 and §5.37 are proposed under Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of registered interior design; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be considered by a licensing authority in making licensing determinations; Tex. Occ. Code §53.0211, which governs the issuance of provisional licenses by a licensing authority; Tex. Occ. Code §§53.022 and 53.023, which identify the factors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Texas Occ. Code Chapter 53, Subchapter D, which governs preliminary evaluations of criminal history by a licensing authority for certain interested persons.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§5.36. Preliminary Evaluation of Criminal History.
(a) - (b) (No change.)
(c) Within 90 days after receiving a request which complies with subsection (b) of this section, the executive director shall issue a criminal history evaluation letter which states:
   (1) a determination that a ground for ineligibility based upon criminal conduct does not exist; or
   (2) a determination that the requestor is ineligible due to criminal conduct and a specific explanation of the basis for that determination, including any factor considered under §5.158(c) or (d) of this chapter that served as the basis for the determination [the relationship between the conduct in question and the practice of Interior Design].
(d) - (g) (No change.)

§5.37. Provisional Licensure.
(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Applicant who has been convicted of an offense that:
   (1) is not directly related to the Practice of Interior Design as determined by the executive director under §5.158 of this chapter (relating to Criminal Convictions);
   (2) [§53.021(2) was committed earlier than five (5) years before the date the Applicant filed an application for registration];
   (3) is not an offense listed in Article 42A.054 [§3g, Article 42A.054], Code of Criminal Procedure; and
   (4) is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.
(b) - (e) (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.

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Lance Brenton
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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.158, §5.162

STATUTORY AUTHORITY

The amendments to §5.158, and §5.162 are proposed under Texas Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the
practice of registered interior design; Tex. Occ. Code §53.021, which identifies the categories of offenses that may be consid-
ered by a licensing authority in making licensing determinations; Tex. Occ. Code §§ 53.022 and 53.023, which identify the fac-
tors that a licensing authority must consider when determining whether a conviction directly relates to an occupation, and, if so, whether to take licensing action; and Tex. Occ. Code §§ 53.0231 and 53.051, which identify the procedural requirements that must be observed by a licensing authority that seeks to revoke or suspend a license or deny a license or an opportunity to be examined for licensure.

CROSS REFERENCE TO STATUTE

The proposed amendments do not affect any other statute.

§5.158. Criminal Convictions.

(a) Pursuant to Chapter 53, Texas Occupations Code and §2005.052, Texas Government Code, the Board may suspend or revoke an existing certificate of registration, disqualify a person from receiving a certificate of registration, issue a provisional license subject to the terms and limitations of §5.37 of this chapter (relating to Provisional Licensure), or deny to a person the opportunity to be examined for a certificate of registration because of the person's conviction for committing an offense if:

(1) the offense directly relates to the duties and responsibilities of a Registered Interior Designer;

(2) the offense does not directly relate to the duties and responsibilities of a Registered Interior Designer and was committed within five (5) years before the date the person applied for registration as a Registered Interior Designer;

(2) the offense is listed in Article 42A.054 [§30, Article 42.12], Texas Code of Criminal Procedure; or

(3) the offense is a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure.

(b) The following procedures will apply in the consideration of an application for registration as a Registered Interior Designer or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration.

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) The executive director may contact the Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. If the executive director intends to pursue revocation or suspension of a registration, or denial of a registration or opportunity to be examined for a registration because of a person's prior conviction of an offense, the executive director must: [The executive director shall allow the Applicant or Registrant no less than 30 days to provide a written response in sufficient detail to allow the executive director to determine whether the conduct at issue appears to directly relate to the duties and responsibilities of a Registered Interior Designer.]

(A) provide written notice to the person of the reason for the intended denial; and

(B) allow the person not less than 30 days to submit any relevant information to the Board.

(4) The notice provided by the executive director under this subsection must contain:

(A) a statement that the person is disqualified from being registered or being examined for registration because of the person's prior conviction of an offense specified in the notice; or

(B) a statement that:

(i) the final decision of the Board to revoke or suspend the registration or deny the person a registration or the opportunity to be examined for the registration will be based on the factors listed in subsection (d) of this section; and

(ii) it is the person's responsibility to obtain and provide to the Board evidence regarding the factors listed in subsection (d) of this section.

(5) If the executive director determines the conviction might be directly related to the duties and responsibilities of a Registered Interior Designer, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) In determining whether a criminal conviction is directly related to the duties and responsibilities of a Registered Interior Designer, the executive director and the Board shall consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice Interior Design;

(3) the extent to which Interior Design registration might offer an opportunity to engage in further criminal activity of the same type as that in which the Applicant or Registrant had been involved; [and]

(4) the relationship of the crime to the ability[. or capacity[. or fitness[. required to perform the duties and discharge the responsibilities of a Registered Interior Designer; and

(5) any correlation between the elements of the crime and the duties and responsibilities of a Registered Interior Designer.

(d) If the executive director or the Board determines under subsection (c) of this section that a criminal conviction directly relates to the duties and responsibilities of a Registered Interior Designer [In addition to the factors that may be considered under subsection (c) of...]

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this section], the executive director and the Board shall consider the following [in determining whether to suspend or revoke a registration, disqualify a person from receiving a registration, or deny to a person the opportunity to take a registration examination]:

(1) the extent and nature of the Applicant’s or Registrant’s past criminal activity;

(2) the age of the Applicant or Registrant at the time the crime was committed;

(3) [and] the amount of time that has elapsed since the Applicant’s or Registrant’s last criminal activity;

(4) [whether] the conduct and work activity of the Applicant or Registrant prior to and following the criminal activity;

(5) [whether] evidence of the Applicant’s or Registrant’s rehabilitative or rehabilitative effort while incarcerated or after release;

(6) evidence of the person’s compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) [whether] other evidence of the Applicant’s or Registrant’s [present] fitness to practice as a Registered Interior Designer, including letters of recommendation, [from law enforcement officials involved in the prosecution or incarceration of the Applicant or Registrant or other persons in contact with the Applicant or Registrant; and

(6) proof that the Applicant or Registrant has maintained steady employment and has supported his/her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered.

(c) - (g) (No change.)

(h) If the Board takes action against any Applicant or Registrant pursuant to this section, the Board shall provide the Applicant or Registrant with the following information in writing:

(1) the reason for rejecting the application or taking action against the Registrant’s certificate of registration, including any factor considered under subsections (c) or (d) of this section that served as the basis for the action;

(2) notice that upon exhaustion of the administrative remedies provided by the Administrative Procedure Act, Chapter 2001, Government Code, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board’s decision is final; and

(3) the earliest date the person may appeal.

(i) (No change.)

§5.162. Deferred Adjudication.

(a) (No change.)

(b) Notwithstanding subsection (a) of this section, the executive director or the Board may consider a person to have been convicted of [for committing] a criminal offense regardless of whether the proceedings were dismissed and the person was discharged as described in subsection (a) of this section if [upon a finding that]

(1) the person was charged with:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by sub-paragraph (A) of this paragraph if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for registration; or

(ii) a conviction for the offense would make the person ineligible for registration by operation of law; and

(2) after consideration of the factors described by §5.158(e) or (d) of this chapter, the executive director or the Board determines that:

(A) the person may pose a continued threat to [the] public safety; or

(B) [whether] employment of the person as a Registered Interior Designer [registration] would create a situation in which the person has an opportunity to repeat the prohibited conduct [an opportunity for the person to engage in the same type of criminal activity as that for which the person pled guilty or nolo contendere].

(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.

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Lance Brenton
General Counsel
Texas Board of Architectural Examiners
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PART 9. TEXAS MEDICAL BOARD

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2

The Texas Medical Board (Board) proposes amendments to 22 TAC §166.2 concerning Continuing Medical Education.

Section 166.2, relating to Continuing Medical Education, is proposed for amendment to require at least two hours of continuing medical education (CME) training in topics related to the prescription of opioids and other controlled substances. The amendments further proposed language requiring the completion of a course in the topic human trafficking prevention awareness. The amendments are proposed in accordance with four bills passed in the 2019 legislative session. The Board proposes to require the education for all physicians, rather than create a difficult to follow set of rules based on variables such as license issuance date, license renewal date, type of practice and issuance of DEA registration. The Board further believes that requiring all physicians to complete the new education requirement fulfills legislative intent and better protects the public.

The public benefit anticipated as a result of these rules will be to increase and enhance physician knowledge of human trafficking prevention and appropriate opioid and controlled substance prescribing, which are critical health and social issues currently affecting Texas. Requiring physicians to complete such education will decrease prescription drug abuse and diversion and help to combat human trafficking.

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Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the subsection as proposed is in effect the public benefit anticipated as a result of enacting this proposal will be as stated above.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enacting or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enacting or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enacting or administering the rule; and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enacting or administering the rule.

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule creates new regulations.
6. The proposed rule expands existing regulations as described above. The proposed rule does not repeal or limit an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule’s applicability.
8. The proposed rule does not positively or adversely affect this state’s economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act. The amendments are further proposed under the authority of House Bills 2059, 2174, 2454, and 3285 (86th Texas Legislature, R.S.). No other statutes, articles or codes are affected by this proposal.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician’s permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories and topics:

1. At least 24 credits every 24 months are to be from formal courses that are:

   A. designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;
   B. approved for prescribed credit by the American Academy of Family Physicians;
   C. designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;
   D. approved by the Texas Medical Association based on standards established by the AMA for its Physician’s Recognition Award; or
   E. approved by the board for medical ethics and/or professional responsibility courses only.

2. At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular credit of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

3. At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of the following topics:

   A. best practices, alternatives treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments;
   B. safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding:
      i. standards of care;
      ii. identification of drug-seeking behavior in patients; and
      iii. effectively communicating with patients regarding the prescription of an opioid or other controlled substances; and
   C. prescribing and monitoring of controlled substances;
   D. For physicians practicing in pain clinics, the hours required under this subparagraph shall be credited towards the 10 hours of required continuing medical education related to pain management.

Pursuant to §166.6, CME credits also include the following:

1. A minimum of 12 hours of professional development in areas including:

   A. practice management and quality improvement;
   B. patient education and support services;
   C. managed care;
   D. all areas of the Texas Diagnostic and Rehabilitation Code.

2. A minimum of 12 hours of professional development in areas related to one or more of the following diseases:

   A. diabetes;
   B. hypertension;
   C. AIDS;
   D. cancer;
   E. substance use disorder;
   F. acquired immune deficiency syndrome; and
   G. other diseases as approved by the Board.

Pursuant to §166.7, continuing education credits for the following courses and activities may be accepted by the Board:

1. Courses and activities that are approved by a continuing education program that is accredited by an agency or entity that is recognized or approved by the Board, or a board of directors of a governmental entity or political subdivision of a governmental entity.
required under 22 TAC Chapter 195.4(e), relating to Operation of Pain Management Clinics.

(E) The hours required under this subparagraph may be designated for medical ethics or professional responsibility credit for purposes of compliance with paragraph (2) of this subsection.

(4) As part of the 24 formal credits of CME required under paragraph (1) of this subsection, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed. The course shall be designated by the board for medical ethics or professional responsibility credit for the purposes of compliance with paragraph (2) of this subsection.

(5) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(6) A physician who performs forensic examinations on sexual assault survivors must have basic forensic evidence collection training or the equivalent education. A physician who completes a CME course in forensic evidence collection that:

[A] meet the requirements described in paragraph (1)(A) - (C) of this subsection; or

[B] is approved or recognized by the Texas Board of Nursing, is considered to have the basic forensic evidence training required by the Health and Safety Code, §323.0045.

(7) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

(8) A physician whose practice includes the treatment of tick-borne diseases should complete CME in the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.

[3] The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.

[4] A physician who performs forensic examinations on sexual assault survivors must have basic forensic evidence collection training or the equivalent education. A physician who completes a CME course in forensic evidence collection that:

[4A] meet the requirements described in paragraph (1)(A) - (C) of this subsection; or

[4B] is approved or recognized by the Texas Board of Nursing, is considered to have the basic forensic evidence training required by the Health and Safety Code, §323.0045.

[5] A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

[6] A physician whose practice includes the treatment of tick-borne diseases should complete CME in the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A physician may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years’ requirements, except that excess credits may not be applied to requirements set forth under paragraphs (2) and (3) of subsection (a).

(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section, subject to the limitations established under paragraph (1) of this subsection.

(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.

[c] A physician shall be presumed to have complied with this section if in the preceding 36 months the physician becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association Bureau of Osteopathic Specialists (AOA). This provision exempts the physician from all CME requirements, including the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)2 of this section. This exemption is valid for one registration period only.

(d) Maintenance of Certification, Presumption of Compliance.

(1) Except as otherwise provided in this subsection, a [A] physician shall be presumed to have complied with subsection (a)(1) and (4) [4A] of this section if the physician is meeting the Maintenance of Certification (MOC) program requirements set forth by a specialty or subspecialty member board of the ABMS or the Osteopathic Continuous Certification (OCC) program requirements set forth by the AOA, and the member board’s MOC or OCC program mandates completion of CME credits that meet the minimum criteria set forth under subsection (a)(1) of this section.

(2) Notwithstanding paragraph (1) of this subsection, a physician’s compliance with an MOC program will not be credited toward the requirements set forth under paragraphs (2), (3), and (4) of subsection (a). [This provision does not exempt the physician from the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section.]
(e) A physician may request in writing an exemption for the following reasons:

(1) the physician's catastrophic illness;
(2) the physician's military service of longer than one year's duration outside the state;
(3) the physician's medical practice and residence of longer than one year's duration outside the United States; or
(4) good cause shown submitted in writing by the physician, which provides satisfactory evidence to the board that the physician is unable to comply with the requirement for CME.

(f) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(g) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

(h) Subsection (a) of this section does not apply to a physician who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(i) This section does not prevent the board from taking board action with respect to a physician or an applicant for a license by requiring additional credits of CME or of specific course subjects.

(j) The board may require written verification of both formal and informal credits from any physician within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(k) Residency or Fellowship Training Completion, Presumption of Compliance.

(1) Except as otherwise provided in this subsection, physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

(2) Notwithstanding paragraph (1) of this subsection, completion of training in a residency or fellowship within six months prior to the registration expiration date will not be credited toward requirements set forth under paragraphs (3) and (4) of subsection (a).

(l) CME credits which are obtained during the 30-day grace period after the expiration of the physician's permit to comply with the CME requirements for the preceding two years, shall first be credited to meet the CME requirements for the previous registration period and then any additional credits obtained shall be credited to meet the CME requirements for the current registration period.

(m) A false report or false statement to the board by a physician regarding CME credits reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A physician who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500.

(n) Administrative penalties for failure to timely obtain and report required CME credits may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 of this title (relating to Disciplinary Sanction Guidelines).

(o) Unless exempted under the terms of this section, failure to obtain and timely report the CME credits on a registration permit application shall subject the physician to a monetary penalty for late registration in the amount set forth in §175.3 of this title (relating to Penalties). Any administrative penalty imposed for failure to obtain and timely report the 48 credits of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.3 of this title.

(p) A physician, who is a military service member, may request an extension of time, not to exceed two years, to complete any continuing medical education 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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Scott Freshour
General Counsel
Texas Medical Board

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For further information, please call: (512) 305-7016

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.13

The Texas Medical Board (Board) proposes amendments to 22 TAC §172.13, concerning Conceded Eminence.

The amendments to §172.13, relating to Conceded Eminence, add language to clarify the requirements for and process to obtain conceded eminence. Superfluous language is deleted. The rule has also been reorganized and renumbered for clarity.

Subsection (c) lists qualifications the Board shall consider in determining whether an applicant has recognized conceded eminence and authority in the applicant's specialty. Examination requirements have been deleted from subsection (c) and expanded upon in subsection (e).

Subsection (d) lists requirements to be shown in an application for conceded eminence. Consideration for foreign applicants who may not be able to maintain a foreign license or certificate has been made in paragraph (1)(B).

Subsection (e) lists examination requirements. Previously, subsection (c)(3) required that an applicant not have failed a licensing examination within a three-attempt limit. Subsection (e)(2) is now expanded, based on stakeholder input, to accept examinations not only accepted by the board for licensure, but also accepted for licensure in another state, territory, Canadian province, or country, or accepted for specialty board certification.

Subsection (f) lists additional requirements and documentation necessary for a conceded eminence application. Based on stakeholder input, paragraph (3) adds a substantial equivalence analysis for subspecialty training programs that have received ACGME accreditation after the applicant's participation.
Subsections (g) through (l) contain information and requirements listed in the Texas Occupations Code Annotated, §155.006, previously contained in the rule.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to clarify and simplify the process for applicants for conceded eminence. Additionally, facilities will be able to recruit and employ conceded eminence physicians who will provide valuable health care services to the citizens of the state of Texas.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years the proposed rules are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

(1) The proposed rule does not create or eliminate a government program.
(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
(4) The proposed rule does not require an increase or decrease in fees paid to the agency.
(5) The proposed rule does not create a new regulation.
(6) The proposed rule does expand, limit, or repeal an existing regulation as described above.
(7) The proposed rule does not increase the number of individuals subject to the rule’s applicability.
(8) The proposed rule does not positively or adversely affect this state’s economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. Additionally, the amendments are proposed under the authority of the Texas Occupations Code Annotated, §155.006, which provides authority for the Board to recommend and adopt rules related to the issuance of a limited license issued to an applicant by virtue of the applicant’s conceded eminence and authority in the applicant’s specialty.

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

§172.13. Conceded Emience.

(a) Pursuant to the authority of §155.006, Texas Occupations Code, the [The] board may issue a limited license to an applicant licensed or educated in another state, territory, Canadian province or country who has [pursuant to the authority of §155.006, Texas Occupations Code, by virtue of the applicant's] conceded eminence and authority in the applicant's specialty.

(b) “Conceded eminence and authority in the applicant's specialty,” as used in this section, shall mean that the physician has achieved a high level of academic or professional recognition, domestically or internationally, for excellence in research, teaching, or the practice of medicine within the applicant’s specialty, as evidenced by objective factors, including: academic appointments, length of time in a profession, scholarly publications and presentations, professional accomplishments, and awards.

(c) In determining whether an applicant has recognized conceded eminence and authority in the applicant’s specialty, the Board shall consider whether: [An applicant for a license based on conceded eminence must complete an application showing that the applicant:]

(1) the applicant has been the recipient of professional honors and awards, and professional recognition in the international or domestic medical community, for achievements, contributions, or advancements in the field of medicine, or medical research as evidenced by objective factors, including, but not limited to:[as recommended to the board by the dean, president, or chief academic officer of:]

(A) publications in recognized scientific, medical, or medical research journals, including American peer review journals; [a school of medicine in this state accredited by the LCME or AOA;]

(B) being the recipient or nominee for international or national awards for distinguished contributions to the advancement of medicine or medical research; [The University of Texas Health Center at Tyler;]

(C) acknowledgement of expertise from recognized American authorities in the applicant's field of medical specialty; and [The University of Texas M.D. Anderson Cancer Center; or]

(D) other professional accomplishments as determined meritorious in the discretion of the Board, [a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline;]

(2) the recommending institution is unable to recruit, after good faith effort, a physician with the same sub-specialty who is: either already licensed in Texas or is eligible for an unrestricted license in
Texas; and [is expected to receive an appointment at the institution or program making the recommendation under paragraph (1) of this subsection;]

(3) other full licensure options are available to the applicant [has not failed a licensing examination within the three-attempt limit provided by §163.6(b) and §163.6(c)(1) of this title;]

[(4) has passed the Texas Medical Jurisprudence Examination;]

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, as defined by §163.1(a)(9) of this title;

(7) has conceded eminence and authority in a medical specialty identified in the application;

(8) has not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the applicant's peers in a local, regional, state, or national professional medical association or staff of a hospital;

(9) has not been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine, or a misdemeanor involving moral turpitude; and

(10) has read and will abide by board rules and the Medical Practice Act.

(d) An applicant must complete an application and present satisfactory proof to the board that the applicant: Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure—Regular).]

(1) is a graduate of:

(A) a medical school which is recognized or accredited by the Liaison Committee on Medical Education (LCME) of the Association of American Medical Colleges, Royal College of Physicians in Canada or the American Osteopathic Association (AOA); or

(B) a foreign medical school and

(i) holds a valid foreign medical license or registration certificate issued by the United States or a foreign country on the basis of a foreign examination, and has practiced medicine for at least 10 years, 5 years of which occurred immediately preceding the date applications is made to the Board; or

(ii) held a valid foreign medical license or certificate at the time of coming to the United States and has since continuously worked under a Faculty Temporary License; and

(2) is recommended to the board by the dean, president, or chief academic officer of:

(A) a school of medicine in this state accredited by the LCME or AOA;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education, that exceeds the requirements for eligibility for first board certification in the discipline; and

(3) is expected to receive an appointment at the institution or program making the recommendation under paragraph (2) of this subsection; and

(4) has demonstrated conceded eminence and authority in a medical specialty identified in the application.

(e) Examination Requirements. An applicant must submit evidence that applicant: [The holder of a conceded eminence license shall be limited to the practice of only a specialty of medicine for which the license holder has conceded eminence and authority, as identified in the application. The license holder may only practice medicine within the setting of the institution or program that recommended the license holder under subsection (c)(1) of this section, including a setting that is part of the institution or program by contractual arrangement.]

(1) has passed the Texas Medical Jurisprudence Examination; and

(2) has passed an examination that is:

(A) accepted by the board for licensure as defined in §163.6(a) of this title (relating to Examinations Accepted for Licensure), and has not exceeded the number of failed attempts allowed for a licensing exam as provided by §163.6(b) of this title; or

(B) accepted for physician licensure in another state, territory, Canadian province, or country; or

(C) accepted for specialty board certification by:

(i) the American Board of Medical Specialties or

(ii) the American Osteopathic Association.

(f) Additional requirements and documentation for Conceded Eminence License. An applicant: [If the holder of a conceded eminence license terminates the relationship with the institution or program that recommended the license holder under subsection (c)(1) of this section, the conceded eminence license shall be considered automatically canceled. To practice medicine in Texas, the license holder must:]

(1) must submit 3 letters of recommendation from Texas physicians who are licensed in the same specialty area as the applicant and who shall attest to the candidate's conceded eminence qualifications, character, and ethical behavior; file an application with the recommendation of a new institution or program, as required by subsection (c)(1) of this section, or

(2) must submit 5 letters from renowned specialists in the applicant's discipline who attest to the applicant's eminence and qualifications; file an application for another Texas medical license or permit.

(3) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (or has completed a substantially equivalent program that has since received ACGME accreditation);

(4) has not been convicted of, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine, or a misdemeanor involving moral turpitude;

(5) has not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the appli-
The Texas Medical Board (Board) proposes amendments to 22 TAC §178.8, concerning Appeals.

The amendments to §178.8 relating to Appeals, adds language requiring that the board receive a complainant’s appeal no later than 90 days after the complainant’s receipt of notice of the board’s dismissal of the complaint.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to improve the efficiency and efficacy of board resolution of complaints when hearing and deciding an appeal, by better ensuring that the board is able to consider evidence and information generated during a period closer in time to the alleged violation at issue.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years the proposed rules are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule and there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

(1) The proposed rule does not create or eliminate a government program.
(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
(4) The proposed rule does not require an increase or decrease in fees paid to the agency.
(5) The proposed rule does not create a new regulation.
(6) The proposed rule does expand, limit, or repeal an existing regulation as described above.

(7) The proposed rule does not increase the number of individuals subject to the rule’s applicability.

(8) The proposed amendments do not positively or adversely affect this state’s economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The amendments are also proposed under the authority of the Texas Occupations Code annotated, Chapter 154.

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

§178.8. Appeals.

(a) Initiation. Following the receipt of the notice of dismissal of a complaint, the complainant may appeal the dismissal to the board. To be considered by the board, the appeal must:

1. be in writing; [and]

2. list the reason(s) for the appeal, providing sufficient information to indicate that additional review is warranted[]; and

3. must be received by the Board no later than 90 days after the complainant’s receipt of notice of the dismissal of the complaint.

(b) Review of an Appeal. Appeals will be considered by a disciplinary committee of the board. Upon review of an appeal, subject to the approval of the board, a disciplinary committee of the board may determine any of the following:

1. the [The] investigation should remain closed;

2. additional [Additional] information needs to be obtained before a determination on the appeal can be made;

3. additional [Additional] information needs to be obtained before a determination can be made as to whether a violation of the Act occurred; or [and]

4. the [This] case should be referred to an ISC for a determination.

(c) Personal Appearances. The complainant has the right to personally appear before a disciplinary committee of the board. This appearance must be scheduled through agency staff. This appearance may be limited in time and scope by the chair of the disciplinary committee of the board [that the appeal is before].

(d) Notice. The complainant shall be notified of the Board's decision concerning the appeal.

(e) Appeals Limited. Only one appeal shall be allowed for each complaint.

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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Scott Freshour
General Counsel
Texas Medical Board
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CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM [AND REHABILITATION ORDERS]

22 TAC §§180.1 - 180.4

The Texas Medical Board (Board) in agreement with the Texas Physician Health Program (TXPHP), proposes amendments to the title of Chapter 180, Texas Physician Health Program and Rehabilitation Orders, and to §180.1, concerning Purpose, §180.2, concerning Definitions, §180.3, concerning Texas Physician Health Program, and §180.4, concerning Operation of Program. The Board also proposes the repeal of §180.7, concerning Rehabilitation Orders.

The amendment to the title of Chapter 180 changes the name to Texas Physician Health Program.

The amendments to §180.1, entitled Purpose, describe the authority for rulemaking and the purpose of the Texas Physician Health Program under Chapter 167 of the Texas Occupations Code.

The amendments to §180.2, entitled Definitions, update existing definitions and add new definitions in order to maintain consistency within this chapter.

The amendments to §180.3, entitled Texas Physician Health Program, clarify and update existing language to ensure consistency with current program processes and TXPHP Governing Board directives.

The amendments to §180.4, entitled Operation of Program, clarify and update existing language to ensure consistency with current program processes and TXPHP Governing Board directives.

The repeal of §180.7, entitled Rehabilitation Orders, eliminates outdated rule language that was historically necessary when TXPHP was created in 2009. Historically, this section transferred licensees who were being confidentially monitored by the Board into the newly created Texas Physician Health Program. The Board no longer issues confidential Rehabilitation Orders and therefore this section is no longer necessary.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to ensure that Texas Physician Health Program participants are monitored in a consistent and fair manner, under the authority of Chapter 167 of the Texas Occupations Code.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect.
there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendment will be in effect, Mr. Freshour 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 require an increase or decrease in fees paid to the agency. Proposed amendments to §180.4 concerning Operation of Program, would increase the yearly fee for physicians and physician assistants by $200 and decrease the yearly fee by $200 for all other licensees. The purpose of this change is to take into account the disparate earning potential between the many different licensees enrolled in TXPHP as well as to account for inflation in the 10 years since the current fees were promulgated. Section 167.011 of the Texas Occupations Code states that the Medical Board by rule shall set and collect reasonable and necessary fees from program participants in amounts sufficient to offset, to the extent reasonably possible, the cost of administering Chapter 167 of the Texas Occupations Code.


(6) The proposed rules expand, limit, or repeal an existing regulation as described above.

(7) The proposed rules do not increase the number of individuals subject to the rule’s applicability.

(8) The proposed rules do not positively or adversely affect this state’s economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

The amendments are also proposed under the authority of the Texas Occupations Code annotated, Chapter 167.

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

§180.1 Purpose.
[Purpose of chapter. The purpose of this chapter is to establish the Texas Physician Health Program for the purpose of encouraging the wellness of program participants pursuant to the Medical Practice Act ("Act"), Texas Occupations Code Annotated §§167.001 - 167.011.]

(a) Pursuant to Chapter 167 of the Texas Occupations Code, the Board is authorized to adopt rules relating to the Texas Physician Health Program.

(b) The purpose of the Texas Physician Health Program is to promote the wellness of program participants and to promote the treatment of health conditions that may compromise the ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues.

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

[(1) Acupuncture Board--Texas State Board of Acupuncture Examiners.]

[(2) [3] Agency--the Texas Medical Board, the Texas Board of Acupuncture Examiners, and advisory boards and committees under the authority of the Texas Medical Board, [medical board, physician assistant board, and acupuncture board] collectively.

(2) Agreement--a contract entered into between a program participant and the Texas Physician Health Program, detailing the terms whereby the program participant shall be monitored by the Texas Physician Health Program. Absent waiver of confidentiality by the program participant or statutory authority for the release of this agreement, the agreement is confidential and shall not be shared beyond the TXPHP.

(3) Committee--TXPHP Advisory Committee, also referred to as the Physician Health and Rehabilitation Advisory Committee under Texas Occupations Code §167.004.

(4) Governing board--the governing board of the program.

(5) License--includes the whole or part of any Agency [board] permit, certificate, approval, registration or similar form of permission authorized by law.

(6) Medical Board or Board--the Texas Medical Board.

(7) Medical Director [director] --a physician licensed by the Board [board] who has expertise in a field of medicine relating to health issues [disorders] commonly affecting medical practitioners [physicians or physician assistants], including substance use [abuse] disorders, and who provides clinical and policy oversight for the Texas Physician Health Program [program].

(8) PA Board--the Texas Physician Assistant Board.

(9) TXPHP or Program--the Texas Physician Health Program.
§180.3. Texas Physician Health Program.

(a) Governing Board.

(1) Appointments.

(A) The president of the Medical Board in consultation with the presiding chair of the PA Board, and with the advice of stakeholders, shall appoint 11 qualified individuals with good professional character to serve on the Governing Board [governing board] of the Program [program].

(B) The appointees shall include physicians, physician assistants, and other related professionals with experience addressing health conditions commonly found in the population of monitored licensees.

(C) The appointees shall include:

(i) six physicians actively licensed in Texas who are doctors of medicine (M.D.) and have been in practice for at least five years;

(ii) two physicians actively licensed in Texas who are doctors of osteopathic medicine (D.O.) and have been in practice for at least five years;

(iii) one physician assistant who is actively licensed by the PA Board and has been in practice for at least five years;

(iv) one other licensed mental health professional with appropriate experience; and

(v) one member of the public who meets the same requirements as public members of the Medical Board as provided under §152.003 of the Texas Occupations Code.

(D) Appointees shall serve staggered six-year terms and may be reappointed by the Medical Board president after completion of a term.

(E) Appointees may not:

(i) serve on a county medical society committee on physician health and rehabilitation;

(ii) have patient populations that include Program [program] participants.

(F) An appointee may be removed if:

(i) grounds for removal exist under §152.006 of the Texas Occupations Code;

(ii) the appointee fails to meet the standards of professional conduct under §161.3 of this title (relating to Organization and Structure); or

(iii) the appointee does not otherwise meet the requirements of this chapter.

(G) If there is a vacancy on the Governing Board [governing board], the Medical Board president in consultation with the presiding chair of the PA Board and with the advice of stakeholders may appoint a new TXPHP Governing Board [board] member.

(H) The President [presiding officer] of the Governing Board shall be appointed by the Medical Board president.

(2) Responsibilities of the Governing Board. The Governing Board [governing board] shall:

(A) provide advice and counsel to the Medical Board;

(B) establish policy and procedures for the operation and administration of the program; and [C]

(C) make determinations regarding non-emergent referrals of program participants to the Agency.

(3) Conflicts of Interest. A Governing Board [governing board] member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the Governing Board [governing board] member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(b) TXPHP Advisory Committee.

(1) Appointments.

(A) The Governing Board [governing board] shall appoint six physicians and mental health care providers actively licensed in Texas with at least five years' experience in disorders commonly affecting program participants to the TXPHP Advisory Committee.

(B) Appointees shall serve at the pleasure of the Governing Board and each appointment shall be for a term of six years.

(C) If there is a vacancy on the committee, the Governing Board with the advice of the president of the Medical Board and the presiding officer of the PA Board may appoint a new committee member.

(2) Responsibilities of the Committee. The committee shall provide opinions upon request of the [governing board] Governing Board or program staff.

(3) Conflicts of Interest.

(A) A committee member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the committee member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(B) A committee member must request to be recused in any decision relating to a program participant that the committee member had treated or is currently treating.

(c) Medical Director Qualifications. The medical director:

(1) serves at the pleasure of the Medical Board;

(2) must be licensed by the Medical Board;

(3) must have expertise in a field of medicine relating to disorders commonly affecting program participants; and

(4) may not treat or supervise a program participant.

§180.4. Operation of Program.

(a) Referrals.

(1) The program shall accept a self-referral from a license applicant or licensee, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a state acupuncture program, a hospital or hospital system licensed in this state, a residency program, or the Agency [medical board, physician assistant board, or the acupuncture board].

(2) The Agency [in addition to confidential referrals to the program, the medical board, physician assistant board, and acupuncture board] may publicly or privately refer an applicant or licensee to the
(b) Eligible Program Participants. An individual who has or may have mental or physical impairment or [an alcohol/substance use disorder is eligible to participate in the Program. For individuals who have violated the standard of care as a result of the use or abuse of drugs or alcohol, committed a boundary violation with a patient or patient's family member(s), or been convicted of, or placed on deferred adjudication community supervision or deferred disposition for a felony, the medical board may publicly refer such individuals through the entry of a disciplinary order that addresses the standard of care, boundary, and/or criminal law related violations.

(c) Drug Testing.

1. The Program's [program's] drug testing shall be provided under contract for services with the vendor approved by the Texas Medical Board.

2. The Program [program] shall adopt policies and protocols for drug-testing that are consistent with those of the Agency [agency in effect on December 31, 2009, or as approved by the Texas Medical Board].

3. The Agency [agency] may monitor the test results for all program participants, provided that the identities of the program participants are not disclosed to the agency.

(d) Reports to the Agency.

1. If an individual who has been referred by the Agency [agency or a third party to the program] and does not enter into an agreement for services or a program participant is found to have committed a substantive violation of an Agreement [agreement], the Governing Board [governing board] shall report that individual to the Agency [agency] for possible disciplinary action.

2. A positive drug screen that is not attributed to a therapeutic prescription by a treating physician, shall be determined to be a substantive violation of an Agreement [agreement] by the program participant.

3. A committee of the Board shall review the report and may accept the individual or program participant for possible disciplinary action. The Agency [direct that an ISC be scheduled to review of the individual's interactions with the program. After consideration of any evidence presented at the ISC, the agency] has the option of referring the individual back to the Program [program. The referral of the individual back to the program shall be a public referral through the entry of an agreed order. The agency may pursue other disciplinary action through the agency's disciplinary process in lieu of or in addition to referral back to the program.]

(e) Fees.

1. Program participants shall pay an annual fee of $1,400.00 for physicians and PAs and $1,000.00 for all other licensees [$1,200]. Half of the annual fee shall be due upon scheduling of the intake interview. This fee is in addition to costs owed by program participants for completion of monitoring [medical care, primary treatment, continuing care, and required evaluations to include costs for drug testing] associated with a program participant's Agreement [Physician Health Program agreement.]

2. The Program [governing board] may waive all or part of the annual fee for a program participant upon a showing of good cause. Good cause may include documented financial hardship. All fee waivers shall be reported on at the next scheduled meeting of the Governing Board.

(f) Process.

1. Interview by Medical Director.

(A) Upon receipt of a referral as described in subsection (a) of this section, the applicant or licensee shall [be invited to] meet [in person] with the TXPHP Medical Director [medical director] or a member of the Advisory Committee [advisory committee] designated by the Medical Director or Governing Board President [medical director] for an interview to determine eligibility for the Program [PHP].

(B) The interview may be conducted by telephone if the individual is out of state or not physically able to meet in person.

(C) An interview may be waived if the Medical Director [medical director] determines that good cause exists. [Advisory committee members are to be given records only in relation to those individuals that they have been assigned to review.]

2. Review by Case Advisory Panel.

(A) A case advisory panel shall include three members. These members shall be the President [Presiding Officer] of the Governing Board, the Secretary of the Governing Board, [and] another member of the Governing Board who shall serve for a four-month term on a rotating basis with the other members, and one member of the Advisory Board who shall serve for a three-month term on a rotating basis. In the event that the President [Presiding Officer] and/or the Secretary is unavailable or must recuse themselves, [one or two] additional members of the Governing Board may [shall be asked to] serve on the panel.

(B) After an interview [by the medical director] has occurred, a case advisory panel may be convened at the discretion of the Medical Director[s] for the purpose of seeking advice and direction [from the case advisory panel to advise in cases relating to applicants or program participants].

(C) All cases reviewed by a case advisory panel shall be reported on at the next scheduled meeting of the Governing Board.

3. After the requirements in paragraph (1) of this subsection have been completed, the applicant or licensee shall be offered an agreement, [be] determined ineligible for the program, or discharged from TXPHP [be found to not need the services of the PHP].

4. Agreements are effective upon signature by the program participant.

5. All agreements are subject to review by the Governing Board.

(g) Evaluations. The TXPHP [PHP] may request that an applicant or licensee undergo a clinically appropriate evaluation after the person has been interviewed. The evaluation shall be considered a term of an agreement and the person will be considered a program participant at that time. If an individual refuses to undergo an evaluation, he or she may be referred to the Agency on an emergent basis or [agency] as described in subsection (d).

(h) Agreements. Agreements between program participants and the TXPHP [PHP] may include, but are not limited to, the following terms and conditions:

1. abstinence from prohibited substances and drug testing;
(2) agreement not to treat one’s own family and friends or receive treatment from family or friends, except under emergency situations;

(3) agreement not to manage one’s own medical care;

(4) participation in mutual help (self-help) groups such as Alcoholics Anonymous;

(5) participation in support groups for recovering professionals;

(6) worksite monitor;

(7) worksite restrictions; and

(8) treatment by an appropriate health care provider.

[64] Interventions. Upon receipt of credible information, the medical director may investigate and, if indicated, initiate, or otherwise facilitate, an intervention for the purpose of assisting an individual in obtaining treatment for a mental or physical condition or substance use problem. All information obtained as a part of the intervention process shall be considered confidential.

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

Filed with the Office of the Secretary of State on March 10, 2020.
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Scott Freshour
General Counsel
Texas Medical Board

Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7016

22 TAC §180.7

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §§153.001, 204.101, 205.101, and 206.101 which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §153.001, Texas Occupations Code.

Sections 167.001 - 167.011, Texas Occupations Code, are affected by this proposal.

§180.7. Rehabilitation Orders.

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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Scott Freshour
General Counsel
Texas Medical Board

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For further information, please call: (512) 305-7016

CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.1, §195.4

The Texas Medical Board (Board) proposes amendments to 22 TAC §195.1, concerning Definitions, and §195.4, concerning Operation of Pain Management Clinics.

Section 195.1, relating to Definitions, is amended to add a new definition for "personnel", distinguishing personnel from physicians.

Section 195.4, relating to Operation of Pain Management Clinics, is amended to add language distinguishing personnel from physicians who may be employed or contracted to provide medical services at a pain clinic.

The amendments are necessitated by House Bill 2454 (86th Legislature, R.S.), which sets for the new continuing education requirements in the topic of opioid prescribing and provides that the new hours may not be credited toward hours required under board rule for pain clinic personnel. The amendments are intended to clarify that a physician’s completion of the additional education hours will be credited toward the rules requiring additional education for physicians employed or contracted to provide medical services in a pain clinic found under Chapter 195, in conformance with legislative intent.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing these amendments will be to provide clarity to physicians employed or contracted to provide medical services at a pain clinic about how to comply with new continuing education requirements related to prescribing opioids and other controlled substances for the treatment of chronic pain.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years the proposed rules are in effect, there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. There are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendment. For each year of the first five years the pro-
posed rule will be in effect, Mr. Freshour 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.
(6) The proposed rules do not expand, limit, or repeal an existing regulation.
(7) The proposed rules do not increase the number of individuals subject to the rule's applicability.

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The amendments are further proposed under the authority of House Bills 2059, 2174, 2454, and 3285 (86th Texas Legislature, R.S.).

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

§195.1 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contexts indicate otherwise.

(1) Board--The Texas Medical Board.
(2) Pain management clinic--A publicly or privately owned facility for which a majority of patients are issued, on a monthly basis, a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.
(3) Personnel--Staff employed or individuals contracted to provide services at a pain clinic. The term does not include physicians.
(4) Physician--A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefor, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.
(5) Operator--An owner, medical director, or physician affiliated or associated with the pain management clinic in any capacity. Each of these individuals is considered to be operating at the pain management clinic.

§195.4 Operation of Pain Management Clinics.

(a) Purpose. The purpose of these rules is to identify the roles and responsibilities of physicians who own pain management clinics and to provide the minimum acceptable standards for such clinics.
(b) Exemptions. The rules promulgated under this title do not apply to the following settings:

(1) a medical or dental school or an outpatient clinic associated with a medical or dental school;
(2) a hospital, including any outpatient facility or clinic of a hospital;
(3) a hospice established under 40 TAC §97.403 (relating to Standards Specific to Agencies Licensed to Provide Hospice Services) or defined by 42 CFR §418.3;
(4) a facility maintained or operated by this state;
(5) a clinic maintained or operated by the United States;
(6) a nonprofit health organization certified by the board under Chapter 177 of this title (relating to Certification of Non-Profit Health Organizations);
(7) a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or
(8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and who personally uses other forms of treatment with the issuance of a prescription for a majority of the patients.
(c) Ownership. A pain management clinic may not operate in Texas unless the clinic is owned and operated by a medical director who is a physician who practices in Texas, and has an unrestricted medical license, and holds a certificate described in §195.2 of this title (relating to Certification of Pain Management Clinics). A clinic may be owned by more than one physician licensed in Texas, but a non-physician may not hold any ownership interest.
(d) Operation of Clinic. The medical director of a pain management clinic must operate the clinic in compliance with Drug Prevention and Control Act, 21 U.S.C.A. 801 et. seq. and the Texas Controlled Substances Act, Chapter 481 of the Texas Health and Safety Code, relating to the prescribing and dispensing of controlled substances.
(e) Personnel and Physician Requirements. The medical director of a pain management clinic must, on an annual basis, ensure that all personnel are properly licensed, if applicable, and that all personnel and physicians complete at a minimum [trained to include] 10 hours of continuing medical education related to pain management, and qualified for employment consistent with §195.2(b)(1) of this title.
(f) Standards to Ensure Quality of Patient Care. The medical director of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic's total number of operating hours;
(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic;
(3) establish protocols consistent with Chapter 170 of this title (relating to Pain Management); and
(4) establish quality assurance procedures to include at a minimum:

(A) a practice quality plan that requires the medical director to complete as part of the 48 credits of CME completed every 24 months as a prerequisite for registration of the physician's permit, at least 10 hours of CME in the area of pain management from formal courses that are:

(i) designated for AMA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education; or

(ii) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(B) documentation of the background, training, and certifications for all clinical staff;

(C) a written drug screening policy and compliance plan for patients receiving chronic opioids; and

(D) performance of periodic quality measures of medical and procedural outcomes and complications that may include questionnaires or surveys for activities of daily living scores, pain scores, and standardized scales.

(g) Patient Billing Procedures.

(1) The medical director of a pain management clinic must ensure that adequate billing records are maintained for all patients and made available to the board, upon request. Billing records shall include the amount paid, method of payment, and description of services.

(2) Billing records shall be maintained for seven years from the date of last treatment of the patient.

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

Filed with the Office of the Secretary of State on March 10, 2020.
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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.51

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.51, concerning Preamble and General Principles.

Background, Justification and Summary

The amendment to §501.51 relocates a portion of the definition of the practice of public accountancy so that the complete definition may be found in one location.

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 amendment will provide a better and more accessible understanding of the practice of public accountancy.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

PROPOSED RULES  March 27, 2020  45 TexReg 2133
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.

§501.51. Preamble and General Principles.

(a) These rules of professional conduct were promulgated under the Public Accountancy Act, which directs the Texas State Board of Public Accountancy to promulgate rules of professional conduct "in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to ensure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public."

(b) The services usually and customarily performed by those in the public, industry, or government practice of accountancy involve a high degree of skill, education, trust, and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designations to their clients, employers and to the public in general. These obligations include maintaining independence in fact and in appearance, while in the client practice of public accountancy, continuously improving professional skills, observing GAAP and GAAS, when required, promoting sound and informative financial reporting, holding the affairs of clients and employers in confidence, upholding the standards of the public accountancy profession, and maintaining high standards of personal and professional conduct in all matters.

(c) The board has an underlying duty to the public to ensure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting the bright minds essential to adequately serving the public interest.

(d) These rules recognize the First Amendment rights of the general public as well as licensees and do not restrict the availability of accounting services. However, public accountancy, like other professional services, cannot be commercially exploited without the public being harmed. While information as to the availability of accounting services and qualifications of licensees is desirable, such information should not be transmitted to the public in a misleading fashion.


(f) Finally, these rules also recognize the duty of certified public accountants to refrain from committing acts discreditable to the profession. These acts, whether or not related to the accountant's practice, impact negatively upon the public's trust in the profession.

(g) In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

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

Filed with the Office of the Secretary of State on March 13, 2020.
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J. Randal (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 26, 2020
For further information, please call: (512) 305-7842

22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52, concerning Definitions.

Background, Justification and Summary

The amendment to §501.52 corrects three typographical errors in the current rule and locates the complete definition of the practice of public accountancy in the definition of professional accounting 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 amendment will provide greater accessibility and clarity to the definition of the practice of public accountancy.

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

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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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.52 Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a person and which has reference to the availability of the person to perform Professional Accounting Services;

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the AICPA, PCAOB, or another national or international accountancy organization recognized by the board;

(B) a review or compilation required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA or another national or international accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA or another national or international accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international accountancy organization recognized by the board;

(5) "Board" means the Texas State Board of Public Accountancy;

(6) "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;

(7) "Client" means a party who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service or professional accounting work;

(8) "Client Practice of Public Accountancy" is the offer to perform or the performance by a person for a client or a potential client of professional accounting services or professional accounting work, and also includes:

(A) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and

(B) the performance of litigation support services;

(9) "Commission" means compensation for recommending or referring any product or service to be supplied by another party;

(10) "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a person's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or
the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;

(11) "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or other comprehensive basis of accounting. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on [42] Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;

(12) "Firm" means a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity engaged in the practice of public accountancy;

(13) "Good standing" means compliance by a licensee with the board's licensing rules, including the mandatory continuing education requirements, Peer Review, and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the person must be in compliance with all the provisions of the board order to be considered in good standing;

(14) "Licensee" means the holder of a license issued by the board to a person pursuant to the Act, or pursuant to provisions of a prior Act;

(15) "Out of state practitioner and out of state firm" means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act (relating to Practice by Certain Out-of-State Firms and Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications);

(16) "Peer Review," [review—] "Quality Review" or "Compliance Assurance" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;

(17) "Person" means an individual, sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (22) of this section;

(18) "Principal office" means the location specified by the client as the address to which a service described in §517.1(a)(2) of this title (relating to Practice by Certain Out of State Firms) is directed and is synonymous with Home Office where it appears in the Act;

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of the client practice of public accountancy;

(20) "Practice privilege" means the privilege for an out-of-state person to provide certain Professional Accounting Services or Professional Accounting Work in Texas to the extent permitted under Chapter 517 of this title (relating to Practice by Certain Out of State Firms and Individuals);

(21) "Preparation engagement" means the preparation of financial statements that do not include an audit, review or a compilation report on those financial statements in accordance with Standards for Accounting and Review Services adopted by the AICPA;

(22) "Professional Accounting Services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including but not limited to:

(A) issuing reports on financial statement(s);
(B) preparation engagements pursuant to SSARS;
(C) providing management or financial advisory or consulting services;
(D) preparing tax returns;
(E) providing advice in tax matters;
(F) providing forensic accounting services; [and]
(G) providing internal auditing services; [s]
(H) accounting, auditing and other assurance services;
(I) providing litigation support services; and
(J) recommending the sale of a product if the recommendation requires or implies accounting or auditing skills.

(23) "Report" means an opinion, report, or other document, prepared in connection with an attest service that states or implies assurance as to the reliability of financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor, or the language of the opinion, report, or other document itself.

(24) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS
22 TAC §501.73
The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.73, concerning Integrity and Objectivity. Background, Justification and Summary
The amendment to §501.73 requires the disclosure in writing of a relationship with another person, entity, product, or service that the licensee is offering to his client that could be viewed as a conflict of interest.

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 amendment will require clarity of evidence of the disclosure in writing of a relationship with another person, entity, product, or service that the licensee is offering to his client that could be viewed as a conflict of interest.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.73. Integrity and Objectivity.

(a) A person in the performance of professional accounting services or professional accounting work shall maintain integrity and objectivity, shall be free of conflicts of interest and shall not knowingly misrepresent facts nor subordinate his or her judgment to others. In tax practice, however, a person may resolve doubt in favor of his client as long as any tax position taken complies with applicable standards such as those set forth in Circular 230 issued by the IRS and the AICPA's SSTs.

(b) A conflict of interest may occur if a person performs a professional accounting service or professional accounting work for a client or employer and the person has a relationship with another person, entity, product, or service that could, in the person’s professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the person’s objectivity. If the person believes that the professional accounting service or professional accounting work can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties in writing, then this rule shall not operate to prohibit the performance of the professional accounting service or professional accounting work because of a conflict of interest.

(c) Certain professional engagements, such as audits, reviews, and other services, require independence. Independence impairments under §501.70 of this chapter (relating to Independence), its interpretations and rulings cannot be eliminated by disclosure and consent.

(d) A person shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs independence or objectivity in rendering professional accounting services or professional accounting work, or which is conducted so as to augment or benefit the accounting practice unless these rules are observed in the conduct thereof.

(e) Interpretive comment: An email communication will satisfy the requirement for written disclosure of a conflict of interest in subsection (b) of this section.

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

Filed with the Office of the Secretary of State on March 13, 2020.
The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75, concerning Confidential Client Communications.

Background, Justification and Summary

The amendment to §501.75 updates the citation of the Texas Securities Act.

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 amendment will provide the public with a better citation to the Texas Securities Act.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.75. Confidential Client Communications.

(a) Except by permission of the client or the authorized representatives of the client, a person or any partner, member, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. The following includes, but is not limited to, examples of authorized representatives:

(1) the authorized representative of a successor entity becomes the authorized representative of the predecessor entity when the predecessor entity ceases to exist and no one exists to give permission on behalf of the predecessor entity; and

(2) an executor/administrator of the estate of a deceased client possessing an order signed by a judge is an authorized representative of the estate.

(b) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement and identified in Chapter 501, Subchapter B of this title (relating to Professional Standards);

(2) by applicable federal laws, federal government regulations, including requirements of the PCAOB;

(3) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, a summons under the provisions of the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, or a summons.
under the provisions of the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), Texas Revised Civil Statutes Annotated;

(4) under a court order signed by a judge if the court order:
   (A) is addressed to the license holder;
   (B) mentions the client by name; and
   (C) requests specific information concerning the client.

(5) by the public accounting profession in reporting on the examination of financial statements;

(6) by a congressional or grand jury subpoena;

(7) in investigations or proceedings conducted by the board;

(8) in ethical investigations conducted by a private professional organization of certified public accountants;

(9) in a peer review; or

(10) in the course of a practice review by another CPA or CPA firm for a potential acquisition in conjunction with a prospective purchase, sale, or merger of all or part of a member's practice if both firms enter into a written nondisclosure agreement with regard to all client information shared between the firms.

(c) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information already made public, including information disclosed to others not having a confidential communications relationship with the client or authorized representative of the client.

(d) A person in the client practice of public accountancy shall take all reasonable measures to maintain the confidentiality of the client records and shall immediately upon becoming aware of the loss of, or loss of control over, the confidentiality of those records notify the client affected in writing of the date and time of the loss if known. Loss includes a cybersecurity breach or other incident exposing the records to a third party or parties without the client's consent or the loss of the client records or the loss of control over the client records. Persons have a responsibility to maintain a back-up system in order to be able to immediately identify and notify clients of a loss.

(e) Interpretive comment. The definition of a successor entity as referenced in subsection (a)(1) of this section does not include the purchaser of all assets of an entity.

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
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Texas State Board of Public Accountancy

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22 TAC §501.76
The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.76, concerning Records and Work Papers.

Background, Justification and Summary
The amendment to §501.76 removes a parenthetical to correctly reflect the intent of the sentence.

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 amendment will provide greater clarity to the rule.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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 pro-
posed 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.

§501.76. Records and Work Papers.

(a) Records.

(1) A person shall return original client records to a client or former client within a reasonable time (promptly, not to exceed 10 business days) after the client or former client has made a request for those records. Original client records are those records provided to the person by the client or former client in order for the person to provide professional accounting services to the client or former client. Original client records also include those documents obtained by the person on behalf of the client or former client in order for the person to provide professional accounting services to the client or former client and do not include the electronic and hard copies of internal work papers. The person shall provide these records to the client or former client, regardless of the status of the client's or former client's account and cannot charge a fee to provide such records. Such records shall be returned to the client or former client in the same format, to the extent possible, that they were provided to the person by the client or former client. The person may make copies of such records and retain those copies.

(2) Unless the person and the client have agreed in writing to the contrary:

(A) A person's work papers, to the extent that such work papers include records which would ordinarily constitute part of the client's or former client's books and records and are not otherwise available to the client or former client, shall also be furnished to the client within a reasonable time (promptly, not to exceed 20 business days) after the client has made a request for those records. The person can charge a reasonable fee for providing such work papers.

(B) Such work papers shall be in a format that the client or former client can reasonably expect to use for the purpose of accessing such work papers. The person is not required to convert records that are not in electronic format to electronic format or to convert electronic records into a different type of electronic format. However, if the client requests records in a specific format, and the records are available in such format within the person's custody and control, the client's request shall be honored.

(C) The person is not required to provide the client with proprietary formulas.

(D) The person is not required to provide the client with other formulas unless the formulas support the client's accounting or other records[,] or the person was engaged to provide such formulas as part of a completed work product.

(3) Work papers which constitute client records include, but are not limited to:

(A) documents in lieu of books of original entry such as listings and distributions of cash receipts or cash disbursements;

(B) documents in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar depreciation records;

(C) all adjusting and closing journal entries and supporting details when the supporting details are not fully set forth in the explanation of the journal entry; and

(D) consolidating or combining journal entries and documents and supporting detail in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(b) Work papers. Work papers, regardless of format, are those documents developed by the person incident to the performance of his engagement which do not constitute records that must be returned to the client in accordance with subsection (a) of this section. Work papers developed by a person during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting, tax, or other professional report prepared by the person for a client, shall be and remain the property of the person who developed the work papers.

(c) For a reasonable charge, a person shall furnish to his client or former client, upon request from his client made within a reasonable time after original issuance of the document in question:

(1) a copy of the client's tax return; or

(2) a copy of any report or other document previously issued by the person to or for such client or former client provided that furnishing such reports to or for a client or former client would not cause the person to be in violation of the portions of §501.60 of this chapter (relating to Auditing Standards) concerning subsequent events.

(d) This rule imposes no obligation on the person who provides services to a business entity to provide documents to anyone involved with the entity except the authorized representative of the entity.

(e) Documentation or work documents required by professional standards for attest services shall be maintained in paper or electronic format by a person for a period of not less than five years from the date of any report issued in connection with the attest service, unless otherwise required by another regulatory body. Failure to maintain such documentation or work papers constitutes a violation of this section and may be deemed an admission that they do not comply with professional standards.

(f) Interpretive Comment: It is recommended that a person obtain a receipt or other written documentation of the delivery of records to a client.

(g) Interpretive Comment: For the purposes of this rule, client records include:

(1) backup or working files of commercially available software along with any passwords needed to access such files; or

(2) client files from commercially available tax return preparation software including any passwords needed to access such files.

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

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22 TAC §501.77

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.77, concerning Acting through Others.

Background, Justification and Summary
The amendment to §501.77 makes a grammatical change to the rule.

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 amendment will provide grammatical clarity to the rule.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.77. Acting through Others.

(a) A person shall not permit others including non-CPA owners and employees, to carry out on his behalf, either with or without compensation, acts, which, if carried out by the person, would place him in violation of these rules of professional conduct.

(b) The board shall consider that the conduct of any non-CPA owner or employee in connection with the business of a licensed firm as [is] the conduct of that licensed firm for the purposes of the rules of professional conduct.

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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For further information, please call: (512) 305-7842

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22 TAC §501.78

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.78, concerning Withdrawal or Resignation.

Background, Justification and Summary
The amendment to §501.78 requires the withdrawal from an engagement or resignation from an employment to be in writing and updates a rule citation resulting from a prior rule revision.

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 amendment will provide the public and the board with evidence of clarity of a licensee’s withdrawal from an engagement or resignation of employment.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.78. Withdrawal or Resignation.

(a) If a person cannot complete an engagement to provide professional accounting services and professional accounting work or employment assignment in a manner that complies with the requirements of this chapter, the person shall withdraw from the engagement or resign from the employment assignment.

(b) If a person withdraws from an engagement or resigns from an employment assignment pursuant to this section, the person shall inform the client or employer of the withdrawal or resignation.

(c) Interpretive Comment: Any withdrawal or resignation shall [preferably] be in writing. A person shall comply with the requirements of §501.75 of this chapter (relating to Confidential Client Communications) and §501.90(17) [§501.90(16)] of this chapter (relating to Discreditable Acts) regarding confidential information of clients and employers during and after a withdrawal or resignation executed pursuant to this section. For purposes of this section, an engagement commences once an engagement letter is signed by the client, time is charged to the engagement, or compensation is received by a person in connection with an engagement or employment assignment.

(d) Interpretive comment: An email communication will satisfy the requirement for written disclosure of a withdrawal or resignation in subsection (c) of this section.

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

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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

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC
22 TAC §501.80
The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.80, concerning Practice of Public Accountancy.

Background, Justification and Summary

The amendment to §501.80 references relevant sections of the Texas Public Accountancy Act to the rule.

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 amendment will provide greater clarity of the rule’s intent.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.80. Practice of Public Accountancy:

(a) A person may not engage in the practice of public accountancy unless he holds a valid license or qualifies under a practice privilege. A person may not use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a CPA unless he holds a valid license issued by the board or qualifies under a practice privilege. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

(b) Any licensee of this board in good standing as a CPA or public accountant may use such designation whether or not the licensee is in the client, industry, or government practice of public accountancy. However, a licensee who is not in the client practice of public accountancy may not in any manner, through use of the CPA designation or otherwise, claim or imply independence from his employer or that the licensee is in the client practice of public accountancy.

(c) Interpretive Comment: This section incorporates the definitions of the practice of public accountancy and professional services and accounting work found in §501.52(8) and (22) of this chapter (relating to Definitions) as well as §901.003 of the Act (relating to Practice of Public Accountancy).

(d) Interpretive Comment: This section incorporates §§901.451 - 901.453 of the Act (relating to the Use of Title or Abbreviation for "Certified Public Accountant;" Use of Title or Abbreviation for "Public Accountant;" and Use of Other Titles or Abbreviations).

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
22 TAC §501.81

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.81, concerning Firm License Requirements.

Background, Justification and Summary

The amendment to §501.81 reflects a revision to the Public Accountancy Act to eliminate firm licensure in Texas by out of state firms providing attest services so long as the out of state firm does not establish a physical office in Texas.

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 amendment will be to provide greater interstate mobility of the practice of public accountancy.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.81. Firm Licensing (License Requirements).

(a) A firm, may not provide or offer to provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license issued by the board or qualifies under a practice privilege. A firm license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued. A firm license does not expire when the application for license renewal is received by the board prior to its expiration date. An expiration date for a firm license may be extended by the board, in its sole discretion, upon a demonstration of extenuating circumstances that prevented the firm from timely applying for or renewing a firm license.

(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state.

[ce] A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement that is to be performed in accordance with SAS;

(2) an examination of prospective financial information that is to be performed in accordance with SSAE; or

(3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.

[de] Each advertisement or written promotional statement that refers to a CPA’s designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio
The requirements of subsection (c) of this section do not apply with regard to a person performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney’s practice of law;

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution’s trust department; or

(3) pursuant to a practice privilege.

d (c) [§501.82] On the determination by the board that a person has practiced without a license or through an unlicensed firm in violation of subsection (c) of this section, the person’s certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

(f) Interpretive Comment: A person who is employed by an unlicensed firm that offers services that fall within the definitions of the client practice of public accountancy as defined in §501.52(8) and (22) of this chapter (relating to Definitions) and §901.003 of the Act (relating to Practice of Public Accountancy) must comply with the disclaimer requirement found in subsection (c) of this section.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy

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22 TAC §501.82

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.82, concerning Advertising.

Background, Justification and Summary

The amendment to §501.82 clarifies the definition of coercion to include not only force but the threat of force.

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 amendment will clarify what constitutes coercion.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.
§501.82. Advertising.

(a) A person shall not use or participate in the use of:

(1) any communication having reference to the person's professional services that contains a false, fraudulent, misleading or deceptive statement or claim;

(2) any communication that refers to the person's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct; nor

(3) a name that is misleading as to the identity of the individual practicing under such name.

(b) Definitions:

(1) A "false, fraudulent, misleading or deceptive statement or claim" includes, but is not limited to, a statement or claim which:

(A) contain a misrepresentation of fact;

(B) is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(C) is intended or likely to create false or unjustified expectations of favorable results;

(D) implies educational or professional attainments or licensing recognition not supported in fact;

(E) represents that professional accounting services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional accounting services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged;

(F) contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived;

(G) implies the ability to improperly influence any court, tribunal, regulatory agency or similar body or official due to some special relations;

(H) consists of self-laudatory statements that are not based on verifiable facts;

(I) makes untrue comparisons with other accountants; or

(J) contains testimonials or endorsements that are not based upon verifiable facts.

(2) Broadcast--Any transmission over the airwaves or over a cable, wireline, Internet, cellular, e-mail system or any other electronic means.

(3) Coercion--Compelling by force or threat of force so that one is constrained to do what his free will would otherwise refuse.

(4) Compulsion--Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act.

(5) Direct personal communication--Either a face-to-face meeting or a conversation by telephone.

(6) Duress--Any conduct which overpowers the will of another.

(7) Harassing--Any word, gesture, or action which tends to alarm and verbally abuse another person.

(8) Intimidation--Willfully to take, or attempt to take, by putting in fear of bodily harm.

(9) Overreaching--Tricking, outwitting, or cheating anyone into doing an act which he would not otherwise do.

(10) Threats--Any menace of such a nature and extent as to unsettle the mind of anyone on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Vexatious--Irritating or annoying.

(c) It is a violation of these rules for a person to persist in contacting a prospective client when the prospective client has made known to the person, or the person should have known the prospective client's desire not to be contacted by the person.

(d) In the case of an electronic or direct mail communication, the person shall retain a copy of the actual communication along with a list or other description of parties to whom the communication was distributed. Such copy shall be retained by the person for a period of at least 36 months from the date of its last distribution.

(e) Subsection (d) of this section does not apply to anyone when:

(1) the communication is made to anyone who is at that time a client of the person;

(2) the communication is invited by anyone to whom it was made; or

(3) the communication is made to anyone seeking to secure the performance of professional accounting services.

(f) In the case of broadcasting, the broadcast shall be recorded and the person shall retain a recording of the actual transmission for at least 36 months.

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
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

22 TAC §501.83

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.83, concerning Firm Names.

Background, Justification and Summary
The amendment to §501.83 helps to clarify that the rule pertains to licensees.

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 amendment will clarify the scope of the rule.
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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.83. Firm Names.

(a) General rules applicable to all firms:

(1) A firm name may not contain words, abbreviations or other language that are misleading to the public, or that may cause confusion to the public as to the legal form or ownership of the firm.

(2) A firm licensed by the board may not conduct business, perform or offer to perform services for or provide products to a client under a name other than the name in which the firm is licensed.

(3) A word, abbreviation or other language is presumed to be misleading if it:

(A) is a trade name or assumed name that does not comply with paragraph (4)(A) or (B) of this subsection;

(B) states or implies the quality of services offered, special expertise, expectation as to outcomes or favorable results, or geographic area of service;

(C) includes the name of a non-owner of the firm;

(D) includes the name of a non-CPA, except as provided in paragraph (4)(B) of this subsection;

(E) states or implies educational or professional attainment not supported in fact;

(F) states or implies licensing recognition for the firm or any of its owners not supported in fact;

(G) includes a designation such as "and company," "associates," "and associates," "group" or abbreviations thereof or similar designations implying that the firm has more than one employed licensee unless there are at least two employed licensees involved in the practice. Independent contractors are not considered employees under this subsection; or

(H) includes the designation "company" when it is a one licensee sole proprietorship.

(4) A word, abbreviation or other language is presumed not misleading if it:

(A) is the licensee's full name, the licensee's surname, or full or last initials of one or more current or former CPA owners of the firm, its predecessor firm or successor firm;

(B) is the name, surname, or initials of one or more current or former foreign practitioner owners of the firm, its predecessor firm or successor firm who are or would have been eligible to practice public accountancy in this state pursuant to §901.355 of the Act (relating to Registration for Certain Foreign Applicants);

(C) indicates the legal organization of the firm; or

(D) states or implies a limitation on the type of service offered by the firm, such as "tax," "audit" or "investment advisory services," provided the firm in fact principally limits its practice to the type of service indicated in the name.

(5) The board may place conditions on the licensing of a firm in order to ensure compliance with the provisions of this section.

(b) Additional Requirements Based on Legal Form or Ownership.
(1) The names of a corporation, professional corporation, limited liability partnership, professional limited liability company or other similar legal forms of ownership must contain the form of ownership or an abbreviation thereof, such as "Inc.," "P.C.," "L.L.P." or "P.L.L.C.%; except that a limited liability partnership organized before September 1, 1993 is not required to utilize the words "limited liability partnership" or any abbreviation thereof.

(2) Sole Proprietors:

(A) The name of a firm that is a sole proprietor must contain the surname of the sole proprietor as it appears on the individual license issued to the sole proprietor by the board.

(B) A partner surviving the death of all other partners may continue to practice under the partnership name for up to two years after becoming a sole proprietor, notwithstanding subsection (d) of this section.

(c) The name of any current or former owner may not be used in a firm name during any period when such owner is prohibited from practicing public accountancy and prohibited from using the title "certified public accountant," "public accountant" or any abbreviation thereof, unless specifically permitted by the board.

(d) A firm licensed by the board is required to report to the board any change in the legal organization of the firm and amend the firm name to comply with this section regarding firm names for the new organization within thirty days of the effective date of such change.

(e) This section regarding firm names does not affect firms licensed by the board prior to the effective date of this section, but does apply to any change in legal organization or name that occurs after the effective date of this section. Nothing in this subsection prohibits the board from placing conditions on the licensing of a firm pursuant to subsection (a)(5) of this section at the time of renewal of the firm license.

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. Randal (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

22 TAC §501.85
The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.85, concerning Complaint Notice.

Background, Justification and Summary

The amendment to §501.85 eliminates the agency's physical address for receipt of complaints against licensees in favor of the agency's electronic address.

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 amendment will provide greater access for the public and interested parties to file complaints.

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; does not expand, limit or repeal an 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. Randal (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

§501.85. Complaint Notice.

When a person receives a complaint that an alleged violation of the Act or Rules of Professional Conduct has occurred, a person shall provide to the complainant a statement that: Complainants concerning Certified Public Accountants may be addressed in writing to the Texas State Board of Public Accountancy at the board's address as it appears on its website at www.tsbpa.texas.gov or enforcement@tsbpa.texas.gov [333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900, telephone (512) 305-7866, e-mail to enforcement@tsbpa.state.tx.us, or fax (512) 305-7854].

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

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

Background, Justification and Summary

The amendment to §501.90 redrafts what constitutes a discreditable act to more accurately reflect the language of the Public Accountancy Act and corrects typographical errors in the titles of board rule §519.7 and §525.1.

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 amendment will provide the public with greater clarity of what constitutes a discreditable act.

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; does not expand, limit or repeal an 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, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 27, 2020.

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.

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy. A discriminable act includes but is not limited to and the board may discipline a person for the following:

(1) fraud or deceit in obtaining a certificate as a CPA or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Subchapter J or §901.458 of the Act (relating to Loss of Independence) applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances; or a criminal prosecution for a crime involving physical harm or the threat of physical harm;

(6) a revocation, cancellation, placement on probation, limitation on the scope of practice, or suspension by another state, or a refusal of renewal by another state, of the authority issued by that state to the person, or to the person's partner, member, or shareholder, to engage in the practice of public accountancy for a reason other than the failure to pay the appropriate authorization fee [cancellation, revocation, suspension or refusal to renew authority to practice as a CPA or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state];

(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;

(8) a final finding of conduct by state or federal courts of competent jurisdiction, agencies, boards, local governments or commissions for violations of state or federal laws or rules or findings of unethical conduct by licensees that engage in activities regulated by entities including but not limited to: the Public Company Accounting Oversight Board, Internal Revenue Service, U.S. Securities and Exchange Commission, U.S. Department of Labor, U.S. General Accounting Office, U.S. Housing and Urban Development, Texas State Auditor, Texas State Treasurer, Texas Securities Board, Texas Department of Insurance, and the Texas Secretary of State;

(9) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(10) fiscal dishonesty or breach of fiduciary responsibility of any type;

(11) failure to comply with a final order of any state or federal court;

(12) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(13) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(14) giving intentional false sworn testimony or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;

(15) threats of bodily harm or retribution to a client;

(16) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(17) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to:

(i) a court order signed by a judge;  
(ii) a summons under the provisions of:  
(I) the Internal Revenue Code of 1986 and its subsequent amendments;  
(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments; or  
(iii) a congressional or grand jury subpoena; or  
(iv) applicable federal laws, federal government regulations, including requirements of the PCAOB;

(D) in an investigation or proceeding by the board;

(E) in an ethical investigation conducted by a professional organization of CPAs;

(F) in the course of a peer review under §901.159 of the Act (relating to Peer Review); or

(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.

(18) breaching the terms of an agreed consent order entered by the board or violating any Board Order.

(19) Interpretive Comment: The board has found in §519.7 of this title (relating to Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License [Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board]) and §525.1 of this title (relating to Applications for the UCPAE, Issuance of the CPA Certificate, or Initial License [Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License]) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

(20) Interpretive comment: A conviction or final finding of unethical conduct by a competent authority, for the purpose of paragraph (8) of this subsection, includes any right to practice before the authority or findings that limit the scope of the permit or license conveyed by the authority. Conviction relates to the finding in a criminal
proceeding and final finding relates to a determination in a non-criminal proceeding. Unethical conduct or activities are determined by the governmental entity making the determination of a conviction or final finding.

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
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