

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 134, regarding the licensing, registration, and certification for surveyors. The proposed amendments are specifically to §134.25, relating to Applications from Out-Of-State Registration Holders, §134.43, relating to Experience Evaluations, §134.53, relating to Reference Statements, §134.67, relating to Examinations on the Principles and Practice of Surveying, and §134.68, relating to Licensed State Land Surveyor Examination, regarding the licensing, registration, and certification for surveyors. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 134 implement Texas Occupations Code, Chapter 1071, the Texas Engineering Practice Act. The proposed rules address the Board's ability to evaluate credentials of out-of-state registration holders, consider experience of applicants, how the experience is verified by references, how applicants take exams, and fees associated with exams administered by the Board.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §134.25 to require reciprocal applicants to meet current licensing requirements and take the Texas Specific Surveying Exam for registration. Reciprocal applicants can currently apply without meeting current licensing requirements, such as education, if their initial out-of-state licensure occurred at a time when such requirements were not in place. Another change makes it clear that reciprocal applicants must take the Texas Specific Surveying Exam for registration in Texas.

The proposed rules amend §134.43 to clarify that a calendar period claimed as engineering experience cannot also be claimed for surveying experience. Companion amendments to Chapter 133 establish proposed rules to clarify that a calendar period claimed as surveying experience cannot also be claimed as engineering experience.

The proposed rules amend §134.53 to expand the manner the Board can receive reference statements. The practice of only accepting reference statements that have been sealed in an envelope with a signature across the flap is not the only way to convey the statements securely. The proposed language is broad to allow different forms of transmittal, especially electronically (via email or electronically uploading the document to a secure location).

The proposed rules amend §134.67 to expand the manner applicants are qualified to take exams. The proposed rules remove a limitation on the maximum number of exams applicants may take and allow applicants who are approved to take the Principles and Practice of Surveying exam the ability to take the exam until the exam is passed. A limit on the number of times the Texas Specific Surveying Exam (TSSE) may be taken before re-applying will be kept in place. Companion amendments to Chapter 133 establish the same criteria for engineers taking

the Principles and Practice of Engineering exam. The proposed rules also clarify that TSSE exam fee will be waived in accordance with Texas Occupations Code Chapter 55.

The proposed rules amend §134.68 to clarify that Licensed State Land Surveyor exam fee will be waived in accordance with Texas Occupations Code Chapter 55.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Rick Strong, P.E., Director of Licensing and Registration for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Strong has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Strong has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be improved clarity of the rules' language for the public and efficiency of Board operations.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Strong has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules are in effect, the agency has determined the following:

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

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., 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@pels.texas.gov.

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and 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 practices of engineering and land surveying in this state. No other codes, articles, or statutes are affected by this proposal.

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§134.25. APPLICATION FROM OUT-OF-STATE REGISTRATION HOLDERS.

(a) An applicant who holds a license or registration as a professional land surveyor from another state or U.S. jurisdiction having registration or licensing requirements substantially equivalent to the requirements of Texas may apply for a standard license.

(b) The Board shall determine whether the licensing or registration standards of the governmental authority under which the reciprocal applicant is licensed or registered are substantially equivalent to those standards required in the State of Texas[at the time of licensure by the reciprocal state].

(c) The [If the Board determines that such standards are not substantially equivalent, the] Board shall [may] require the reciprocal applicant to take and pass an examination not to exceed four (4) hours as required for applicants under §1071.259 of the Surveying Act.

(d) To be eligible for registration as a registered professional land surveyor (RPLS), one must submit a completed application.

(e) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550, a computer based score of at least 200 or an internet based score of at least 95 or other evidence such as significant academic or work experience in English acceptable to the executive director.

(f) Applicants for a registration shall submit:

(1) an application in a format prescribed by the board and shall:

(A) list his or her full, legal and complete name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License

issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) list social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) proof of educational credentials pursuant to Subchapter D of this chapter (relating to Education);

(4) supplementary experience record as required under §134.41 of this chapter (relating to Supplementary Experience Record);

(5) reference statements as required under Subchapter F of this chapter (relating to Reference Documentation); and

(6) documentation of passing scores on examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §134.61(g) of this chapter (relating to Surveying Examinations);

(7) verification of a current license from another jurisdiction;

(8) TOEFL scores, if applicable;

(9) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a form prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(10) for applications submitted on or after September 1, 2020, documentation of submittal of fingerprints for criminal history record check as required by Texas Occupations Code §1001.272.

(g) The NCEES record may be accepted as verification of an original transcript, licenses held, examinations taken, experience record and reference documentation to meet the conditions of subsection (d)(3) - (7) of this section.

(h) Once an application is accepted for review, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(i) An applicant who is a citizen of another country shall show sufficient documentation to the board to verify the immigration status for the determination of his or her eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(j) Once an application under this section is accepted for review, the board will follow the procedures in §134.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to ensure eligibility as needed. Pursuant to Texas Occupations Code §1001.453 the board may review the license holder's status and take action if the license was obtained by fraud or error or if the license holder may pose a threat to the public's health, safety, or welfare.

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§134.43. EXPERIENCE EVALUATION.

(a) The board shall evaluate the nature and quality of the experience found in the supplementary experience record or the NCEES record experience information and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of land surveying work of a similar character.

(b) The following standards are to be used in evaluating experience:

(1) All experience must be obtained under the direction and guidance of one or more registered professional land surveyors.

(2) Experience shall be obtained in the area of boundary surveying and boundary determination only.

(3) Experience to be counted toward registration shall be counted from the date the applicant passes the National Council of Examiners for Engineering and Surveying (NCEES) fundamentals of land surveying examination.

(4) The required experience is divided into two types of experience, which are as follows:

(A) Office experience. The required office experience will consist of a minimum of three months of acceptable experience within each of the following categories, herein referred to as "acceptable office experience" for a minimum of one year:

(i) Research of county records and records search;

(ii) Legal principles, boundary reconciliation, and deed sketches;

(iii) Computations/traverse accuracy analysis;

(iv) Documentation/description/monumentation/preparation of final surveys. All two years of the experience requirement may be obtained as office experience.

(B) Field experience. The remaining acceptable experience, if not within the previously listed office experience categories, must be within the categories following:

(i) Field accuracies and tolerances;

(ii) Field traverse notes;

(iii) Monument search based on deed sketches.

(c) In the review of surveying experience, the board may consider additional elements including:

(1) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(2) whether the quality of the surveying work shows minimum technical competency;

(3) whether the experience was gained in accordance with the provisions of the Surveying Act and board rules;

(4) whether non-traditional surveying experience such as sales or military service provides sufficient depth of practice;

(5) whether short engagements have had an impact upon professional growth;

(6) whether the applicant intends to practice or offer surveying services in Texas;

(7) whether the experience was supplemented by training courses or participation in surveying organizations or societies that contribute to the applicant's competence and readiness for registration.

(d) Surveying experience may be considered satisfactory for the purpose of registration provided that:

(1) the experience is gained during an engagement longer than three months in duration;

(2) the experience, when taken as a whole, meets the minimum time;

(3) the experience is not anticipated and has actually been gained at the time of application; and

(4) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed and the calendar time has not been claimed as engineering experience in an engineering licensure application.

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§134.53. REFERENCE STATEMENTS.

(a) The applicant shall make available to each reference provider, the board's reference statement form and a complete copy of the applicable portion(s) of the supplementary experience record.

(b) Persons providing reference statements verifying an applicant's land surveying experience shall:

(1) complete and sign the reference statement in a format prescribed by the board; and

(2) review, evaluate, and sign all applicable portions of the supplementary experience record(s).

The reference provider's signature indicates that he has read the supplementary experience

record(s), that the record(s) are correct to the best of his knowledge, and that the experience is relevant to registration. If the reference provider disagrees with or has comments or clarification to the information provided by the applicant, the reference provider should submit written comments or concerns to the board.

(3) For the purposes of this section, a reference statement and associated portions of the applicant's supplementary experience record submitted directly to the board through a secure method prescribed by the board will be considered "signed" as required in this subsection.

(c) The reference provider shall submit to the board both the reference statement and the supplementary experience record.

(d) For any reference statement to meet the requirements of the board, the reference statement must be securely submitted in a manner acceptable to the board [secured]. Any tampering of the reference statements by the applicant could result in denial of the application.

[For a reference statement to be considered secure, the reference provider shall:

(1) place the completed reference statement and reviewed supplementary experience records in an envelope;

(2) secure the flap of the envelope to prevent tampering; and

(3) the reference provider shall return the sealed envelope to the applicant or transmit the documents directly to the board.]

(e) Secured reference envelopes shall be submitted to the board by applicant or reference provider.

(f) Reference documents submitted directly to the board by the reference provider in a method prescribed by the board will meet the requirements of subsection (d) of this section.

(g) Evidence of retaliation by an applicant against a person who provides reference material for an application may be considered in the application process as described in §134.81 of this chapter (relating to Receipt of Applications).

(h) The NCEES record reference documentation may be accepted in lieu of reference statements as specified in this section.

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§134.67. EXAMINATION ON THE PRINCIPLES AND PRACTICE OF SURVEYING.

(a) General Exam Provisions

(1) To meet the examination requirements set forth in §1071.256 of the Surveying Act an applicant must pass both the NCEES Principles and Practice of Surveying examination (PS Exam) and the Texas Specific Surveying Examination (TSSE).

(2) The PS exam and TSSE are open only to applicants who have received board approval to take the exams and Texas registered professional land surveyors who wish to take the exams for record purposes.

(3) An applicant approved to take the PS exam and TSSE:

(A) shall be advised of the date he or she is eligible.

(B) shall be solely responsible for timely scheduling for the examinations and any payment of examination fees.

(4) For the purposes of this section, exam attempt means a unique administration of an examination for which attendance is documented.

[(5) An applicant who does not pass the PS exam or the TSSE within the approved examination period described in subsections (b) or (c) 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 surveying experience as described in Subchapter E of this chapter (relating to Experience) or until the applicant has completed at least six (6) additional semester hours of formal college level classroom courses relevant to land surveying. The time period to obtain additional surveying experience or enroll in additional college courses commences on the date of the last exam attempt. Applicants meeting the additional experience or education requirements must apply in accordance with §134.21 of this chapter (relating to Application for Standard License) and receive approval for additional exam attempts.]

(5)[(6)] If the applicant has not attempted to take the TSSE [neither exam] within the approved examination period described in subsection [subsections (b) or] (c) of this section, the applicant may re-apply to take the exam [exams] after the prior approved examination period has expired under §134.21 of this chapter (relating to Application for Standard License) and may receive approval for additional exam attempts.

(6)[(7)] The PS exam and TSSE shall be constructed according to §1071.256 of the Surveying Act. The examinations shall be written and designed to aid the Board in determining the applicant's knowledge of land surveying, mathematics, land surveying laws, and the applicant's general fitness to practice the profession as outlined in the Surveying Act.

(b) Principles and Practice of Surveying Exam

(1) The board shall utilize the PS Exam developed and administered by NCEES to meet this requirement.

(2) The PS exam shall be offered according to the schedule determined by [the] NCEES.

(3) An applicant who has passed the PS exam will not be required to re-take the examination.

(4) Applicants who are granted certification as a Surveyor-in-Training in accordance with §134.1 of this chapter (relating to Surveyor-in-Training Designation) are approved to take the PS exam.

(5) Applicants who have been approved for examinations per §134.87 of this chapter (relating to Final Actions on Applications) are approved to take the PS exam.

[(6) An applicant approved to take the PS exam shall be allowed not more than three examination attempts and those attempts must be completed within a four-year period starting with the date of the notification for approval to take the exam. No extensions of time shall be granted except as provided for in §134.61(i) of this chapter (relating to Surveying Examinations Required for a License to Practice as a Professional Surveyor).]

(c) Texas Specific Surveying Examination (TSSE)

(1) The TSSE shall be developed by the board to supplement the NCEES PS Exam and cover any topic areas specific to the professional practice of land surveying in Texas that are not covered by the NCEES PS exam. The TSSE shall not exceed four hours in duration.

(2) The TSSE shall be offered according to a schedule and at a location determined by the board.

(3) An applicant who has passed the TSSE will not be required to re-take the examination.

(4) Applicants who have been approved for examinations per §134.87 of this chapter (relating to Final Actions on Applications) are approved to take the TSSE.

(5) An applicant approved to take the TSSE shall be allowed not more than three examination attempts and those attempts must be completed within a four-year period starting with the date of the notification for approval to take the exam. No extensions of time shall be granted except as provided for in §134.61(i) of this chapter (relating to Surveying Examinations Required for a License to Practice as a Professional Surveyor).

(6) An applicant who does not pass the TSSE within the approved examination period described in subsection (5) 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 surveying experience as described in Subchapter E of this chapter (relating to Experience) or until the applicant has completed at least six (6) additional semester hours of formal college level classroom courses relevant to land surveying. The time period to obtain additional surveying experience or enroll in additional college courses commences on the date of the last TSSE exam attempt. Applicants meeting the additional experience or education requirements must apply in accordance with §134.21 of this chapter (relating to Application for Standard License) and receive approval for additional exam attempts.

(7) TSSE Exam fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55.

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§134.68. LICENSED STATE LAND SURVEYOR EXAMINATION.

(a) The licensed state land surveyor examination is open only to applicants who have received board approval to take it.

(b) An applicant approved to take the licensed state land surveyor examination:

(1) shall be advised of the date he or she is eligible; and

(2) shall be solely responsible for timely scheduling for the examination and any payment of examination fees.

(c) For the purposes of this section, exam attempt means a unique administration of an examination for which attendance is documented.

(d) The licensed state land surveyor examination shall be offered according to the schedule determined by the board.

(e) The licensed state land surveyor examination shall be constructed according to §1071.256 of the Surveying Act. The exam shall be written and so designed to test the applicant's knowledge of the history, files, and functions of the General Land Office, survey construction, legal aspects pertaining to state interest in vacancies, excesses, and unpatented lands, and familiarity with other state interests in surface and subsurface rights as covered by existing law.

(f) The licensed state land surveyor examination consists of two four-hour sections and each part graded independently. An applicant is required to pass both sections of the examination in the same exam attempt. If an applicant does not pass both parts, the exam is not passed and the examinee may register for and attempt the examination again.

(g) The board shall develop an examination to meet the requirements of this section (relating to the licensed state land surveying examination).

(h) The licensed state land surveyor examination fee shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55.

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