



GOVERNOR GREG ABBOTT

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

From: Caleb Gunnels, Counsel
Regulatory Compliance Division, Office of the Governor

Date: January 10, 2023

Subject: Proposed Title 22 Texas Administrative Code Sections 363.24 and 363.25 (RCD Rule Review #2022-007)

I. Syllabus

On July 8, 2022, the Texas State Board of Plumbing Examiners (“board”) filed an intent to review 22 TAC Chapter 363 pursuant to Section 2001.039, Texas Government Code.¹ That chapter includes §§363.24-363.26 which contain requirements for providers and instructors of training programs and training program requirements for master plumbers. As authorized in Section 57.106(g), Texas Occupations Code, the Regulatory Compliance Division (“division”) initiated a review of these rules on July 19, 2022. On October 28, 2022, the board proposed amendments to the requirements for providers and instructors of training programs, and proposed repealing §363.26, which contains the training program requirements for Responsible Master Plumbers (“RMP”).² The board subsequently submitted the proposed amended rules to the division for review on November 17, 2022.³ Based on the proposed repeal of §363.26, the division withdrew its review of that rule, and invited public comments on proposed amended §§363.24 and 363.25 for a period ending on December 22, 2022 and received no comments.

Based on the following analysis, the division has determined that the proposed rules are consistent with state policy, and, thus, proposed amended §§363.24 and 363.25 are approved by the division and may be finally adopted and implemented.

¹ 47 Tex. Reg. 3987 (2022) (notice of intent to review 22 TAC ch. 361, 363, and 367) (published July 8, 2022) (Tex. State Bd. Plumbing Exam’rs).

² 47 Tex. Reg. 7213 (2022) (to be codified at 22 TAC §§363.24 and 363.25) (proposed Oct. 28, 2022) (Tex. State Bd. Plumbing Exam’rs).

³ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Nov. 17, 2022) (22 TAC §§363.24-363.26) (on file with the Regulatory Compliance Division of the Office of the Governor).

II. Analysis

Following changes to Chapter 1301, Texas Occupations Code, by House Bill 636 during the 87th Regular Legislative Session, the board has proposed rulemaking to update and simplify requirements related to the provision and instruction of training programs.⁴ And, because House Bill 636 eliminated the RMP training program, the board proposed repealing the RMP training program requirements in current §363.26.⁵ Given that conditions, including limitations on eligibility to provide training and instruction to applicants and licensees can create barriers to ongoing market participation and may increase the cost of compliance for licensees, proposed §§363.24 and 363.25 may affect competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code.

A. The division finds that proposed amended §363.24 is consistent with state policy.

On September 14, 2022, the division approved 22 TAC §§365.19-365.21, which establish the qualifications and curriculum standards for CPE and training course providers and instructors of CPE courses and training programs, including CPE and training programs for medical gas piping installation endorsements.⁶ Given that proposed amended §363.24 contains similar qualification requirements for providers and instructors of endorsement training programs, a similar analysis applies. Section 1301.404(a)(1) and (2), Texas Occupations Code, broadly instruct the board to promulgate rules establishing the minimum curriculum standards for CPE programs and courses offered to license and endorsement holders as well as the minimum qualifications for instructors of such programs and courses. Additionally, Section 1301.404(c)(1) grants the board's executive director the authority to approve CPE programs or courses that meet the board's standards. Section 1301.405(a-1)(1) and (2), Texas Occupations Code, contain identical directives for the adoption of rules setting minimum curriculum standards and instructor qualifications for the training programs that registrants must complete each renewal cycle. And, Section 1301.405(a-2)(1) allows the executive director to approve such training programs. Proposed amended §363.24(a)-(c) generally follow statute by allowing course providers to offer courses or training programs taught by instructors approved by the executive director, and by requiring that such instructors hold a current board-issued license, be in good standing, and hold the relevant endorsement to teach courses related to the endorsement held. While the board has expanded the list of qualified licensees that may instruct training programs to include plumbing inspectors, the qualification requirements placed on approved course instructors mirror those found in 22 TAC §365.20(a) and (b), which have already been approved by the division.⁷ There, the board reasonably sought to ensure that license and endorsement holders and registrants receive

⁴ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (Nov. 17, 2022) (22 TAC §§363.24-363.26), at 1.

⁵ *Id.*

⁶ Regulatory Compliance Determination Letter for Proposed Title 22 Texas Administrative Code Sections 365.19-365.22 (RCD Rule review #2022-008) (Sept. 14, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

⁷ Regulatory Compliance Determination Letter for Proposed Title 22 Texas Administrative Code Sections 365.19-365.22 (RCD Rule review #2022-008) (Sept. 14, 2022), at 3.

competent instruction from instructors who have at least met the minimum qualifications of licensure or of the endorsement for which they are seeking to teach.⁸ Next, proposed amended §363.24(d) generally follows statute by requiring course providers and instructors to adhere to the curriculum or instruction criteria approved by the board and reasonably requires course providers and instructors to provide a certificate of completion and only offer credit to students who fully complete a course or training. Lastly, proposed amended §363.24(f)(4) establishes a basic two-year course completion, record-retention requirement. Ultimately, because statute grants the board broad authority to establish the minimum curriculum standards for CPE courses and training programs and the minimum qualifications for providers and instructors, and grants the board's executive director authority to approve qualified providers and instructors of CPE courses and training programs, proposed amended §363.24 is a reasonable exercise of such authority and is consistent with state policy.

B. The division finds that proposed amended §363.25 is consistent with state policy.

Similar to proposed amended §363.24, proposed amended §363.25 sets the qualifications for providers and instructors of training programs for journeyman plumber and tradesmen plumber-limited license applicants. Section 1301.404(a)(2) grants the board broad authority to establish the minimum qualifications for instructors of CPE programs and courses, and Section 1301.405(a-1)(2) does the same for instructors of renewal training programs. And, Sections 1301.404(c)(2) and 1301.405(a-2)(2) grant the board's executive director authority to approve instructors who meet the minimum standards established by the board. Under the authority granted to the board, proposed amended §363.25(a) generally follows statute by allowing course providers or course instructors who have been approved by the executive director to provide instruction in plumbers professional training related to health and safety, the plumbing codes adopted by the board, and water conservation. The board reasonably exercises its broad authority to determine the qualifications of approved course instructors by requiring an authorization from the Occupational Safety and Health Administration ("OSHA") to provide OSHA instruction. The proposal also offers flexibility by allowing nonapproved instructors that are OSHA-authorized construction trainers to teach OSHA instruction through an approved course provider, so long as the course provider is present. Consistent with the board's authority to establish the minimum curriculum standards and to approve CPE courses and training programs, proposed amended §363.25(c)(1) and (4) require approved course providers and instructors to teach board approved material and to abide by the same standards of conduct required of approved CPE providers. Proposed amended §363.25(c)(2) mirrors proposed amended §363.24(d)(2) by reasonably requiring that course credit be provided only to students who complete the course. Proposed amended §363.25(c)(3), (5), and (6) establish basic administrative practices for course providers and instructors to provide advance notice of course schedules, to detail what information must be included on a student's certificate of course completion, and to ensure adequate record retention of certificates of completion. Lastly, proposed amended §363.25(f) reasonably requires course providers and instructors to be in good standing with the board. Because statute grants the board

⁸ Rule Submission Memorandum from the Texas State Board of Plumbing Examiners (July 25, 2022) (22 TAC §§365.19-365.22) (on file with the Regulatory Compliance Division of the Office of the Governor), at 4.

broad authority to establish the minimum curriculum standards for CPE courses and training programs and the minimum qualifications for providers and instructors, and grants the board's executive director authority to approve qualified providers and instructors of CPE courses and training programs, proposed amended §363.25 is a reasonable exercise of such authority and is consistent with state policy.

III. Determination

Based on the above analysis, proposed §§363.24 and 363.25 are approved by the division and may proceed to final adoption and implementation.