



GOVERNOR GREG ABBOTT

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

Date: June 16, 2021

Subject: Title 22 Texas Administrative Code Sections 1.21 and 1.22 (RCD Rule Review #2021-005)

I. Syllabus

The Texas Board of Architectural Examiners (“board”) filed an intent to review 22 TAC Chapter 1 pursuant to Section 2001.039, Texas Government Code.¹ The board submitted 22 TAC §§1.21 and 1.22, which set forth the requirements for architectural registration by examination and reciprocity, to the Regulatory Compliance Division (“division”) for review on March 26, 2021.² The division invited public comments on the rules for a 30-day period ending April 28, 2021, but received no comments. The division has determined that §§1.21 and 1.22 are consistent with state policy and, thus, the rules are approved for readoption.

II. Analysis

Sections 1051.704 and 1051.705, Texas Occupations Code, create a three-pronged approach to architectural registration by requiring applicants to meet education, experience, and examination prerequisites, which are detailed in §1.21.³ Additionally, Section 1051.305, as reflected in §1.22, allows the board to waive prerequisites for applicants who hold credentials from another jurisdiction with substantially equivalent requirements or with which Texas has a reciprocity agreement. Because registration prerequisites and limitations on reciprocal credentialing may

¹ 46 Tex. Reg. 2049 (2021) (notice of intent to review 22 TAC chs. 1, 3, 5, and 7) (published Mar. 26, 2021) (Tex. Bd. Architectural Exam’rs.).

² Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 1 and 5 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ *Id.* at 2.

create barriers to entering the market, the rules affect competition pursuant to Section 57.105(d)(1), Texas Occupations Code.⁴

A. The education prerequisite in 22 TAC §1.21(a)(1) is consistent with state policy.

Section 1051.705(a)(1) requires applicants to graduate from a recognized university or college of architecture approved by the board. Section 1.21(a)(1)(A) requires architectural education programs to be accredited by the National Architectural Accrediting Board (“NAAB”). By using a national accrediting body, the board is able to judge programs based on consistent standards, while applicants remain free to choose between programs of varying costs, locations, and reputations without impacting their eligibility for registration in Texas.⁵ Subparagraphs (B) and (C) provide additional flexibility for applicants who attend programs pending accreditation, which expands academic opportunities for students, as well as encourages new programs, while ultimately still holding applicants to the same education standards.⁶

Further, §1.21(a)(1)(D) recognizes a pathway to registration for graduates of programs outside of the United States that NAAB, or another organization acceptable to the board, determines are substantially equivalent to NAAB-accredited programs. NAAB reviews international programs of architecture for comparability and also conducts individual evaluations of applicants’ foreign education, similar to a private credential evaluation organization.⁷ Both accreditation and education evaluation services enable the board to efficiently approve applicants’ architectural education programs as required by Section 1051.705(a)(1). Thus, §1.21(a)(1) is consistent with state policy.

B. The experience prerequisite in 22 TAC §1.21(a)(2) is consistent with state policy.

Section 1051.705(a)(2) requires applicants to have satisfactory experience in architecture in an office or offices of one or more legally practicing architects, as prescribed by board rule. Section 1.21(a)(2) implements that provision by requiring applicants to complete the Architectural Experience Program (“AXP”), which is administered by the National Council of Architectural Registration Boards (“NCARB”) and provides applicants the opportunity to track a variety of relevant work.⁸ Although the board is not explicitly

⁴ *Id.* at 4 and 7.

⁵ *See id.* at 3; *see also* National Architectural Accrediting Board, *NAAB-Accredited Architecture Programs in the United States*, (April 2021), <https://www.naab.org/wp-content/uploads/Accredited-NAAB-Programs-032421.pdf>.

⁶ *See* 33 Tex. Reg. 2770 (2008) (preamble to proposed amended 22 TAC §1.21) (proposed Apr. 4, 2008) (Tex. Bd. Architectural Exam’rs.).

⁷ National Architectural Accrediting Board, *NAAB International Certification*, <https://www.naab.org/international/international-certification/> (last visited May 24, 2021); National Architectural Accrediting Board, *Education Evaluation Services for Architects (ESSA)*, <https://www.naab.org/eesa/> (last visited May 24, 2021).

⁸ National Council of Architectural Registration Boards, *Gain AXP Experience*, <https://www.ncarb.org/gain-axp-experience> (last visited May 24, 2021).

authorized to delegate the formulation, administration, and evaluation of the experience required of applicants, relying on NCARB's program relieves the board of the administrative burden associated with evaluation of experience and increases the portability of architectural credentials.⁹ Further, the board has relied on NCARB for decades without intervention. For example, Section 1051.308 was enacted in 2011 and references the predecessor program to the AXP, which was also administered by NCARB.¹⁰ Additionally, the board received no comments when it repealed rules that specifically outlined experience requirements through the formal notice-and-comment procedures; while the rules simply mirrored NCARB requirements, the repeal solidified the board's deference to NCARB to administer the experience program for Texas.¹¹ Despite its historical reliance on NCARB, the board continues to exercise oversight of the AXP through regular reviews of program updates, providing input as a member of NCARB, and considering changes in open meetings to ensure experience requirements are appropriate for Texas.¹² Because reliance on the AXP enables the board to fulfill its duty under Section 1051.705(a)(2), and the board maintains oversight of the program's impact to applicants in Texas, §1.21(a)(2) is consistent with state policy.

C. Requiring applicants to pass the national Architect Registration Examination, as incorporated into 22 TAC §1.21(a)(3), is consistent with state policy.

Section 1051.704 requires applicants to pass an examination on any architectural subject or procedure required by the board. Section 1.21(a)(3) incorporates by reference 22 TAC Chapter 1, Subchapter C, which requires applicants to successfully complete all sections of the Architect Registration Examination ("ARE").¹³ Sections 1051.302 and 1051.304(b) recognize that the board may rely on a third party to administer and score its examinations. Further, the ARE has been adopted by architectural regulatory agencies nationwide, so its use in Texas promotes interstate mobility for registrants.¹⁴ Thus, the requirement to take the ARE, as incorporated into §1.21(a)(3), is consistent with state policy.

⁹ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 3. *See also* National Council of Architectural Registration Boards, *Licensing Requirements Tool*, <https://www.ncarb.org/get-licensed/licensing-requirements-tool> (select "Initial Registration" option; "Completion of the AXP/IDP is required." is listed under "Requirements" on the left side of the page) (last visited April 27, 2021).

¹⁰ Acts of 2011, 82nd Leg., R.S., ch. 1157 (H.B. 2284).

¹¹ 41 Tex. Reg. 2570 (2016) (preamble to proposed amended 22 TAC §1.5 and proposed repeal of 22 TAC §§1.191 and 1.192) (proposed Apr. 8, 2016) (Tex. Bd. Architectural Exam'rs.); 41 Tex. Reg. 4487 (2016) (preamble to adoption of amended 22 TAC §1.5 and repeal of 22 TAC §§1.191 and 1.192) (adopted June 17, 2016) (Tex. Bd. Architectural Exam'rs.).

¹² Agency Response to Request for Additional Information (Apr. 16, 2021), at 1-2 and Appendix 1, generally (on file with the Regulatory Compliance Division of the Office of the Governor).

¹³ 22 TAC §1.41 et seq.

¹⁴ Rule Submission Memorandum from the Texas Board of Architectural Examiners (Mar. 26, 2021), at 3. *See also* National Council of Architectural Registration Boards, *Licensing Requirements Tool*, <https://www.ncarb.org/get-licensed/licensing-requirements-tool> (select "Initial Registration" option; "Completion of the ARE is required." is listed under "Requirements" on the left side of the page) (last visited April 27, 2021).

D. The transition provisions in 22 TAC §1.21(b), (c), and (d) are no longer needed, but requiring applicants to submit proof of legal status in 22 TAC §1.21(e) is consistent with state policy.

In §1.21(b), (c), and (d), the board provided for the application of older rules to applicants who applied for registration by examination on or before August 31, 2011. These subsections likely prevented the interruption of education or experience being accrued during a change in registration requirements, but they have been expired for a decade. As neither statute nor circumstances currently require similar language, these subsections may be removed from the rule without affecting competition to improve clarity for applicants. Finally, §1.21(e) requires applicants to submit proof of legal status in the United States in the form of a birth certificate or other documentation, pursuant to federal law and as implemented in Section 231.302(c)(1), Texas Family Code.¹⁵ Thus, that provision is consistent with state policy.

E. The criteria for registration by reciprocity in 22 TAC §1.22 are consistent with state policy.

As stated above, Section 1051.305 clearly authorizes the board to waive any prerequisite to obtaining a certificate of registration for an applicant who holds a license or certificate of registration issued by another jurisdiction that has substantially equivalent registration requirements or with which Texas has a reciprocity agreement. Section 1.22(a) restates that authority, and Subsection (b) outlines the criteria an applicant must meet to obtain a reciprocal registration, including the successful completion of the ARE or a comparable exam, and completion of the AXP or at least three years of acceptable experience following registration in another jurisdiction. The board broadly interprets “acceptable architectural practice” in §1.22(b)(1)(B) as the time during which the applicant was engaged in the practice of architecture while registered in another jurisdiction, which captures professional experience without limitation.¹⁶ Alternatively, applicants may qualify for reciprocity with a national certification from NCARB, which requires completion of the AXP, passage of the ARE, and graduation from an acceptable education program, similar to the board’s requirements for registration by examination.¹⁷ Finally, §1.22(c) requires the payment of the registration fee, consistent with Section 1051.305(c)(1). Thus, §1.22 is consistent with state policy.

¹⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2268 (1996), at Sections 317 and 411 (establishing 42 U.S.C. §666(a)(13) and 8 U.S.C. §1621, respectively).

¹⁶ Agency Response to Request for Additional Information (Apr. 16, 2021), at 3.

¹⁷ National Council of Architectural Registration Boards, *Get NCARB Certified*, <https://www.ncarb.org/advance-your-career/ncarb-certificate/get-certified> (last visited May 19, 2021). Certification is accepted in 55 U.S. jurisdictions and several international jurisdictions to facilitate reciprocal credentialing. National Council of Architectural Registration Boards, *The NCARB Certificate*, <https://www.ncarb.org/advance-your-career/ncarb-certificate> (last visited May 19, 2021).

III. Determination

Based on the above analysis, 22 TAC §§1.21 and 1.22 are approved by the division and may be readopted pursuant to Section 2001.039, Texas Government Code.