

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER B. ADMINISTRATIVE POLICIES

1 TAC §5.101

The Office of the Governor (OOG) proposes new 1 TAC §5.101, relating to identifying and escalating procurement contracts that require enhanced contract or performance monitoring.

Explanation of Proposed Rule

The purpose of the proposed rule is to implement changes made in the law regarding state contracting requirements by §2261.253(c), Texas Government Code. The new law requires a state agency, by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring; and submit information on these contracts to the agency's governing official. Additionally, the agency's contract management office or procurement director is required to immediately notify the agency's governing official of any serious issue or risk that is identified with respect to a contract monitored under §2261.253(c).

Fiscal Note

Ms. Jordan Hale, Director of Administration Division, Office of the Governor, has determined that for each of the first five years in which the proposed rule is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed rule. Ms. Hale has also determined that there may be a positive fiscal impact on the state of Texas as a result of the increased contract management.

Public Benefit and Cost

Ms. Hale has also determined that for each year of the first five years in which the proposed rule is in effect, the public benefit anticipated as a result of the proposed rule will be to provide an effective and efficient means for the Office of the Governor to provide the appropriate level of contract management. There are no anticipated economic costs for persons required to comply with the proposed rule. There will be no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposed rule may be submitted to Ms. Jordan Hale, Director of Administration Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, or to Jordan.Hale@gov.texas.gov. The deadline for receipt of comments is 5:00 p.m. CST on Monday, October 17, 2016.

The new section is proposed in accordance with Government Code, §2261.253(c), which requires the OOG to establish a procedure to identify each procurement contract that requires enhanced contract or performance monitoring.

No other code, article or statute is affected by this proposal.

§5.101. Identification and Escalation of Procurement Contracts that Require Enhanced Contract or Performance Monitoring.

(a) The OOG will complete a risk assessment to identify procurement contracts for goods or services from a private vendor that require enhanced contract or performance monitoring.

(b) The OOG will complete a risk assessment to evaluate whether enhanced contract or performance monitoring may be required for contracts with a value greater than \$100,000. For contracts of a lesser value, the OOG may complete a risk assessment to evaluate whether enhanced contract or performance monitoring is indicated.

(c) The risk assessment may consider the following factors:

- (1) total cost of the contract, including contract renewals;
- (2) risk of loss to the agency under the contract;
- (3) risk of fraud, waste or abuse;
- (4) scope of the goods or services provided;
- (5) availability of agency resources;
- (6) complexity of the contract;
- (7) business process impact of failure or delay;
- (8) vendor past performance; and
- (9) whether the vendor is a foreign or domestic person or

entity.

(d) Information on these contracts will be reported to the Chief of Staff at least quarterly. The Chief of Staff will be notified immediately of any serious issue or risk that is identified with respect to such a contract.

(e) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

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 September 1, 2016.

TRD-201604612



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2016-2017 Student Attendance Accounting Handbook*.

The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2016-2017 school year.

Significant changes to the *2016-2017 Student Attendance Accounting Handbook* from the *2015-2016 Student Attendance Accounting Handbook* include the following:

Section 2

The section on student detail reports would specify that campuses that offer multiple instructional tracks will have multiple student detail reports.

A requirement would be added that the student detail report contain the total eligible minutes present for a student in an Optional Flexible School Day Program or High School Equivalency Program.

The word *campus* would be changed to *track* in the student detail reports.

The campus summary report would be required to summarize all tracks on a campus.

Language would be added to specify that if a campus has multiple tracks, the earliest track beginning date and latest track ending date should be indicated in the campus and district summary reports.

The district summary report would be required to summarize all campuses in the school district or open-enrollment charter school.

Section 3

The attendance exception for an eligible transfer student would be removed from shared services arrangements (SSAs), including regional day school program for the deaf (RDSPD) SSAs.

Information would be added stating that a student is considered present for FSP funding purposes if the student is temporarily absent because of a documented appointment for the student or the student's child that is with a health care professional who is certified or registered by an appropriate agency of the State of Texas.

Language would be added to specify that the TEA will grant a maximum of six early release waivers per school year.

Information would be added to allow a school district or an open-enrollment charter school to add additional minutes to the instructional day to make up for closures due to bad weather or other issues of health or safety.

Section 4

A requirement would be added that a student with a disability cannot be reported with a special education instructional setting code in the Public Education Information Management System (PEIMS) before actual service begins.

Information would be added to clarify that the admission, review, and dismissal (ARD) committee may determine that services will begin on the same date as the ARD committee meeting with agreement from all parties.

Language would be added to specify that code 00 is used regardless of whether speech therapy is provided in the general education classroom or in a location other than a general education setting.

Language would be modified to specify that a teacher serving a student at home or hospital bedside while the student is in the special education homebound setting must be a certified special education teacher. Language relating to No Child Left Behind (NCLB) and the teacher's highly qualified status would be removed.

A requirement would be added to specify that if no special education services are being provided, the student should be dismissed from the special education program.

Clarification would be made regarding when to use instructional setting code 41 or 42.

A requirement would be added to clarify that personnel can be certified instead of being qualified when providing students with speech therapy or other services.

A requirement would be added that with the closing of speech therapy services, RDSPD SSAs must report students who reside in one district but receive educational services in another district as transfer students.

Section 5

Language would be added to specify that beginning with the 2016-2017 school year, schools and teachers will only need to meet state requirements for certification. The federal term *highly qualified teacher status* would no longer apply. Paraprofessionals would still be required to meet the highly qualified requirements of NCLB for the 2016-2017 school year.

A requirement would be added to state that teachers with less than a bachelor's degree are not eligible to teach Career and Technical Education courses that meet graduation requirements.

Section 6

The term *limited English proficient* would be changed to *English language learner* throughout the section.

Section 7

In the subsection on student eligibility for prekindergarten based on eligibility for the national school lunch program, information would be added relating to documentation of family income level.

Section 10

Language would be updated to align with statute that states that a juvenile justice alternative education program must operate at least 7 hours per day (420 minutes) and at least 180 days per year.

Section 12

An update would be added to state that a total of no more than three semester courses taken through the Texas Virtual School Network statewide course catalog may be used in determining a student's average daily attendance eligibility for any one semester with a maximum of six total semester courses in a school year. An exception would apply to a student who lacks just six semester courses to meet his or her graduation plan, is in the final semester of the school year, and did not generate FSP funding in the first semester of that school year.

Section 14

The definition of *school days* would be updated to state that the law requires that districts have 75,600 minutes unless a waiver has been issued to shorten the school year, that charter schools are required to have 75,600 minutes in the school year minus the number of minutes that are approved for waivers, and that maximum funding is based on 75,600 minutes.

The proposed amendment would place the specific procedures contained in the *2016-2017 Student Attendance Accounting Handbook* in the Texas Administrative Code. The TEA distributes FSP funds according to the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the PEIMS.

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept would correspond with the student attendance accounting requirement changes described previously.

FISCAL NOTE. Kara Belew, deputy commissioner for finance, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local em-

ployment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Belew has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 16, 2016, and ends October 17, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 16, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §25.081, which authorizes that each school year each school district and charter school provides for at least 75,600 minutes of instruction, including intermissions and recesses, for students. In addition, the commissioner may approve the instruction of students for fewer than 75,600 minutes if a calamity causes the school closing; TEC, §25.0812, which requires that school districts and charter schools may not schedule the last day of school for students before May 15; TEC, §30A.153, which requires the commissioner to adopt rules for the implementation of Foundation School Program (FSP) funding for the state virtual school network, including rules regarding attendance accounting; and TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the FSP.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§25.081, 25.0812, 30A.153, and 42.004.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2016-2017 [~~2015-2016~~] are described in the official Texas Ed-

ucation Agency (TEA) publication *2016-2017 [2015-2016] Student Attendance Accounting Handbook*, dated August [May] 2016, which is adopted by this reference as the agency's official rule. A copy of the *2016-2017 [2015-2016] Student Attendance Accounting Handbook*, dated August [May] 2016, is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the *2016-2017 [2015-2016] Student Attendance Accounting Handbook*, dated August [May] 2016, and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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 September 2, 2016.

TRD-201604621

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: October 16, 2016

For further information, please call: (512) 475-1497



SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING TRUANCY PREVENTION MEASURES AND SANCTIONS

19 TAC §§129.1041, 129.1043, 129.1045, 129.1047

The Texas Education Agency (TEA) proposes new §§129.1041, 129.1043, 129.1045, and 129.1047, concerning truancy prevention measures and sanctions. The proposed new sections would outline minimum standards, best practices, and sanctions related to truancy prevention measures in accordance with Texas Education Code (TEC), §25.0915, as amended by House Bill (HB) 2398, 84th Texas Legislature, 2015.

HB 2398, 84th Texas Legislature, 2015, amended the TEC, §25.0915, requiring school districts to adopt truancy prevention measures designed to address student conduct related to truancy in the school setting and minimize the need for referrals to truancy court.

Beginning with the 2015-2016 school year, the TEC, §25.0915, requires that if a student fails to attend school without excuse on three or more days or parts of days within a four-week period, the school district must initiate truancy prevention measures. In addition, schools are required to employ a truancy prevention facilitator or juvenile case manager or designate an existing district employee or juvenile case manager to implement the truancy prevention measures.

Finally, the TEC, §25.0915, requires that the TEA adopt rules to create minimum standards for truancy prevention measures, establish a set of best practices, and provide for sanctions for a school district found to be not in compliance with the statute.

Proposed new 19 TAC Chapter 129, Subchapter BB, would refile the requirements in the TEC, §25.0915, as follows.

Section 129.1041, Definitions, would specify that, for the purposes of the subchapter, the definition of a school district includes an open-enrollment charter school. Although TEC, §25.0915, does not specifically reference charter schools, the entire statutory scheme of compulsory attendance enforcement is applicable to charter schools since they have their own attendance officers pursuant to either TEC, §25.088 or §25.090. All attendance officers are required under TEC, §25.091, to implement truancy prevention measures under TEC, §25.0915.

Section 129.1043, Minimum Standards, would identify the minimum standards for a district's truancy prevention measures.

Section 129.1045, Best Practices, would outline the TEA's suggested best practices for truancy prevention measures.

Section 129.1047, Sanctions, would specify which sanctions the commissioner could impose for districts found to be not in compliance with TEC, §25.0915, and proposed new Chapter 129, Subchapter BB.

The proposed new sections would have no procedural or reporting implications.

The proposed new sections would have no locally maintained paperwork requirements.

FISCAL NOTE. A.J. Crabill, deputy commissioner for governance, has determined that for the first five-year period the new sections are in effect, there will be no fiscal impact to state or local government beyond what the statute requires. There is no effect on local economy for the first five years that the proposed new sections are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Crabill has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to minimize the need for referrals to truancy court and address student conduct related to truancy in the school setting. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 16, 2016, and ends October 17, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 16, 2016.

STATUTORY AUTHORITY. The new sections are proposed under the Texas Education Code (TEC), §25.0915, which requires school districts to adopt truancy prevention measures to address student conduct related to truancy; TEC, §25.0915(f), which re-

quires the commissioner of education to adopt rules to create minimum standards for truancy prevention measures adopted by school districts and establish a set of best practices for truancy prevention measures; and TEC, §25.0915(g), which requires the commissioner to adopt rules to provide for sanctions for a district found to be not in compliance with truancy prevention measures.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §25.0915.

§129.1041. Definitions.

For the purposes of this subchapter, the definition of a school district includes an open-enrollment charter school.

§129.1043. Minimum Standards.

The minimum standards for the truancy prevention measure(s) implemented by a school district under Texas Education Code, §25.0915, include:

- (1) identifying the root cause of the student's unexcused absences and actions to address each cause;
- (2) maintaining ongoing communication with students and parents on the actions to be taken to improve attendance; and
- (3) establishing reasonable timelines for completion of the truancy prevention measure.

§129.1045. Best Practices.

(a) A school district shall consider the following best practices for truancy prevention measures:

- (1) develop an attendance policy that clearly outlines requirements related to truancy in accordance with Texas Education Code (TEC), Chapter 25, Subchapter C, and communicate this information to parents at the beginning of the school year;
- (2) create a culture of attendance that includes training staff to talk meaningfully with students and parents about the attendance policy and the root causes of unexcused absences;
- (3) create incentives for perfect attendance and improved attendance;
- (4) educate families on the positive impact of school attendance on performance;
- (5) provide opportunities for students and parents to address causes of absence and/or truancy with district staff and link families to relevant community programs and support;
- (6) develop collaborative partnerships between appropriate school staff, program-related liaisons, and external partners such as law enforcement, court representatives, and community organizations to assist students;
- (7) determine root causes of unexcused absences and review campus- and district-level data on unexcused absences to identify systemic issues that affect attendance; and
- (8) use existing school programs such as Communities In Schools, 21st Century Community Learning Centers, Restorative Discipline, and Positive Behavior Interventions and Supports (PBIS) to provide students and their parents with services.

(b) In determining services offered to students identified in TEC, §25.0915(a-3), a school district shall consider:

- (1) offering evening and online alternatives; and
- (2) working with businesses that employ students to help students coordinate job and school responsibilities.

§129.1047. Sanctions.

The commissioner of education may impose any sanction otherwise authorized under Texas Education Code (TEC), Chapter 39, and Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions) against a school district that is found to be not in compliance with TEC, §25.0915, or this subchapter.

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 September 2, 2016.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.9

The State Board of Dental Examiners (Board) proposes an amendment to §100.9, concerning advisory committees and workgroups established by the board. The proposed amendment identifies the creation of the blue ribbon panel on dental sedation/anesthesia safety established by proposed new §100.12, which is published concurrently in this issue of the *Texas Register*.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rules are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Kelly Parker has also determined that for the first five-year period the proposed rules are in effect, the public benefit anticipated as a result of administering this section will be to clarify the board's internal processes concerning processing of complaints and investigations. Ms. Parker has determined that for the first five-year period the proposed rules are in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rules are enforced or administered.

Comments on the proposed amendment may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 475-0977, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

This amendment is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by these proposed amendment.

§100.9. *Advisory Committees and Workgroups Established by the Board.*

(a) In addition to any specific statutory authority to establish particular advisory committees, the board may authorize advisory committees from outside the board's membership to advise the board on rulemaking, pursuant to §2001.031 of the Texas Government Code and subject to chapter 2110 of the Texas Government Code, State Agency Advisory Committees.

(b) Creation and dissolution. The board, in a regularly scheduled meeting, may vote to establish advisory committees and workgroups from outside the board's membership to address specific subjects, purposes, or ends. Unless continued by a vote of the board, advisory committees and workgroups outside the board's membership are abolished the sooner of one year from the date of creation or when the specific subject, purpose, or end for which the advisory committee or workgroup was established, have been served.

(c) Chair. Each advisory committee or workgroup shall select from among its members a chairperson who shall preside over the advisory committee or workgroup and shall report to the board or agency as needed.

(d) Membership. The presiding officer shall determine the method by which members are designated to the advisory committee or workgroup. The membership of an advisory committee must provide a balanced representation between members of the dental industry and consumers of the dental industry. Advisory committee and workgroup members shall serve terms as determined by the board.

(e) Board member liaisons. The presiding officer may appoint board member or board members to serve as a liaison(s) to an advisory committee or workgroup and report to the board the recommendations of the advisory committee or workgroup for consideration by the board. The role of a board member liaison is limited to clarifying the board's charge and intent to the advisory committee or workgroup.

(f) Agency staff liaisons. The executive director of the agency may assign agency staff to assist the advisory committee and workgroup.

(g) Meetings and participation. All meetings shall be open to the public and noticed on the Secretary of State's website to allow the public an opportunity to participate.

(h) Purpose. The board rule establishing the advisory committee or workgroup shall state the purpose and tasks of the committee and describe the manner in which the committee will report to the board.

(i) Committee actions. The actions of advisory committees are recommendations only.

(j) The following are advisory committees and workgroups [is an advisory committee and workgroup] established by the board or established by statute:

(1) Dental Hygiene Advisory Committee, established by Subchapter B of Chapter 262 of the Texas Occupations Code; and[-]

(2) Advisory Committee- Blue Ribbon Panel on Dental Sedation/Anesthesia Safety, established by board rule 100.12.

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

Filed with the Office of the Secretary of State on September 1, 2016.

TRD-201604614

Kelly Parker

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: October 16, 2016

For further information, please call: (512) 475-0977



22 TAC §100.12

The State Board of Dental Examiners (Board) proposes new rule §100.12, concerning the blue ribbon panel on dental sedation/anesthesia safety. The rule establishes the panel and sets out its procedures and limitations.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Kelly Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the procedures relating to creating ad hoc committees. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

This new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§100.12. Advisory Committee- Blue Ribbon Panel on Dental Sedation/Anesthesia Safety.

(a) Pursuant to board rule 100.9, chapter 2110 of the Texas Government Code, and the management direction of the Sunset Commission issued on August 22, 2016, the board establishes an independent advisory committee: the Blue Ribbon Panel on Dental Sedation/Anesthesia Safety. The advisory committee shall make recommendations to the Sunset Commission and the Texas Legislature at or before the meeting of the Sunset Commission scheduled for January 11, 2017.

(b) Purpose. The purpose of the advisory committee is to review, study, and report to the Legislature and the Sunset Commission findings and recommendations on the use and misuse of sedation/anesthesia in dentistry. Specifically, the advisory committee shall review de-identified data compiled during board investigations in fiscal years 2012 through 2016 involving patient mortalities and patient harm during or following dental treatment at which sedation/anesthesia was administered and evaluate the appropriate substance and application of emergency protocols related to the administration of sedation/anesthesia.

(c) Tasks. The advisory committee shall review de-identified investigative data; report on trends and commonalities in the de-identified investigative data, including whether or not the patient mortality

ties or harms were related to the administration of sedation/anesthesia, related to another aspect of the dental treatments, or unrelated to the administration of sedation/anesthesia or another aspect of the dental treatments; review anesthesia laws, regulations, and studies from other jurisdictions; and review relevant published scientific literature. In its written report, the advisory committee shall opine on whether present laws, regulations, and board policies are sufficient to protect patients and recommend appropriate change to the laws, regulations, and board policies related to the administration of sedation/anesthesia to dental patients.

(d) Creation, dissolution, and membership. The board or its presiding officer shall appoint five to ten Texas-licensed dentists to serve as members of the advisory committee. The members shall be selected from active participants of the board's Dental Review Panel. The members of the Dental Review Panel who participate in the advisory committee shall not evaluate pending investigations and provide written expert reports as Dental Review Panel members during their period of service on the advisory committee. The advisory committee is dissolved upon presentation of its final written report to the Sunset Commission on January 11, 2017. Upon the dissolution of the advisory committee, the members of the advisory committee may resume their roles on the Dental Review Panel.

(e) Chair. The advisory committee shall select from among its members a chairperson who shall preside over the advisory committee, report to the board as needed, and facilitate presentation of the final written report to the Sunset Commission.

(f) Reporting to the board. The advisory committee shall provide at least four status updates to the Executive Director of the board on or before October 12, 2016; November 11, 2016; November 23, 2016; and December 7, 2016.

(g) Final report. The chair of the advisory committee shall present the final written report at or before the meeting of the Sunset Commission scheduled for January 11, 2017.

(h) Meetings and Relationship to the Board. While the advisory committee is intellectually independent, it is a governmental body pursuant to paragraph 551.001(3)(A) of the Texas Government Code, as it is a committee in the executive branch of state government that is affiliated with and directed by the board. All meetings of the advisory committee shall be open to the public and noticed on the Secretary of State's website.

(i) Confidential information. The board may require the members of the advisory committee to execute confidentiality agreements related to their membership on the advisory committee. The board shall provide confidential de-identified data to the members of the advisory committee as directed in the management recommendation of the Sunset Commission.

(j) Reimbursement. The advisory committee may be reimbursed for expenses in accordance with section 2110.004 of the Texas Government Code.

(k) Commencement. The advisory committee may convene and commence its work prior to the effective date of this rule, as directed by the board.

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

Filed with the Office of the Secretary of State on September 1, 2016.

TRD-201604615

Kelly Parker

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 475-0977

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

The Texas Board of Professional Engineers (Board) proposes amendments to §131.1, concerning Purpose and Duties; §131.3, concerning Headquarters of the Board; §131.7, concerning Organization of the Board; §131.81, concerning Definitions, and §131.85, concerning Board Rules Procedures.

The proposed rule changes are clean up changes to make some minor corrections and updates. These changes clarify, correct or simplify existing rules to make them more consistent with the current statute and procedures and update the Board's physical address.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §§131.1, 131.3, 131.7

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§131.1. Purpose and Duties.

(a) The board is statutorily empowered to regulate the practice of engineering in Texas.

(b) The board shall promulgate and adopt rules as authorized and required by statute, which are necessary for the performance of its duties. Such rules shall establish standards of conduct and ethics for engineers, ensure strict compliance with and enforcement of the provisions of the Act, ensure uniform standards of practice and procedure, ~~[including fees for services;]~~ and provide for public participation, notice of the agency actions, and a fair and expeditious determination of causes before the board.

(c) - (d) (No change.)

§131.3. *Headquarters of the Board.*

The headquarters and administrative office ~~[offices]~~ of the Texas Board of Professional Engineers (board) ~~is [shall be]~~ located at 1917 South Interstate 35 [H 35 South], Austin, Texas 78741-3702.

§131.7. *Organization of the Board.*

(a) In accordance with Texas Occupations Code, Chapter 1001 [§§1001.101 through 1001.112], the board shall consist of members appointed by the Governor with the advice and consent of the Senate.

(b) - (g) (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 Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

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SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81, §131.85

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§131.81. *Definitions.*

In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

(1) - (5) (No change.)

(6) Application--The forms, information, and fees necessary to obtain a license as a professional engineer, certification as an engineer-in-training, or a certificate of registration for a firm.

(7) - (33) (No change.)

(34) Recognized institution of higher education--An institution of higher education as defined in §61.003, Education Code; or

in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the North Central Association Commission on Accreditation and School Improvement, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country; or a program accredited by ABET.

(35) Respondent--~~The person or party that is the subject of a [Any party against whom any] complaint [has been] filed with the board.~~

(36) - (39) (No change.)

§131.85. *Board Rules Procedures.*

(a) ~~[Amendments, Deletions, and Additions of Rules.]~~ Proposed amendments, deletions, or additions to the board rules of practice and procedure may be submitted by the staff or any board member. Board action to accept or amend the proposal shall require a majority vote when a quorum is present at a meeting. A proposal or amended proposal, as accepted by the board, can be promulgated as an amendment, deletion, or addition to board rules by following the procedures set out in Chapters 2001 and 2002[;] of the Texas Government Code.

(b) ~~[Petition for Adoption of Rules.]~~ The board shall accept a petition from an interested person as defined in Texas Government Code, Chapter 2001, submitted by at least 25 persons or by an association having at least 25 members to adopt, delete, or amend a rule. For a petition under this section, at least 51 percent of the total number of signatures required must be of residents of this state. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition must [will] include, but need not be limited to, the following requirements:~~[-]~~

(1) ~~[Identity information.]~~ Full name and complete mailing address and telephone number of the petitioner on whose behalf the petition is filed.

(2) ~~[Reference.]~~ Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified and prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.

(3) ~~[A suggested effective date.]~~ The desired effective date should be stated.

(4) ~~[Justification.]~~ Justification for the proposed action in narrative form with sufficient particularity to fully inform the board and any interested party of the facts upon which the petitioner relies, including the statutory authority for the promulgation of the proposed rule.

(5) ~~[Desired effect of proposal.]~~ Include a brief statement detailing the desired effect to be achieved by the proposed rule, change, or amendment or deletion.

(6) ~~[Summary.]~~ A concise summary of the proposed rule, change, or amendment.

(7) ~~[Signatures.]~~ Signatures on the petition of the petitioners and/or the attorney or representative of the petitioners.

(8) ~~[Fee.]~~ Any fee required by statute or board rules.

(c) [~~Petition Decision by Board.~~] Within 60 days after submission of a petition requesting the adoption of a rule, the board either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule making proceedings in accordance with subsection (a) of this section and by law.

(d) [~~Suspension of Rules.~~] In any case in which a public emergency or imperative public necessity so requires, the board may suspend the operation of these sections to the extent authorized by law.

(e) Invalid Portions and Saving Provisions: [-]

(1) If any subcategory, rule, section, subsection, sentence, clause, or phrase of these rules is for any reason held invalid, such decision shall not affect the validity of the remaining portions of these sections. The board hereby declares that it would have adopted these sections and such subcategories, rules, sections, subsections, sentences, clauses, or phrases thereof irrespective of the fact that any one or more of the subcategories, rules, sections, subsections, sentences, clauses, or phrases be declared invalid.

(2) Since individual board rules are adopted, changed, or deleted periodically, each rule herein will apply only to acts occurring on or after the effective date of the rule. An act occurring before the effective date of one or more of these rules will be governed by the rules existing before the effective date, which rules are continued in effect for this purpose as if these rules were not in force. Any proceeding pending before the board on the effective date of one or more of these rules is governed by the rules existing before the effective date of these rules, which rules are continued in effect for this purpose as if these rules were not in force.

(3) If there is any conflict between the agency's rules and statutory provisions, and the rules cannot be harmonized with the statute in a timely manner, the statutory provisions shall control. The board shall issue a statement describing the irregularity, expected schedule for correction, and necessary action by an effected party.

(f) [~~Effective Date.~~] The effective date of each rule or subdivision of each rule shall be that date published as the effective date of the rule or subdivision of the rule in the Texas Register as a result of the rule making procedures set out in Chapters 2001 and 2002, Texas Government Code.

(g) [~~Rules Identification and Format.~~] The board reserves the right to revise the format of these rules of practice and procedure to comply with statutory requirements, and such required revision shall not invalidate any portion or change the effective date of the rules of practice and procedure as adopted by the board.

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

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Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) proposes amendments to §133.35, concerning Proof of Educational

Qualifications--Accredited/Approved Programs and §133.67, concerning Examination on the Principles and Practice of Engineering.

The proposed rule change to §133.35 extends the acceptance of transcripts from the National Council of Examiners for Engineering and Surveying (NCEES) and board approved commercial evaluation services provided the transcripts were forwarded directly from the registrar of the institution from which the applicant graduated.

The proposed rule changes to §133.67 clarifies the time frame when an applicant may re-apply for approval to register for the principles and practice of engineering (PE) exam after exhausting the approved exam attempts or having the approval period expire.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417, or sent by email to rules@engineers.texas.gov.

SUBCHAPTER D. EDUCATION

22 TAC §133.35

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.35. Proof of Educational Qualifications--Accredited/Approved Programs.

(a) An applicant for licensure who has graduated from a degree program in which the undergraduate or graduate degree in the same discipline has been accredited or approved by any of the organizations identified in §133.31(a)(1)(A) or (a)(2)(A) of this chapter (relating to Educational Requirements for Applicants) shall provide to the board an official transcript for each degree to be relied upon to meet the educational requirements for certification or licensure.

(b) Transcript(s) shall include either grades or mark sheets and proof that the degree was conferred.

(c) To ensure security of transcripts, each transcript must be received directly from:

(1) the registrar of the institution from which the applicant graduated; or

(2) the National Council of Examiners for Engineering and Surveying (NCEES) or board approved commercial evaluation service provided the transcripts were forwarded directly from the registrar of the institution from which the applicant graduated.

(d) Copies of transcripts of all other engineering or mathematical, physical, or engineering science degrees shall be submitted to the board; these transcripts can be copies of the original transcript and can be forwarded to the board by the applicant.

(e) The applicant is responsible for ordering and paying for all transcripts.

(f) Additional academic information, including but not limited to grades and transfer credit, shall be submitted to the board at the request of the executive director.

[An applicant for licensure who has graduated from a degree program in which the undergraduate or graduate degree in the same discipline has been accredited or approved by any of the organizations identified in §133.31(a)(1)(A) or (a)(2)(A) of this chapter (relating to Educational Requirements for Applicants) shall provide to the board an official transcript for each degree to be relied upon to meet the educational requirements for certification or licensure. Such transcript(s) shall include either grades or mark sheets and proof that the degree was conferred and must be forwarded directly to the board by the registrar of the institution from which the applicant graduated. In addition, copies of transcripts of all other engineering or mathematical, physical, or engineering science degrees shall be submitted to the board; these transcripts can be copies of the original transcript and can be forwarded to the board by the applicant. The applicant is responsible for ordering and paying for all such transcripts. Additional academic information, including but not limited to grades and transfer credit, shall be submitted to the board at the request of the executive director.]

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 Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.67

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§133.67. *Examination on the Principles and Practice of Engineering.*

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

(d) An applicant who does not pass the examination on the principles and practice of engineering within the approved examination period described in subsection (b) of this section is considered not approved and may not re-apply for approval until he or she has obtained at least one (1) year of additional engineering experience as described in Subchapter E of this chapter (relating to Experience) [of this chapter] or until the applicant has completed at least six (6) additional semester hours of formal college level classroom courses relevant to the applicant's dominant branch or discipline of experience. The time period to obtain additional engineering experience or enroll in additional college courses commences on the date of the last exam attempt or when the approved examination period expired. Applicants meeting the additional experience or education requirements must apply in accordance with §133.21 of this chapter (relating to Application for Standard Licensure) and receive approval for additional exam attempts.

(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 Kinney, P.E.

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For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

The Texas Board of Professional Engineers (Board) proposes amendments to §137.5, concerning License Holder Notification Requirements, §137.17, concerning Continuing Education Program, §137.31, concerning Seal Specifications, §137.33, concerning Sealing Procedures, §137.37, concerning Sealing Misconduct, and §137.63, concerning Engineers' Responsibility to the Profession.

The proposed rule changes are clean up changes to make some minor corrections and updates. These changes clarify, correct or simplify existing rules to make them more consistent with the current statute and procedures.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the flexibility of the licensure processes and the

ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.5, §137.17

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§137.5. License Holder Notification Requirements.

(a) Each license holder shall notify the board in writing not later than 30 days after [of] a change in the person's legal name, personal mailing address, or employment status.

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

§137.17. Continuing Education Program.

(a) (No change.)

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in ABET-approved program or other related college course.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(5) Self-directed study--Time spent engaging in professional development that is not otherwise identified in this rule. (Examples include, but are not limited to: reading/reviewing trade magazines or books, watching tutorials, and viewing other online content.)

(c) - (m) (No change.)

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New license holders by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the

military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) License holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) License holders who list their status as "Inactive" and who further certify that they are not providing professional engineering services in Texas shall be exempt from the professional development hours required.

(5) Exemptions must be claimed at the time of renewal.

(o) A license holder may bring an inactive license to active status by obtaining all delinquent PDH units and submitting copies of CEP records demonstrating compliance to the board or its authorized representative for verification purposes. If the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required, and hours acquired must be within the two years prior to reactivation.

(p) Noncompliance:

(1) If a license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) Failure to comply with CEP reporting requirements as listed in this section is a violation of board rules and shall be subject to sanctions.

(3) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

(4) If found to be noncompliant, the board may require additional audits of the license holder.

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 August 31, 2016.

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Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 16, 2016

For further information, please call: (512) 440-7723



SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §§137.31, 137.33, 137.37

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§137.31. Seal Specifications.

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

(d) All seals obtained and used by license holders shall contain any given name, commonly accepted variation of the given name, or initial combination with the surname as currently listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination. The name can be displayed on the seal using all uppercase letters such as "LESLIE H. DOE" or using the standard combination of upper and lowercase letters, such as "Leslie H. Doe". If after licensure, a license holder legally changes his/her name, the license holder must have a new seal or seals made showing the new legal name and submit an imprint or imprints of the new seal(s) to the board for review, approval, and processing (submitted within 60 days of name change).

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

§137.33. *Sealing Procedures.*

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

(d) License holders shall take reasonable steps to ensure the security of their physical or electronic seals and electronic signatures. For electronic seals and electronic signatures, the engineer must have reasonable security measures in place to protect these files. In the event of loss of a seal or electronic signature, the engineer will, as soon as possible, but within 30 days of discovery, [immediately] give written notification of the facts concerning the loss to board.

(e) - (h) (No change.)

(i) A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

~~[(1) the client furnishes the documentation of such work submitted to the client by the first license holder;]~~

(1) ~~[(2)]~~ the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

(2) ~~[(3)]~~ any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder's design.

(j) - (n) (No change.)

§137.37. *Sealing Misconduct.*

(a) (No change.)

(b) A person not licensed by the board shall ~~[may]~~ not use, cause to be used, affix, or cause to be affixed or in any other manner, regardless of the means, attach or in any way depict an engineering seal or a representation of an engineering seal without the express permission of ~~[by]~~ the currently active licensee ~~[responsible for the project or the specific engineering work in question].~~

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 C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.63

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§137.63. *Engineers' Responsibility to the Profession.*

(a) (No change.)

(b) The engineer must ~~[shall]~~:

(1) ~~[endeavor to]~~ meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules, ordinances or standards in the performance of engineering services;

(2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services;

(3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules.

(4) act as faithful agent for their employers or clients;

(5) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party; and

(6) practice engineering in a careful and diligent manner.

(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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CHAPTER 139. ENFORCEMENT

The Texas Board of Professional Engineers (Board) proposes amendments to §139.13, concerning Filing a Complaint, §139.15, concerning Processing a Complaint, §139.17, concerning Investigating a Complaint, §139.19, concerning Final Resolution of Complaint, §139.31, concerning Enforcement Actions for Violations of the Act, §139.35, concerning Sanctions and Penalties, §139.43, concerning License Holder with Criminal Convictions, and §139.47, concerning Probation.

The proposed rule changes are clean up changes to make some minor corrections and updates. These changes clarify, correct or simplify existing rules to make them more consistent with the current statute and procedures.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §§139.13, 139.15, 139.17, 139.19

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§139.13. *Filing a Complaint.*

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

(c) A complainant may contact the board in person or by telephone to file a complaint. However, the complaint shall be submitted in writing containing sufficient information to determine jurisdiction. ~~[Upon receipt of the written complaint and supporting evidence, it will be logged and assigned a case number.]~~

(d) - (g) (No change.)

§139.15. *Processing a Complaint.*

(a) ~~Upon receipt of the written complaint and supporting evidence, it will be logged and assigned a case number. [Upon receipt of a complaint, the board staff shall assign the complaint a case number.]~~

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

§139.17. *Investigating a Complaint.*

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

(c) Upon determination that sufficient evidence exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the person or entity by personal service or by certified or registered mail of the alleged violation. The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act or board rules.

(d) - (g) (No change.)

§139.19. *Final Resolution of Complaint.*

(a) Upon the completion of an investigation, the board staff shall present to the executive director a report of investigation and recommendation of final resolution of the complaint. If sufficient evidence and documentation exists to substantiate one or more violations of the Act or board rules has occurred, the board shall proceed as prescribed in §139.31 of this chapter (relating to Enforcement Actions for Violations of the Act). These actions may include, but are not limited to, one or more of the following:

- (1) enter into an agreement of voluntary compliance;
- (2) agree to informal Consent Order or Agreed Board Order that may include an administrative penalty and/or compliance requirements;
- (3) referral of injunctive or criminal actions to the proper authorities;
- (4) referral to the State Office of Administrative Hearings [~~which will result in a Final Order for dismissal or issuance of a sanction~~]; or
- (5) other action as provided by law.

(b) (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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Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.31, §139.35

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§139.31. *Enforcement Actions for Violations of the Act.*

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

(c) ~~[Upon determination that sufficient probable cause exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the person or entity, hereafter referred to in this section as "respondent," by personal service or by certified or registered mail of the alleged violation.]~~ The respondent shall be afforded an opportunity to present rebuttals, arguments, and evidence [to the board] prior to the initiation of disciplinary proceedings. If a respondent does not respond, the board may proceed with a contested case hearing at the State Office of Administrative Hearings.

§139.35. *Sanctions and Penalties.*

(a) (No change.)

(b) The following is a table of suggested sanctions the board may impose against *license holders* for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list "suspension" [~~"suspension"~~], all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.

Figure: 22 TAC §139.35(b)
~~[Figure: 22 TAC §139.35(b)]~~

(c) The following is a table of suggested sanctions that may be imposed against a *person or business entity* for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

Figure: 22 TAC §139.35(c)
~~[Figure: 22 TAC §139.35(c)]~~

(d) - (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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SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §139.47

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§139.47. *Probation.*

As part of a disciplinary action for violating the Act and board rules including, but not limited to, negligence, incompetence, or endangerment to the public, the board may prescribe conditions of probation for each probated suspension on a case-by-case basis depending on the severity of the violation that will include reporting requirements, restrictions on practice, and/or continuing education requirements as applicable as described in this subsection.

(1) The board will determine the reporting requirements for each probated suspension and will include a list of board probation requirements and schedule for completion of those requirements in which the board may require the license holder to submit documentation including, but not limited to, client lists, job assignments, designs, proof of continuing education participation, restricted practice reports, and other documents concerning the practice of engineering to demonstrate compliance with the conditions of probation. As a condition of probation, the license holder shall accept that schedule deadlines are final and no extensions or revision shall be granted, unless approved by the board.

(2) - (5) (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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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (TBPG) proposes amendments to 22 TAC §§851.29, 851.31, and 851.32, and proposes new rules §§851.35, 851.113, 851.203 and 851.204, concerning the licensure and regulation of Professional Geoscientists.

BACKGROUND AND PURPOSE

The TBPG proposes amendments to clarify the requirements regarding Endorsement and Reciprocal Licensure. Proposed amendments amend language to show that a licensing qualification can be endorsed by another licensing board for an applicant for P.G. licensure who is currently or has been licensed in the last ten years to practice a discipline of geoscience in Texas or another U.S. jurisdiction. Proposed amendments also clarify under "Licensure by similar examination" that an individual who has applied for licensure as a Professional Geoscientist in Texas may meet the licensing examination requirement by submitting proof of passage of examinations that are substantially similar to the applicable examination(s) as specified in §851.21.

TBPG proposes amendments to clarify the process of obtaining a temporary license and to be consistent with the requirements

of temporary licensure authorized in Texas Occupations Code 1002.258. TBPG proposes amendments to clarify and simplify the process for obtaining a temporary P.G. license in Texas.

TBPG proposes amendments to clarify a licensee's duty to comply with continuing education (CE) program requirements, adding a specific 30-day deadline for when a licensee must respond and produce a CE activity log and supporting records. Amendments also clarify that a licensee is subject to disciplinary action for failure to satisfy CE program requirements during the applicable period, and that it is a separate violation to falsely report CE requirements for a renewal period.

TBPG proposes a new rule to outline the process for voluntary surrender of a license, registration, or certification.

TBPG proposes a new rule to require all persons who are the subject of a Board order to abide by the terms of that order, and that failure to abide by the terms of a Board order is grounds for disciplinary action. Additionally, the proposed new rule adds that the Board may deny a person's request for a license, registration or certification, or deny renewal of a license, registration or certification if the person has failed to timely pay an administrative penalty. This rule also allows the Board to apply money received from an individual to outstanding administrative penalties owed by that individual before applying it to any other fee or cost.

TBPG proposes a new rule to clarify that the Board may serve a notice of hearing on a respondent by sending it to his or her last known address as shown by the Board's records. The proposed rule also outlines the procedures for default cases, and details a procedure for informal disposition of cases in accordance with §2001.056 of the Texas Government Code. The proposed rule also addresses the process taken when an applicant with a criminal history applies for a license and does not show up at the hearing at the State Office of Administrative Hearings.

TBPG proposes a new rule to provide that the costs of an administrative hearing shall be borne by the licensee who chooses to appeal a Board Order. Specifically, the cost of transcribing the contested-case hearing and the cost of preparing the record shall be assessed to the person appealing the Board's order. This rule also outlines how these costs may be recovered.

SECTION BY SECTION SUMMARY

Proposed amendment to §851.29 adds language in subsection (a)(2) regarding the licensure endorsement process to show that an applicant for a P.G. license who is currently or has been licensed or registered "in the last ten years" to practice a discipline of geoscience in "Texas or" another U.S. jurisdiction or another country may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement. It adds language in subsection (a)(4) to show that the Board staff considers evidence "supporting the endorsement of a licensing qualification" of an applicant, and adds language in subsection (a)(4)(A) to show that verification may be provided if the license is current or "was held in the past ten years from the date of application." In subsection (b)(2), regarding licensure by similar examination, words are added to show that an individual who is licensed or registered to practice a discipline of geoscience in another United States jurisdiction, or another country, "...who has applied for licensure as a Professional Geoscientist" under this subsection "may meet the licensing examination requirement by submitting" proof of passage of examination(s) that is/are substantially similar to the applicable examination(s) as specified in §851.21.

Proposed amendment to §851.31 removes subsections (b), (c), and (d) to clarify that "TBPG may issue a temporary license to an applicant as described in §1002.258(a) of the Act."

Proposed amendment to §851.32 adds language in subsection (p)(2) regarding noncompliance with the continuing education program (CEP) to show that "a licensee must submit the CEP certification log and supporting records for credits claimed not later than 30 days after the Board sends by certified mail an audit notification and request for a log and supporting documentation to the licensee's last known address as shown by the Board's records. Failure to timely submit a CEP certification log and supporting records for credits claimed is grounds for disciplinary action." A new subsection (p)(3) adds that "A licensee must satisfy CEP requirements. Failure to satisfy CEP requirements during the applicable period is grounds for disciplinary action." A sentence previously located in (p)(2) is moved to new subsection (p)(4) and is reworded to state, "Falsely reporting that CEP requirements have been met for a renewal period is misconduct and will subject the licensee to disciplinary action."

Proposed new rule §851.35, entitled, "Voluntary Surrender of a License, Registration or Certification" adds language to outline the process for voluntary surrender of a license, registration, or certification. New subsection (a) states, "A license holder who does not wish to maintain a license, registration, or certification may voluntarily surrender the license, registration, or certification by submitting a request in writing on a form prescribed by the TBPG, provided that the license holder: (1) has a current license, registration, or certification; (2) is not out of compliance with a disciplinary order; (3) does not have a complaint pending; and (4) is not under a continuing education audit." New subsection (b) states, "The effective date of a voluntary surrender of a license shall be the date that the Board accepts the surrender and will mark the termination of the licensee's license, registration, or certification." New subsection (c) states, "Any fees paid on the license, registration, or certification shall not be refunded upon surrender." New subsection (d) states, "A license, registration, or certification that has been voluntarily surrendered may not be renewed. A licensee who has voluntarily surrendered a license, registration, or certification may apply for a new license, registration, or certification." New subsection (e) states, "The Board maintains jurisdiction over a complaint filed against a licensee alleging violation of the TBPG's Code of Professional Conduct that occurred prior to the date of surrender of the license, registration, or certification."

Proposed new rule §851.113, entitled "Duty to Abide by Board Order and Timely Pay Administrative Penalty" adds new subsection (a) which states, "All persons who are the subject of a Board order shall abide by the terms of that order. Failure to abide by the terms of a Board order is grounds for disciplinary action." New subsection (b) adds, "All persons who are assessed an administrative penalty must pay the administrative penalty not later than the 30th day after the date the Board's order becomes final or timely satisfy section 1002.454(b) of the Texas Occupations Code." New subsection (c) states, "Failure to timely pay an administrative penalty is grounds for disciplinary action. This subsection does not apply if a person timely complies with section 1002.454(b) of the Texas Occupations Code regarding staying the enforcement of the administrative penalty at issue." New subsection (d) adds, "The Board may deny a person's request for a license, registration or certification, or to renew a license, registration, or certification if the person has failed to timely pay an administrative penalty." New subsection (e) adds, "When a person pays money to the Board, the Board may first apply that

money to outstanding administrative penalties owed by that person before applying it to any other fee or cost."

Proposed new rule §851.203 entitled "Defaults" adds new subsection (a) which states, "The Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the Board's records." New subsection (b) adds, "Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Board." New subsection (c) adds, "Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case and returning the file to the Board for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven and the Board will issue a final order imposing a sanction requested in the notice of hearing." New subsection (d) adds, "Contesting a final order issued following a default. In the event that the respondent wishes to contest a final order issued following a default, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following: (1) the default was neither intentional nor the result of conscious indifference; (2) the respondent has a meritorious defense; (3) a new hearing will not cause delay or otherwise injure the Board; and (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for meritorious defense." New subsection (e) adds, "Failure to prosecute. If a party who does not represent TBPG Board or staff and who has the burden of proof fails to appear at a contested case hearing at the state Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the Board may not consider a subsequent petition from the party until the first anniversary of the date of dismissal of the case." New subsection (f) adds, "Applicants for licensure bear the burden to prove fitness for licensure."

Proposed new rule §851.204 outlines TBPG's policies regarding the costs of administrative hearings. New subsection (a) adds, "If a person files a suit for judicial review of an agency decision in a contested case, the Board shall request that the contested-case hearing be transcribed." New subsection (b) adds, "Costs. The costs of transcribing the contested-case hearing and preparing the record for appeal in a suit for judicial review shall be paid by the party who appeals to district court." New subsection (c) adds, "Documentation of costs. Documentation supporting the costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal shall be included in the administrative record or filed with the court." New subsection (d) adds, "Recovery as court costs. The costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal in a suit for judicial review may be recovered as court costs." New subsection (e) adds, "Additionally and alternatively, failure to timely pay the cost of transcribing the contested-case hearing is grounds for disciplinary action, and payment of the cost of transcribing the contested-case hearing is due no later than 60 days after the Board sends a request for payment and copy of the documentation of costs to the respondent's last known address as shown by the Board's records or to the respondent's attorney if any." New subsection (f) adds, "The Board may deny a person's request to issue or renew a license,

registration, or certification if the person has failed to pay the cost of transcribing the contested-case hearing." New subsection (g) adds, "When a person pays money to the Board, the Board may first apply that money to outstanding transcript costs owed by that person before applying it to any other fee or cost."

FISCAL NOTE

Charles Horton, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the sections are in effect there is no cost to the state as a result of enforcing or administering the section as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Mr. Horton has determined that there will be no anticipated economic costs to small businesses or micro-businesses required to comply with proposed amendments to §§851.29, 851.31, 851.32 and proposed new §§851.35, 851.113, 851.203, and 851.204. Consequently, an economic impact statement or regulatory flexibility analysis is not required. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections. There is no anticipated negative impact on state or local government.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is that the Texas Board of Professional Geoscientists' rules are clarified, and the Board will be able to more effectively regulate the public practice of geoscience in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Board has determined that these proposals are not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to chorton@tbpg.state.tx.us. Please indicate "Comments on Proposed Rules" in the subject

line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.29, 851.31, 851.32, 851.35

The proposed amendments and new rule are authorized by the Texas Occupations Code §1002.151, which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.154, which provides that Board shall enforce the Act; by Occupations Code §1002.255, which defines license eligibility; by Occupations Code §1002.257, which allows for reciprocity of licensure; and by Occupations Code §1002.258, which authorizes temporary licenses.

The proposal implements the Texas Occupations Code, §§1002.151, 1002.154, 1002.255, 1002.257, and 1002.258.

§851.29. *Endorsement and Reciprocal Licensure.*

(a) Endorsement.

(1) Endorsement is the process whereby TBPG, based on review of evidence of having completed a requirement for licensure for an equivalent license in another jurisdiction, determines that the applicant has met a requirement for licensure as a Professional Geoscientist.

(2) An applicant for a Professional Geoscientist license who is currently or has been licensed or registered in the last ten years to practice a discipline of geoscience in Texas or another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement.

(3) The Board staff will only consider documentation provided to the TBPG directly from a licensing authority that has issued a license to the applicant. It is the responsibility of the applicant to ensure that the licensing authority provides information to the TBPG and pays any associated costs.

(4) In order for the Board staff to consider evidence supporting the endorsement of a licensing qualification, the applicant must ensure that his or her licensing authority provides:

(A) Verification that the license is current or was held in the past ten years from the date of application; and

(B) Verification of the specific requirements that were met in order to become licensed.

(5) Verification may be in the form of:

(A) A document signed by an authorized agent of the jurisdiction indicating the specific qualifications that were met in order to become licensed; and/or

(B) Copies of specific documents that were submitted to the licensing authority to document having met a specific requirement.

(6) The TBPG may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(b) Reciprocal Licensure.

(1) Licensure by reciprocity agreement.

(A) Licensure by reciprocity agreement is the process whereby an applicant for licensure as a Professional Geoscientist in Texas who is currently licensed as a Professional Geoscientist

(or equivalent license) in another United States jurisdiction (state, commonwealth or territory, including the District of Columbia) or another country becomes licensed in Texas and the process whereby an applicant currently licensed as a Professional Geoscientist in Texas applying for licensure as a Professional Geoscientist (or equivalent license) in the other jurisdiction becomes licensed in the other jurisdiction under the terms of a formal reciprocity agreement between the two jurisdictions.

(B) An applicant who holds a current license in a jurisdiction with which the TBPG has a reciprocity agreement may apply for licensure under the terms of the specific reciprocity agreement between the two jurisdictions.

(C) The TBPG shall maintain a list of each jurisdiction in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

(2) Licensure by similar examination. An individual who is licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who has applied for licensure as a Professional Geoscientist [applying for licensure] under this subsection may meet the licensing examination requirement by submitting [must submit] proof of passage of examination(s) that is/are substantially similar to the applicable examination(s) as specified in §851.21 of this chapter.

(3) Licensure by recognition of licensed experience in another jurisdiction. An applicant for a Professional Geoscientist license who is currently licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who was licensed without examination, i.e. "grandfathered", with regard to a licensing examination or who was licensed based on a licensing examination that is not recognized as substantially similar to the current licensing examination required for licensure under paragraph (2) of this subsection shall be deemed to have met the examination requirement upon verification of the following:

(A) Verification of a valid licensure in the other jurisdiction. The applicant requesting licensure under this subsection must be in good standing with the jurisdiction in which that individual holds their current license as a professional geologist or geoscientist;

(B) Verification of at least five (5) years of responsible professional geoscience work experience since the date of their initial licensure;

(C) Verification that licensure was maintained continuously (including sequential licensure, if a license was held in more than one jurisdiction) during the five (5) years prior to application with the TBPG; and

(D) Verification that no complaint is pending against the applicant, that no complaint against the applicant has been substantiated, and no disciplinary action has ever been taken against the applicant.

(E) The applicant seeking licensure under this subsection shall be responsible for contacting the jurisdiction(s) in which the applicant is currently licensed and all jurisdictions in which the applicant has ever been licensed and cause to have verification of information in subparagraphs (A) - (D) of this paragraph submitted to TBPG.

§851.31. *Temporary License.*

~~{(a)}~~ The TBPG may issue a temporary license to an applicant as described in §1002.258(a) of the Act.

~~[(b) A temporary licensee is subject to all rules and legal requirements to which a standard license is subject. The TBPG may issue a temporary license to an applicant currently licensed in another jurisdiction who:]~~

~~[(1) Has held such a license in good standing as a geoscientist for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of the TBPG and has passed a national or other examination recognized by the Appointed Board relating to the discipline of geoscience for which licensure is being sought;]~~

~~[(2) Submits all required forms and fees; and]~~

~~[(3) Complies with and meets the requirements set forth in §1002.258 of the Act.]~~

~~[(e) Pursuant to §1002.258(e) of the Act, a temporary license expires either on the 90th day after the date of issuance or on the date a reciprocal license is issued or denied, whichever event occurs first.]~~

~~[(d) The application fee is non-refundable.]~~

§851.32. Continuing Education Program.

(a) Each licensee shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

(c) Every P.G. licensee is required to obtain 15 continuing education hours (PDH units) during a standard renewal period year (one year). The continuing education requirement for a license that is renewed for a period less than one year per §851.28(b) of this chapter shall be prorated.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists, or review on-line of the Texas Geoscientist Practice Act and TBPG rules.

(e) If a licensee exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; or

(C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed course work.

(10) Software programs published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit (CEU)--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH.

(6) Each published paper or article--10 PDH and book--45 PDH.

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH.

(8) Each patent issued--15 PDH.

(9) Each software program published--15 PDH.

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit:

(1) The Appointed Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board staff shall not pre-approve or endorse any CEP activities. It is the responsibility of each licensee to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board staff for an opinion for

whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the licensee.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the licensee.

(7) Credit for activity described in subsection (h)(7) of this section requires that a licensee serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The licensee must submit CEP certification on the log and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

Figure: 22 TAC §851.32(k) (No change.)

(l) CEP records for each licensee must be maintained for a period of three years by the licensee.

(m) CEP records for each licensee are subject to audit by the Board staff.

(1) Copies must be furnished, if requested, to the Board staff for audit verification purposes.

(2) If upon auditing a licensee, the Board staff finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience, the Board staff may require the licensee to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A licensee may be exempt from the professional development educational requirements for a specific renewal period or periods for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New licensees that were licensed by passage of any part of the required licensing examinations shall be exempt for their first renewal period.

(2) A licensee serving on active duty and deployed outside the United States, its possessions and territories, in or for the military

service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A licensee employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt.

(5) Supporting documentation must be furnished to the TBPG. The Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate.

(o) A licensee may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, including 2 hours of professional ethics, roles and responsibilities of Professional Geoscientists, then 30 units (including 2 hours of ethics) shall be the maximum number required.

(p) Noncompliance:

(1) If a licensee does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A licensee must submit the CEP certification log and supporting records for credits claimed not later than 30 days after the Board sends by certified mail an audit notification and request for a log and supporting documentation to the licensee's last known address as shown by the Board's records. Failure to timely submit a CEP certification log and supporting records for credits claimed is grounds for disciplinary action.

(3) A licensee must satisfy CEP requirements. Failure to satisfy CEP requirements during the applicable period is grounds for disciplinary action.

(4) [(2)] Falsely reporting that CEP requirements have been met for a renewal period is [A determination by audit that CEP requirements have been falsely reported shall be considered to be] misconduct and will subject the licensee to disciplinary action.

§851.35. Voluntary Surrender of a License, Registration or Certification.

(a) A license holder who does not wish to maintain a license, registration, or certification may voluntarily surrender the license, registration, or certification by submitting a request in writing on a form prescribed by the TBPG, provided that the license holder:

(1) has a current license, registration, or certification;

(2) is not out of compliance with a disciplinary order;

(3) does not have a complaint pending; and

(4) is not under a continuing education audit.

(b) The effective date of a voluntary surrender of a license shall be the date that the Board accepts the surrender and will mark the termination of the licensee's license, registration, or certification.

(c) Any fees paid on the license, registration, or certification shall not be refunded upon surrender.

(d) A license, registration, or certification that has been voluntarily surrendered may not be renewed. A licensee who has voluntarily surrendered a license, registration, or certification may apply for a new license, registration, or certification.

(e) The Board maintains jurisdiction over a complaint filed against a licensee alleging violation of the TBPG's Code of Professional Conduct that occurred prior to the date of surrender of the license, registration, or certification.

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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Charles Horton

Executive Director

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For further information, please call: (512) 936-4405



SUBCHAPTER C. CODE OF PROFESSIONAL CONDUCT

22 TAC §851.113

The proposed new rule is authorized by the Texas Occupations Code §1002.151, which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.153, which provides that the Board shall adopt a code of professional conduct that is binding on all license holders; by Occupations Code §1002.154, which provides that Board shall enforce the Act; and by Occupations Code §1002.351, which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation.

The proposed new rule implements the Texas Occupations Code, §§1002.151, 1002.153, 1002.154, and 1002.351.

§851.113. Duty to abide by Board order and timely pay administrative penalty.

(a) All persons who are the subject of a Board order shall abide by the terms of that order. Failure to abide by the terms of a Board order is grounds for disciplinary action.

(b) All persons who are assessed an administrative penalty must pay the administrative penalty not later than the 30th day after the date the Board's order becomes final or timely satisfy section 1002.454(b) of the Texas Occupations Code.

(c) Failure to timely pay an administrative penalty is grounds for disciplinary action. This subsection does not apply if a person timely complies with section 1002.454(b) of the Texas Occupations Code regarding staying the enforcement of the administrative penalty at issue.

(d) The Board may deny a person's request for a license, registration or certification, or to renew a license, registration, or certification if the person has failed to timely pay an administrative penalty.

(e) When a person pays money to the Board, the Board may first apply that money to outstanding administrative penalties owed by that person before applying it to any other fee or cost.

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SUBCHAPTER E. HEARINGS--CONTESTED CASES

22 TAC §851.203, §851.204

The proposed new rules are authorized by the Texas Occupations Code §1002.151, which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.154, which provides that Board shall enforce the Act; by Occupations Code §1002.351, which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation; and by Occupations Code §1002.453, which provides that the Board adopt rules of procedure for the imposition of an administrative penalty, and that such rules must conform to the requirements of Chapter 2001, Government Code.

The proposed new rules implement the Texas Occupations Code, §§1002.151, 1002.154, 1002.351, and 1002.453.

§851.203. Defaults.

(a) The Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the Board's records.

(b) Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Board.

(c) Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case and returning the file to the Board for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven and the Board will issue a final order imposing a sanction requested in the notice of hearing.

(d) Contesting a final order issued following a default. In the event that the respondent wishes to contest a final order issued following a default, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:

(1) the default was neither intentional nor the result of conscious indifference;

(2) the respondent has a meritorious defense;

(3) a new hearing will not cause delay or otherwise injure the Board; and

(4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious defense.

(e) Failure to Prosecute. If a party who does not represent TBPG Board or staff and who has the burden of proof fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the Board may not consider a subsequent petition from the party until the first anniversary of the date of dismissal of the case.

(f) Applicants for licensure bear the burden to prove fitness for licensure.

§851.204. Costs of Administrative Hearings.

(a) If a person files a suit for judicial review of an agency decision in a contested case, the Board shall request that the contested-case hearing be transcribed.

(b) Costs. The costs of transcribing the contested-case hearing and preparing the record for appeal in a suit for judicial review shall be paid by the party who appeals to district court.

(c) Documentation of costs. Documentation supporting the costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal shall be included in the administrative record or filed with the court.

(d) Recovery as court costs. The costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal in a suit for judicial review may be recovered as court costs.

(e) Additionally and alternatively, failure to timely pay the cost of transcribing the contested-case hearing is grounds for disciplinary action, and payment of the cost of transcribing the contested-case hearing is due no later than 60 days after the Board sends a request for payment and copy of the documentation of costs to the respondent's last known address as shown by the Board's records or to the respondent's attorney if any.

(f) The Board may deny a person's request to issue or renew a license, registration, or certification if the person has failed to pay the cost of transcribing the contested-case hearing.

(g) When a person pays money to the Board, the Board may first apply that money to outstanding transcript costs owed by that person before applying it to any other fee or cost.

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