

The Texas Commission on Environmental Quality (commission or agency) proposes new §§30.13, 30.34 - 30.38; amendments to §§30.3, 30.20, 30.30, and 30.33; and the repeal of §30.35.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rules implement requirements in House Bill (HB) 963 and HB 2808, 81st Legislature, 2009, related to the eligibility of certain applicants for occupational licenses and the authority of the commission to revoke, suspend, or deny a license on the basis of certain criminal proceedings. HB 963 and HB 2808 impact Chapter 30.

This proposed rulemaking would allow an individual to request a criminal history evaluation letter from the executive director regarding the individual's eligibility for a license issued by the executive director if the individual is enrolled or planning to enroll in an educational program that prepares an individual for an initial license, or is planning to take an examination for an initial license and has reason to believe that the individual is ineligible for the license because of a conviction or deferred adjudication for a felony or a misdemeanor offense. Additionally, the proposed rules would set forth requirements regarding the request and provisions relating to the executive director's power to investigate a request. The proposed rules would also set forth requirements regarding notification to the requestor of the executive director's determination of eligibility and authorizes the agency to charge the requestor a fee to cover administrative costs.

The proposed rules would expand the grounds for license suspension or revocation, disqualification for a license, or denial of an opportunity to take a licensing examination to include a conviction of any of the following offenses: an offense that does not directly relate to the duties of the licensed occupation and

that was committed less than five years before the date of the person's license application; an offense for which a person is not eligible for judge-ordered community supervision; or a sexually violent offense. Additionally, the proposed rules set forth provisions regarding the licensing of certain applicants with prior criminal convictions.

The commission administers 10 occupational licensing programs that include the following licenses and registrations: Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, Irrigation Technicians and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisors and Contractors; Wastewater Operators and Operations Companies; and Public Water System Operators and Operations Companies.

#### SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rulemaking to reflect the agency's current practices and to conform to Texas Register and agency guidelines. These changes include updating agency references, updating cross-references, and correcting typographical, spelling, and grammatical errors. These changes are non-substantive and generally are not specifically discussed in this preamble.

#### *Subchapter A - Administration of Occupational Licenses and Registrations*

The proposed amendment to §30.3, Purpose and Applicability, would add maintenance technicians to

§30.3(b)(6) as one of the registrations to which this chapter's requirements apply. This amendment is needed because the maintenance technician registration was added to Chapter 30, Subchapter G, On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators effective September 11, 2008. The proposed amendment would also remove provision §30.3(c), because effective January 1, 2010, the installer license is no longer valid and is replaced by an irrigation technician license. Therefore, this provision is no longer applicable.

The proposed new §30.13, Eligibility of Certain Applicants for Occupational Licenses or Registrations, would create §30.13(a) - (b) to allow an individual to request a criminal history evaluation letter from the executive director regarding the individual's eligibility for a license issued by the executive director if the individual is enrolled or planning to enroll in an educational program that prepares the individual for an initial license, or is planning to take an examination for an initial license and has reason to believe that the individual is ineligible for the license because of a conviction or deferred adjudication for a felony or misdemeanor offense. Additionally, the proposed §30.13 would create §30.13(c) to set forth requirements regarding the request and provisions relating to the executive director's power to investigate a request. The proposed §30.13 would also create §30.13(d) - (g) to set forth requirements regarding notification to the requestor of the executive director's determination of eligibility for a license issued by the executive director. The commission proposes this new section to implement the requirements of Texas Occupations Code, §53.102, as amended by HB 963.

The proposed amendment to §30.20, Examinations, would add §30.20(m) to expand the grounds for the denial of an individual's opportunity to take a licensing examination to include a conviction of any of the following offenses: an offense that does not directly relate to the duties of the licensed occupation and

that was committed less than five years before the date of the person's license application; an offense for which a person is not eligible for judge-ordered community supervision; or a sexually violent offense. The commission proposes this amendment to implement the requirements of Texas Occupations Code, §53.021(a), as amended by HB 963.

The proposed amendment to §30.30, Terms and Fees for Licenses and Registrations, would remove §30.30(b)(1) - (9), which outlined for certain licenses and registration transitional periods that are no longer applicable. The proposed amendment would add §30.30(h) to allow the agency to charge individuals requesting a criminal history evaluation letter from the executive director regarding the individual's eligibility for a license a fee to cover administrative costs associate to conducting the criminal history evaluation. Additionally, changes in the lettering to this subsection in this section are proposed where necessary to reflect the changes. The commission proposes this amendment to implement the requirements of Texas Occupations Code, §53.105, as amended by HB 963.

The proposed amendment to §30.33, License or Registration Denial, Warning, Suspension, or Revocation, would add §30.33(a)(2)(H) to expand the grounds for the denial of a license application to include a conviction of certain criminal offenses. In addition, the proposed amendment would add §30.33(d), that would allow the commission to suspend or revoke a license or registration on the grounds the individual has been convicted of certain criminal offenses. The proposed amendment would also add §30.33(e), that would allow the commission to revoke the license or registration upon an individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. The proposed amendment would also add §30.33(f), that would direct the executive director, regardless of the statutory authorization, not to consider an individual

to have been convicted of an offense under certain circumstances, except as provided by §30.33(g), notwithstanding any other law. The proposed amendment would also add §30.33(g), that would allow the executive director to consider an individual to have been convicted of certain offenses regardless of whether the proceedings were dismissed and the individual was discharged as described by subsection (f) if, after consideration of the factors described by Texas Occupations Code, §53.022 and §53.023(a), the executive director determines that the individual has an opportunity to repeat the prohibited conduct. Changes in the lettering to the subsections in this section are also proposed where necessary to reflect the changes. The commission proposes this amendment to implement the requirements of Texas Occupations Code, §53.021(a), as amended by HB 963.

The proposed new §30.34, Factors in Determining Whether Conviction Relates to Occupation, would add §30.34(a) - (d), which would outline factors to be considered in determining whether a criminal conviction directly relates to an occupation and the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime. The commission proposes this new section to implement the requirements of Texas Occupations Code, §53.022 and §53.023. The requirements of the proposed addition were not previously included in the agency's rules, but would ensure that the agency's rules are up to date and consistent with statutory standards included by the required implementation of HB 963 and HB 2808 and would help to ensure that the rules are effective.

The commission proposes to repeal §30.35, Hearings and propose it as new §30.38, Hearings. In addition, the commission proposes new §30.35, Guidelines. The proposed new §30.35, Guidelines, would add §30.35(a) - (b), that would require the executive director to file with the secretary of state for

publication in the Texas Register guidelines stating the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the commission. The commission proposes this new section to implement the requirements of Texas Occupations Code, §53.025. The requirements of the proposed addition were not previously included in the agency's rules, but would ensure that the agency's rules are up to date and consistent with statutory standards included by the required implementation of the HB 963 and HB 2808 and would help to ensure that the rules are effective.

The proposed new §30.36, Notice, specifically, §30.36(1) - (3), would require the executive director to notify the individual in writing of the intent to suspend or revoke a license or deny the individual a license or the opportunity to be examined for a license because of the individual's prior conviction of a crime and the relationship of the crime to the license. The commission proposes this new section to implement the requirements of Texas Occupations Code, §53.051. The requirements of the proposed addition were not previously included in the agency's rules, but would ensure that the agency's rules are up to date and consistent with statutory standards included by the required implementation of the HB 963 and HB 2808 and would help to ensure that the rules are effective.

The proposed new §30.37, Judicial Review, specifically, §30.37(a) and (b), would allow an individual whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination and has exhausted their administrative appeals to file an action in the district court in Travis County, Texas for review of the evidence presented to the commission and the decision of the commission. The commission proposes this new section to implement the requirements of Texas Occupations Code, §53.052. The requirements of the proposed addition were not previously included in

the agency's rules, but would ensure that the agency's rules are up to date and consistent with statutory standards included by the required implementation of the HB 963 and HB 2808 and would help to ensure that the rules are effective.

Proposed new §30.38, Hearings, which contains the text of the proposed repeal of §30.35, Hearings, regarding requirements for conducting hearings. The commission proposes this new section to implement the requirements of 30 TAC Chapters 70 and 80, concerning Enforcement; and Contested Case Hearings.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect no significant fiscal implications are expected for the agency as a result of administration or enforcement of the proposed rules. Any costs for the Texas Department of Public Safety (DPS) to conduct criminal background checks are expected to be offset through the collection of fees. Therefore, the proposed rules are not expected to have a significant fiscal impact on DPS or other state agencies. The proposed rules are not expected to have a fiscal impact on local governments. Units of local government who request criminal background checks can expect to pay a small fee for the background check.

The proposed rules implement requirements in HB 963 and HB 2808, related to the eligibility of certain applicants for occupational licenses and the authority of the commission to revoke, suspend, or deny a license on the basis of certain criminal proceedings. HB 963 and HB 2808 impact Chapter 30. This proposed rulemaking would allow for the request of a criminal history evaluation for an individual who is enrolled or planning to enroll in an educational program that prepares them for an initial license. The

proposed rules would also allow for the request of a criminal history evaluation if an individual planning to take an examination for an initial license has reason to believe that they may be ineligible for the license because of a conviction, deferred adjudication for a felony, or a misdemeanor offense.

The proposed rules set forth requirements regarding the request and provisions relating to the executive director's power to investigate a request. The proposed rules also set forth requirements regarding notification to the requestor of the executive director's determination of eligibility and authorize the agency to charge requestors a fee to cover administrative costs. The proposed rules expand the grounds for license suspension or revocation, disqualification for a license, or denial of an opportunity to take a licensing examination to include a conviction of any of the following offenses: an offense that does not directly relate to the duties of the licensed occupation and that was committed less than five years before the date of the person's license application; an offense for which a person is not eligible for judge-ordered community supervision; or a sexually violent offense. Additionally, the proposed rules set forth provisions regarding the licensing of certain applicants with prior criminal convictions.

The agency administers 10 occupational licensing programs and would collect a fee to administer background checks as authorized by HB 963. The fee could range from \$4.00 to \$20 per instance depending on the extent of the background check required, and the fee would be deposited into Fund 0001 - General Revenue. The agency will use a contract with DPS to conduct background checks. The agency does not have authority to spend fee revenue collected for the background checks, so fees assessed to the agency by the DPS will be absorbed using current resources. Based on staff projections of 50 to 100 requested background checks each year, revenue collected and fees paid to DPS could be between \$200 to \$2,000 per year. The increase in costs will not have a significant fiscal impact on the agency.



The agency will use currently available resources to develop data systems and modify forms to account for background check services.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be enhanced public safety since public exposure to persons with a potential to repeat criminal conduct would be limited. The proposed rules will also promote efficiency in issuing occupational licenses since background checks could be requested in advance of testing and issuance of licenses.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation or enforcement of the proposed rules. The proposed rules will increase the cost, ranging from \$4.00 to \$20 per instance, depending on the extent of the background check required, to request a criminal history evaluation regarding eligibility for a license. The request of a criminal background check under the proposed rules is voluntary.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. If a small or micro-business voluntarily decides to pay for an individual's criminal history evaluation, they would pay the same fees as an individual. This would save the business the cost of educational programs or examination fees for ineligible license candidates, and any fees paid by businesses are not expected to have a significant fiscal impact on the business.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect. A decision to pay a fee for an individual's criminal history evaluation would be a voluntary one.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to that statute. Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the proposed rules is to implement requirements in HB 963 and HB 2808, related to the eligibility of certain applicants for occupational licenses and the authority of the commission to revoke, suspend, or deny a license on the basis of certain criminal proceedings. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of the rules. Furthermore, the proposed rules implement new regulations for the agency's licensing and registration programs that are necessary to ensure more consistent operation and enforcement among the licensing and registration programs that the agency administers, and would not adversely affect, in a material way, the economy, a section of the

economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the proposed rules generally only apply to individuals who wish to request that the agency issue a criminal evaluation letter regarding the individual's eligibility for a license. Thus, the proposed rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis.

Furthermore, the proposed rules do not meet any of the four applicability requirements listed in Texas Government, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards regulating occupational licensing; however, if there were, these rules are specifically required by HB 963 and HB 2808. These rules do not exceed state law requirements, and state law requires their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. And finally, these rules are being proposed under specific state laws, in addition to the general powers of the agency.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

## TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these proposed rules is to ensure consistency between the rules and their applicable statutes, to make grammatical and punctuation corrections, and to modify or add language to improve the readability of 30 TAC Chapter 30 and enhance its enforceability. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These proposed rules make non-substantive changes to the existing rules and the proposed new regulations do not affect private real property.

## CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial,

administrative, and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on March 8, 2010, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments

should reference Rule Project Number 2009-037-030-PR. The comment period closes March 15, 2010.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

*[http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html)*. For further information, please contact Terry

Thompson, Permitting and Registration Support Division, (512) 239-6095.

**SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL LICENSES AND  
REGISTRATIONS**

**§§30.3, 30.13, 30.20, 30.30, 30.33, 30.34 - 30.38**

**STATUTORY AUTHORITY**

These amendments and new sections are proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments and new sections are also proposed under TWC, §26.0301, concerning Wastewater Operations Company Registrations and Operator Licensing; TWC, §26.346, concerning Registration Requirements; TWC, §26.452, concerning Underground Storage Tank Contractor; TWC, §26.456, concerning Underground Storage Tank On-Site Supervisor Licensing; and TWC, §26.3573, concerning Petroleum Storage Tank Remediation Account. These amendments and new sections are also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. These amendments and new sections are also proposed under Texas Occupations Code, §1903.251, concerning License Required. These amendments and new sections are also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; THSC, §341.034, concerning Licensing and Registration of Persons who Perform Duties Relating to Public Water Supplies; Texas Occupations Code, §1904.051, concerning Water Treatment Specialist Certification Program; THSC, §361.002, concerning Policy; Findings; THSC, §361.011, concerning

Commission's Jurisdiction; Municipal Solid Waste; THSC, §361.022, concerning Public Policy Concerning Municipal Solid Waste and Sludge; THSC, §361.024, concerning Rules and Standards; and THSC, §361.027, concerning Licensure of Solid Waste Facility Supervisors. These amendments and new sections are also proposed under THSC, §363.021, concerning Commission Rulemaking Authority; and THSC, §363.022, concerning Commission Powers and Duties. Finally, these amendments and new sections are proposed under THSC, §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; and THSC, §366.071 concerning Occupational Licensing and Registration.

The proposed amendments and new sections implement THSC, §§341.033, 341.034, 361.002, 361.011, 361.022, 361.024, 361.027, 363.021, 363.022, 366.011, 366.012, and 366.071; Texas Occupations Code, §§53.021, 53.022, 53.025, 53.051, 53.102, 53.103, 53.104, 53.105, 53.0211, 1903.251, and 1904.051; and TWC, §§5.013, 5.102, 5.103, 26.0301, 26.346, 26.452, 26.456, 26.3573, and 37.001 - 37.015.

### **§30.3. Purpose and Applicability.**

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, [Installer], Irrigation Technicians and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage



Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; and Visible Emissions Evaluator Training and Certification [Providers]) contain the program-specific requirements related to each program.

(b) The requirements of this chapter apply to the following occupational licenses and registrations:

(1) backflow prevention assembly testers;

(2) customer service inspectors;

(3) landscape irrigators, [installers,] irrigation technicians and irrigation inspectors;

(4) leaking petroleum storage tank corrective action specialists and project managers;

(5) municipal solid waste facility supervisors;

(6) on-site sewage facility installers, designated representatives, apprentices, maintenance providers, maintenance technicians and site evaluators;

(7) water treatment specialists;

(8) underground storage tank contractors and on-site supervisors;

(9) wastewater operators and operations companies;

(10) public water system operators and operations companies; and

(11) visible emissions evaluators training providers.

[(c) Effective January 1, 2010, the installer license will no longer be valid and will be replaced by an irrigation technician license. No new or renewal installer license applications will be accepted after June 1, 2009. Existing installer licenses or those renewed after the effective date of these rules, but prior to June 1, 2009 will remain valid until December 31, 2009 or their expiration date, whichever occurs first.]

**§30.13. Eligibility of Certain Applicants for Occupational Licenses or Registrations.**

(a) An individual may request the agency to issue a criminal history evaluation letter regarding the individual's eligibility for a license if the individual:

(1) is enrolled or planning to enroll in an educational program that prepares the individual for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the individual is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) The request must state the basis for the individual's potential ineligibility.

(c) The executive director has the same powers to investigate a request relating to the requestor's eligibility that it has to investigate a person applying for a license.

(d) If the executive director determines that a ground for ineligibility does not exist, the executive director shall notify the requestor in writing of the executive director's determination on each ground of potential ineligibility.

(e) If the executive director determines that the requestor is ineligible for a license, the executive director shall issue a letter setting out each basis for potential ineligibility and the executive director's determination as to eligibility. Subject to subsection (g) of this section, the executive director's determination of eligibility is final.

(f) The executive director must provide notice under subsection (d) of this section or issue a letter under subsection (e) of this section not later than the 90th day after the date the executive director receives the request.

(g) Upon the executive director's discovery of new facts unknown or undisclosed at the time of the determination of eligibility, the executive director may re-evaluate the eligibility of the requestor.

**§30.20. Examinations.**

(a) The executive director shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) Any individual with an approved application who fails an examination may repeat the examination after waiting 60 days from the most recent examination taken by the individual for that particular exam.

(d) An individual shall not take the same examination more than four times within 365 days of the initial application submittal.

(e) After 365 days or taking the same examinations four times, whichever occurs first, the application becomes void and a new application with a new fee must be submitted before the applicant may take the examination again, in accordance with subsection (d) of this section.

(f) Any scores for repeat examinations taken prior to waiting 60 days from the most recent examination date for that particular exam or taken after an application has expired or becomes void will not be applied to the issuance of the license.

(g) Repeat examinations taken prior to waiting 60 days from the most recent examination date for that particular exam or after an application has expired or becomes void will count towards the number of exams allowed within the 365-day period.

(h) Individuals using a computer-based testing method may be excluded from waiting 60 days to retest after failing an exam.

(i) Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(j) Examinations shall be given at places and times approved by the executive director.

(k) The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

(l) An individual who wishes to observe a religious holy day on which the individual's religious beliefs prevent the individual from taking an examination scheduled by the agency on that religious holy day shall be allowed to take the examination on an alternate date.

(m) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that the individual has been convicted of:

- (1) an offense that directly relates to the duties and responsibilities of the licensed occupation;
- (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;
- (3) an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g; or
- (4) a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001.

**§30.30. Terms and Fees for Licenses and Registrations.**

- (a) All licenses and registrations are valid for three years from the date of issuance.
- [(b) The following licenses and registrations shall be transitioned from a two-year cycle to a three-year cycle:]
- [(1) landscape irrigator and installer, according to Subchapter D of this chapter (relating to Landscape Irrigators and Installers);]

[(2) leaking petroleum storage tank corrective actions project manager and specialist according to Subchapter E of this chapter (relating to Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists);]

[(3) underground storage tank on-site supervisor and contractor, according to Subchapter I of this chapter (relating to Underground Storage Tank On-site Supervisor Licensing and Contractor Registration);]

[(4) on-site sewage facilities installers, apprentices, designated representatives, maintenance providers, and site evaluators, according to Subchapter G of this chapter (relating to On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, and Site Evaluators);]

[(5) Class D wastewater treatment facility operators, according to Subchapter J of this chapter (relating to Wastewater Operators and Operations Companies);]

[(6) Class I wastewater collection system operators, according to Subchapter J of this chapter;]

[(7) wastewater operations companies according to Subchapter J of this chapter;]

[(8) Class D public water system operators, according to Subchapter K of this chapter (relating to Public Water System Operators and Operation Companies); and]

[(9) public water system operations companies according to Subchapter K of this chapter.]

(b) [(c)] The executive director may adopt a system under which licenses or registrations expire on various dates.

(c) [(d)] The license fee is \$111 for a three-year license. The total amount shall be paid with each initial and renewal application and is nonrefundable.

(d) [(e)] Registration fees are established in the applicable subchapters of this chapter.

(e) [(f)] The executive director may charge a \$20 fee to process a duplicate certificate or pocket card.

(f) [(g)] A convenience fee may be set by the executive director or service provider for alternative fee payment methods. A person using an alternative payment method is responsible for paying the convenience fee.

(g) [(h)] An examination or reexamination fee may be charged if the executive director designates an entity to administer the examinations.



(h) The executive director may charge an individual requesting a criminal history evaluation letter under §30.13 of this title (relating to Eligibility of Certain Applicants for Occupational Licenses or Registrations) a fee adopted by the commission. Fees adopted by the commission under §30.13 of this title must be in an amount sufficient to cover the cost of administering §30.13 of this title.

**§30.33. License or Registration Denial, Warning, Suspension, or Revocation.**

(a) The executive director may deny an initial or renewal application for the following reasons.

(1) Insufficiency. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration). The executive director may determine that an application is insufficient for the following reasons:

(A) failing to meet the licensing or registration requirements of this chapter; or

(B) if an out-of-state licensing program does not have requirements substantially equivalent to those of this chapter.

(2) Cause. After notice and opportunity for a hearing, the commission may deny an application for a license or registration by an applicant who:

(A) provides fraudulent information or falsifies the application;

(B) has engaged in fraud or deceit in obtaining or applying for a license or registration;

(C) has demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license or registration;

(D) made an intentional misstatement or misrepresentation of fact or [in] information required to be maintained or submitted to the commission by the applicant or by the license or registration holder;

(E) failed to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(F) at the time the application is submitted, is indebted to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute; [or]

(G) is in default on loans guaranteed by Texas Guaranteed Student Loan Corporation (TGS LC) (the executive director shall proceed as described in Texas Education Code, Chapter 57) if identified by TGS LC and the application is for a renewal license or registration; or [.]

(H) has been convicted of:

(i) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(ii) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the applicant applies for the license;

(iii) an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g; or

(iv) a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001.

(b) If a person causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the person's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the person may be grounds for suspension, revocation, enforcement action, or some combination. A warning is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration on any of the grounds contained in Texas Water Code, §7.303(b).

(d) After notice and hearing, the commission may suspend or revoke a license on the grounds that the individual has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;

(3) an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g; or

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

(e) The commission shall revoke the license or registration upon an individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(f) Except as provided by subsection (g) of this section, notwithstanding any other law, the executive director may not consider an individual to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:

(1) the individual entered a plea of guilty or nolo contendere;

(2) the judge deferred further proceedings without entering an adjudication of guilt and placed the individual under the supervision of the court or an officer under the supervision of the court; and

(3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the individual.

(g) The executive director may consider an individual to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the individual was discharged as described by subsection (f) of this section if, after consideration of the factors described by Texas Occupations Code, §53.022 and §53.023(a), the executive director determines that:

(1) the individual may pose a continued threat to public safety; or

(2) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(h) [(d)] After notice and hearing, the commission may revoke a maintenance provider registration on any of the grounds in Texas Health and Safety Code, §366.0515(m).

(i) [(e)] The commission may also suspend a license or registration if a licensed or registered individual has been identified by the Office of the Attorney General as being delinquent on child support

payments (upon receipt of a final order suspending a license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(j) [(f)] After notice and hearing a license or registration may be suspended for a period of up to one year, depending upon the seriousness of the violations. A license or registration shall be revoked after notice and hearing upon a second suspension.

(k) [(g)] The commission may revoke a license or registration after notice and hearing for a designated term or permanently. If a license or registration is revoked a second time, the revocation shall be permanent.

(l) [(h)] The following procedures for renewal apply to persons that have had their license or registration suspended.

(1) If a license or registration expiration date falls within the suspension period, a person may renew the license or registration during the suspension period according to §30.24 of this title (relating to License and Registration Applications for Renewal) and the applicable subchapters.

(2) After the suspension period has ended, the license or registration shall be automatically reinstated unless the person failed to renew the license or registration during the suspension period.

(m) [(i)] Persons that have had their license or registration revoked shall not have their license or registration reinstated after the revocation period. After the revocation period has ended, a person may apply for a new license or registration according to this chapter.

**§30.34. Factors in Determining Whether Conviction Relates to Occupation.**

(a) In determining whether a criminal conviction directly relates to an occupation, the commission shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the individual previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(b) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of an individual who has been convicted of a crime, the executive director shall consider, in addition to the factors listed in subsection (a) of this section:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's last criminal activity;

(4) the conduct and work activity of the individual before and after the criminal activity;

(5) evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) other evidence of the individual's fitness, including letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual;

(B) the sheriff or chief of police in the community where the individual resides;  
and

(C) any other individual in contact with the convicted individual.

(c) The applicant has the responsibility, to the extent possible, to obtain and provide to the



executive director the recommendations of the prosecution, law enforcement, and correctional authorities as required by subsection (b)(6) of this section.

(d) In addition to fulfilling the requirements of subsection (a)(2) of this section, the applicant shall furnish proof in the form required by the executive director that the applicant has:

(1) maintained a record of steady employment;

(2) supported the applicant's dependents;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

### **§30.35 Guidelines.**

(a) The agency shall issue guidelines relating to the practice of the agency in determining whether a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the commission.

(b) The agency shall file the guidelines with the secretary of state for publication in the *Texas Register*.

**§30.36. Notice.**

The executive director shall notify the individual in writing of the intent to suspend or revoke a license or deny the individual a license or the opportunity to be examined for a license because of the individual's prior conviction of a crime and the relationship of the crime to the license. The notification shall include, but not be limited to:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by §30.35 of this title (relating to Guidelines); and

(3) the earliest date that the individual may appeal the action of the commission.

**§30.37. Judicial Review.**

(a) An individual whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under §30.20(m) and §30.33(a)(2)(H) or (d) of this title (relating to Examinations; or License or Registration Denial, Warning, Suspension, or Revocation) and who has exhausted the individual's administrative appeals may file an action in the district court in Travis County, Texas for review of the evidence presented to the commission and the decision of the commission.

(b) The petition for an action under subsection (a) of this section must be filed not later than the 30th day after the date the commission's decision is final and appealable.

**§30.38. Hearings.**

All hearings are to be conducted according to Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings, respectively).

**SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL LICENSES AND  
REGISTRATIONS**

**[§30.35]**

**STATUTORY AUTHORITY**

The repeal of this section is proposed under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. The repeal is also proposed under TWC, §26.0301, concerning Wastewater Operations Company Registrations and Operator Licensing; TWC, §26.346, concerning Registration Requirements; TWC, §26.452, concerning Underground Storage Tank Contractor; TWC, §26.456, concerning Underground Storage Tank On-Site Supervisor Licensing; and TWC, §26.3573, concerning Petroleum Storage Tank Remediation Account. The repeal is also proposed under TWC, §§37.001 - 37.015, concerning: Definitions; Rules; License or Registration Required; Qualifications; Issuance and Denial of Licenses and Registrations; Renewal of License or Registration; Licensing Examinations; Training; Continuing Education; Fees; Advertising; Complaints; Compliance Information; Practice of Occupation; Roster of License Holders and Registrants; and Power to Contract. The repeal is also proposed under

Texas Occupations Code, §1903.251, concerning License Required. The repeal is also proposed under Texas Health and Safety Code (THSC), §341.033, concerning Protection of Public Water Supplies; THSC, §341.034, concerning Licensing and Registration of Persons who Perform Duties Relating to Public Water Supplies; Texas Occupations Code, §1904.051, concerning Water Treatment Specialist Certification Program; THSC, §361.002, concerning Policy; Findings; THSC, §361.011, concerning Commission's Jurisdiction; Municipal Solid Waste; THSC, §361.022, concerning Public Policy Concerning Municipal Solid Waste and Sludge; THSC, §361.024, concerning Rules and Standards; and THSC, §361.027, concerning Licensure of Solid Waste Facility Supervisors. The repeal is also proposed under THSC, §363.021, concerning Commission Rulemaking Authority; and THSC, §363.022, concerning Commission Powers and Duties. Finally, the repeal is proposed under THSC, §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; and THSC, §366.071 concerning Occupational Licensing and Registration.

The proposed repeal implements THSC, §§341.033, 341.034, 361.002, 361.011, 361.022, 361.024, 361.027, 363.021, 363.022, 366.011, 366.012 and 366.071; Texas Occupations Code, §§53.021, 53.022, 53.025, 53.051, 53.102, 53.103, 53.104, 53.105, 53.0211, 1903.251, and 1904.051; and TWC, §§5.013, 5.102, 5.103, 26.0301, 26.346, 26.452, 26.456, 26.3573, and 37.001 - 37.015.

**[§30.35. Hearings.]**

[All hearings are to be conducted according to Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings).]