
TEXAS REGISTER

Volume 37 Number 1

January 6, 2012

Pages 1 - 84



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.state.tx.us

Secretary of State –
Hope Andrade

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Elaine Crease
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
S. Gail Woods
Mirand Zepeda-Jaramillo

IN THIS ISSUE

GOVERNOR

Appointments.....	5
-------------------	---

ATTORNEY GENERAL

Requests for Opinions.....	7
Opinions.....	7

PROPOSED RULES

TEXAS ETHICS COMMISSION

REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

1 TAC §20.219.....	9
1 TAC §20.279.....	10
1 TAC §20.331.....	11
1 TAC §20.433.....	12

RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.11, §22.13.....	14
1 TAC §22.15.....	15

STATE PRESERVATION BOARD

RULES AND REGULATIONS OF THE BOARD

13 TAC §§111.13 - 111.18, 111.20, 111.23, 111.25, 111.27, 111.32, 111.33.....	15
---	----

TEXAS EDUCATION AGENCY

ASSESSMENT

19 TAC §101.3005.....	30
19 TAC §101.3031.....	30

SCHOOL DISTRICT PERSONNEL

19 TAC §153.1021, §153.1022.....	31
----------------------------------	----

TEXAS MEDICAL BOARD

BUSINESS ORGANIZATIONS

22 TAC §177.5.....	39
22 TAC §177.16.....	40
22 TAC §177.17.....	41

TEXAS FUNERAL SERVICE COMMISSION

LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.11.....	42
---------------------	----

LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.1.....	43
22 TAC §203.7.....	44
22 TAC §203.29.....	44

22 TAC §203.39.....	45
---------------------	----

TEXAS DEPARTMENT OF INSURANCE

CORPORATE AND FINANCIAL REGULATION

28 TAC §7.68.....	46
28 TAC §7.68.....	47

TEXAS STATE SOIL AND WATER CONSERVATION BOARD

DISTRICT OPERATIONS

31 TAC §520.2.....	57
--------------------	----

TEACHER RETIREMENT SYSTEM OF TEXAS

HEALTH CARE AND INSURANCE PROGRAMS

34 TAC §41.4.....	58
-------------------	----

ADOPTED RULES

TEXAS FUNERAL SERVICE COMMISSION

LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6.....	61
22 TAC §203.26.....	61

TEXAS BOARD OF NURSING

LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.19, §217.20.....	62
22 TAC §217.22.....	66

OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.2.....	67
--------------------	----

ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.3.....	68
--------------------	----

TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

REQUIREMENTS FOR LICENSURE

40 TAC §364.2, §364.3.....	68
----------------------------	----

DISPLAY OF LICENSES

40 TAC §369.3.....	68
--------------------	----

LICENSE RENEWAL

40 TAC §370.3.....	69
--------------------	----

PROVISION OF SERVICES

40 TAC §372.1.....	69
--------------------	----

SUPERVISION

40 TAC §373.3.....	69
--------------------	----

IN ADDITION

Texas Department of Agriculture

Request for Proposals: 2012 Specialty Crop Block Grant Program..	71
--	----

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....	72
------------------------------	----

Employees Retirement System of Texas

Request for Proposal to Provide Third-Party Administration Services for the Short and Long Term Disability Benefits Plan for the Texas Employees Group Benefits Program.....	72
--	----

Texas Commission on Environmental Quality

Agreed Order	72
--------------------	----

Agreed Orders.....	73
--------------------	----

Notice of Comment Period and Hearing on Draft Air Curtain Incinerator General Operating Permit.....	76
---	----

Notice of Water Quality Applications.....	77
---	----

Notice of Water Rights Application.....	78
---	----

Texas Facilities Commission

Request for Proposals #303-3-20319.....	78
---	----

Request for Proposals #303-3-20321	79
--	----

Texas Health and Human Services Commission

Public Notice.....	79
--------------------	----

Houston-Galveston Area Council

Request for Proposals	79
-----------------------------	----

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	80
--	----

Notice of Application for Designation as an Eligible Telecommunications Carrier	80
---	----

Notice of Application for Retail Electric Provider Certification	80
--	----

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line.....	80
---	----

Request for Proposals to Provide Legal Services	81
---	----

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services.....	81
---	----

Public Hearing Notice - Highway Project Selection Process	82
---	----

Public Notice - Aviation.....	82
-------------------------------	----

Texas Water Development Board

Notice of Hearing.....	82
------------------------	----

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for December 6, 2011

Appointed to the Texas State Affordable Housing Corporation Board of Directors, effective December 15, 2011, for a term to expire February 1, 2017, Gerard "Gerry" Evenwel, Jr. of Mount Pleasant (replacing M. Jeran Akers of Plano who resigned).

Appointed to the Public Safety Commission, effective December 31, 2011, for a term to expire December 31, 2017, Ada Brown of Plano (Judge Brown is being reappointed).

Appointed to the Texas Ethics Commission for a term to expire November 19, 2015, Robert K. "Bob" Long, Sr. of Bastrop (Reverend Long is being reappointed).

Appointed as presiding officer of the North East Texas Regional Mobility Authority for a term to expire February 1, 2012, Linda Ryan Thomas of Longview (replacing Jeff Austin, III of Tyler who resigned).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2015, Chet D. Creel of Olney (replacing Trent McKnight of Throckmorton who resigned).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2015, William J. "Bill" Rankin of Brenham (replacing John Steinmetz of Lubbock who resigned).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2017, Paul J. Christensen of Crawford (replacing Christopher DeCluitt of Waco who resigned).

Designating G. Dave Scott, III as presiding officer of the Brazos River Authority Board of Directors for a term at the pleasure of the Gover-

nor. Mr. Scott is replacing Christopher DeCluitt of Waco as presiding officer.

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2013, Terri L. Bauer of Richardson (replacing Daniel Powers of Carrollton who resigned).

Pursuant to HB 3, 82nd Legislature, First Called Session, appointed to the Joint Interim Committee to Study Seacoast Territory Insurance for a term at the pleasure of the Governor, Thomas M. Braniff of Houston.

Pursuant to HB 3, 82nd Legislature, First Called Session, appointed to the Joint Interim Committee to Study Seacoast Territory Insurance for a term at the pleasure of the Governor, Wilson C. "Bill" Cooney of Fair Oaks Ranch.

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2015, David A. Smith of Brownwood (replacing Ziad Haydar of Dallas who resigned).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2017, Susan Faris of Springtown (Ms. Farris is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2017, Linda S. Strong of Corpus Christi (Ms. Strong is being reappointed).

Rick Perry, Governor

TRD-201105840



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Requests for Opinions

RQ-1029-GA

Requestor:

The Honorable Kevin P. Eltife
Chair, Committee on Administration
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Whether, in determining the market value of a residence home-
stead, a chief appraiser is required to consider the value of previously
sold foreclosed residential property (RQ-1029-GA)

Briefs requested by January 19, 2012

RQ-1030-GA

Requestor:

Tim F. Branaman, Ph.D.
Chair, Texas State Board of Examiners of Psychologists
333 Guadalupe, Suite 2-450
Austin, Texas 78701

Re: Whether a mental health professional is required by chapter 261,
Family Code, to report abuse or neglect that occurred during the child-
hood of a now-adult patient (RQ-1030-GA)

Briefs requested by January 23, 2012

RQ-1031-GA

Requestor:

The Honorable Rob Eissler
Chair, Committee on Public Education
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether, under particular circumstances, a school district may,
pursuant to section 22.011, Education Code, permit charities to partic-
ipate in campaigns to solicit contributions (RQ-1031-GA)

Briefs requested by January 27, 2012

For further information, please access the website at
www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201105833

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: December 28, 2011



Opinions

Opinion No. GA-0900

The Honorable Pete P. Gallego
Chair, Committee on Criminal Jurisprudence
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether Government Code section 2157.0611, concerning the
procedure for making certain catalog purchases, applies to an independ-
ent school district (RQ-0980-GA)

S U M M A R Y

The provision for catalog purchases in section 2157.0611 of the Gov-
ernment Code, to the extent that it is currently in effect, does not apply
to purchases by an independent school district.

Opinion No. GA-0901

The Honorable Robert Henneke
Kerr County Attorney
County Courthouse, Suite BA-103
700 Main Street
Kerrville, Texas 78028

Re: Sheriff's use of the county jail commissary fund to train inmates
to perform certain activities (RQ-0981-GA)

S U M M A R Y

A county sheriff controls the county jail commissary fund, and as a re-
sult, the sheriff must make the initial determination, subject to judicial
review, as to whether proceeds from the fund may be used for particular

purposes. The proceeds may be used only to fulfill one of the five purposes described in section 351.0415(c) of the Local Government Code.

Opinion No. GA-0902

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Authority of the Higher Education Coordinating Board to adopt a complaint procedure that complies with the program integrity regulations established by the Federal Department of Education (RQ-0982-GA)

S U M M A R Y

The Texas Higher Education Coordinating Board has authority to promulgate procedures for handling complaints about postsecondary educational institutions. The Texas Supreme Court has held that the Board is prohibited from regulating, in certain respects, religious postsecondary education institutions' *religious* programs of study, but it has not held that the Board is prohibited from regulating religious postsecondary education institutions' *secular* programs of study. Accordingly, the Board may handle complaints about religious postsecondary institutions' secular programs of study.

Opinion No. GA-0903

The Honorable Jo Anne Bernal

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Authority of a county attorney to enforce a bail bond forfeiture judgment that is more than twelve years old (RQ-0983-GA)

S U M M A R Y

Subsection 52.006(b) of the Property Code was enacted in 2007 and applies to judgments that existed on the effective date of the Act and were not then dormant. Under the plain language of that provision, if the county obtained a bail bond forfeiture judgment in favor of the state, that judgment does not become dormant if it was not dormant on April 23, 2007.

Section 31.006 of the Texas Civil Practices and Remedies Code makes the two year limitations period to bring a revival action inapplicable to a political subdivision. Therefore, the county may revive a dormant judgment at any time.

Once a county has revived a dormant judgment, it may apply for and file an abstract of the judgment, thereby establishing a lien, as long as the property is not exempt.

Texas Code of Criminal Procedure article 17.11 prohibits any person who has signed as a surety on a bail bond and is in default thereon from subsequently signing as a surety in a county without a bail bond board until the default is rectified.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201105832

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: December 28, 2011



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the commission) proposes amendments to §§20.219, 20.279, 20.331, and 20.433, concerning reporting requirements under the campaign finance law.

Section 20.219 contains a long list of the contents of campaign finance reports filed by candidates. Under Senate Bill 1 (SB 1), 82nd Legislature, Special Session, candidates are now required to disclose in campaign finance reports any credit, interest, rebate, refund, reimbursement, return of a deposit fee resulting from the use of a political contribution or asset purchased with a political contribution, and any other gains received from a political contribution if the amount exceeds \$100. SB 1 also requires the disclosure of the sale of an asset and the disclosure of an investment purchased with a political contribution if the amount received exceeds \$100. The proposed amendment to §20.219 would bring it in line with these additional disclosure requirements in the law.

Section 20.219 currently requires a report to include the "nature of the goods or services for which" certain expenditures are made. Title 15 of the Election Code requires the disclosure of the "purpose" of expenditures and the commission recently adopted an amendment to §20.61 clarifying the meaning of the term "purpose." Thus, the "nature of the goods or services" in §20.219 may be confusing and unnecessary. The proposed amendment would change the phrase "nature of the good or services" to "purpose of the expenditure," which is in line with the statute.

Also, the proposed amendment would change the use of the term "payment" to "expenditure" for consistency and because the terms are largely interchangeable. Furthermore, the requirement to include a statement of no reportable activity would be eliminated because the law requires the disclosure of the amounts of activity in cover page totals of the reports.

Section 20.279 is similar to §20.219, but applies to the contents of an officeholder's report. The proposed amendment is similar to the proposed amendment to §20.219.

Section 20.331 is similar to §20.219, but applies to the contents of a specific-purpose committee's report. The proposed amendment is similar to the proposed amendment to §20.219.

Section 20.433 is similar to §20.219, but applies to the contents of a general-purpose committee's report. The proposed amendment is similar to the proposed amendment for §20.219. The amendment to §20.433 would also remove the part of the rule

that clarified the effective date (July 1, 2005) of certain reporting requirements for expenditures made from corporate contributions.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that the rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §20.219

The amendments to §20.219 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §20.219 affect Title 15 of the Election Code.

§20.219. Content of Candidate's Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) - (8) (No change.)

(9) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) - (C) (No change.)

(D) the purpose of the expenditure ~~[nature of the goods or services for which the expenditure was made];~~ and

(E) (No change.)

(10) - (15) (No change.)

(16) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (9) of this section:

(A) the date of each expenditure ~~[payment];~~

(B) the full name of the person to whom the expenditure ~~[payment]~~ was made;

(C) the address of the person to whom the expenditure ~~[payment]~~ was made;

(D) the purpose of the expenditure ~~[nature of the goods or services for which the payment was made];~~ and

(E) the amount of the expenditure ~~[payment];~~

(17) - (18) (No change.)

(19) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(20) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(21) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(22) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(23) the full name and address of each person from whom an amount described by paragraph (19), (20), (21), or (22) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(24) ~~[(19)]~~ the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$100 and less; and

(E) the total amount of all political expenditures; and

~~[(20) if applicable, a statement that no reportable activity occurred during the reporting period; and]~~

(25) ~~[(24)]~~ an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105750

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-5800



SUBCHAPTER D. REPORTING REQUIREMENTS FOR AN OFFICEHOLDER WHO DOES NOT HAVE A CAMPAIGN TREASURER APPOINTMENT ON FILE

1 TAC §20.279

The amendments to §20.279 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §20.279 affect Title 15 of the Election Code. §20.279. *Contents of Officeholder's Sworn Report of Contributions and Expenditures.*

An officeholder's semiannual report of contributions and expenditures required by this subchapter must cover reportable activity during the reporting period and must include the following information:

(1) - (4) (No change.)

(5) on a separate page, the following information for each expenditure from political contributions made to a business in which the officeholder has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) - (C) (No change.)

(D) the purpose of the expenditure ~~[nature of the goods or services for which the expenditure was made];~~ and

(E) (No change.)

(6) - (10) (No change.)

(11) for political expenditures made during the reporting period that total more than \$100 to a single payee, other than expenditures reported under paragraph (5) of this section:

(A) - (C) (No change.)

(D) the purpose of the expenditure~~[; for example, the nature of the goods or services for which the expenditure was made];~~ and

(E) (No change.)

(12) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

(A) - (C) (No change.)

(D) the purpose of the expenditure~~[- for example, the nature of the goods or services for which the expenditure was made];~~

(E) - (G) (No change.)

(13) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (5) of this section:

(A) the date of each expenditure [payment];

(B) the full name of the person to whom the expenditure [payment] was made;

(C) the address of the person to whom the expenditure [payment] was made;

(D) the purpose of the expenditure~~[- for example, nature of the goods or services for which the payment was made];~~ and

(E) the amount of the expenditure [payment];

(14) - (15) (No change.)

(16) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(17) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(18) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(19) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(20) the full name and address of each person from whom an amount described by paragraph (16), (17), (18), or (19) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(21) [(46)] the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$100 and less; and

(E) the total amount of all political expenditures; and

~~[(17) if applicable, a statement that no reportable activity occurred during the reporting period; and]~~

(22) [(48)] an affidavit, executed by the officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105751
Natalia Luna Ashley
General Counsel
Texas Ethics Commission

Earliest possible date of adoption: February 5, 2012
For further information, please call: (512) 463-5800



SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §20.331

The amendments to §20.331 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §20.331 affect Title 15 of the Election Code.

§20.331. Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures.

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) - (10) (No change.)

(11) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) - (C) (No change.)

(D) the purpose of the expenditure ~~[nature of the goods or services for which the expenditure was made];~~ and

(E) (No change.)

(12) - (17) (No change.)

(18) for political expenditures made during the reporting period that total more than \$100 to a single payee:

(A) - (C) (No change.)

(D) the purpose of the expenditure~~[- for example, the goods or services for which the expenditure was made];~~ and

(E) (No change.)

(19) (No change.)

(20) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (11) of this section:

(A) the date of each expenditure [the payment];

(B) the full name of the person to whom the expenditure [payment] was made;

(C) the address of the person to whom the expenditure [payment] was made;

(D) the purpose of the expenditure [nature of the goods or services for which the payment was made]; and

(E) the amount of the expenditure [payment];

(21) (No change.)

(22) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(23) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(24) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(25) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(26) the full name and address of each person from whom an amount described by paragraph (22), (23), (24), or (25) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(27) [~~(22)~~] the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$100 and less; and

(E) the total amount of all political expenditures; and

~~[(23) if applicable, a statement that no reportable activity occurred during the reporting period; and]~~

(28) [~~(24)~~] an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105752

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-5800



SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

1 TAC §20.433

The amendments to §20.433 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §20.433 affect Title 15 of the Election Code.

§20.433. *Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures.*

[(a)] Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the general-purpose committee;

(2) the address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer;

(4) the residence or business street address of the general-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;

(9) if the general-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation as defined by §20.1 of this title (relating to Definitions):

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution;

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

(10) for each political expenditure by the general-purpose committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the general-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the general-purpose committee;

(11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than \$50 in value, or political contributions other than pledges or loans that total more than \$50 in value (or more than \$10 for a general-purpose committee reporting monthly):

- (A) the date each contribution was accepted;
- (B) the full name of the person making the contribution;
- (C) the address of the person making the contribution;
- (D) the principal occupation of the person making the contribution;
- (E) the amount of the contribution; and
- (F) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than \$50 in money or to provide goods or services worth more than \$50 (more than \$10 for a general-purpose committee reporting monthly):

- (A) the full name of the person making the pledge;
- (B) the address of the person making the pledge;
- (C) the principal occupation of the person making the pledge;
- (D) the amount of each pledge;
- (E) the date each pledge was accepted; and
- (F) a description of any goods or services pledged;

(13) the total of all pledges accepted during the period for \$50 and less from a person, except for those reported under paragraph (12) of this section ~~[subsection]~~;

(14) for each person making a loan or loans to the general-purpose committee for campaign purposes if the total amount loaned by the person during the period is more than \$50 (more than \$10 for a general-purpose committee reporting monthly):

- (A) the full name of the person or financial institution making the loan;
- (B) the address of the person or financial institution making the loan;
- (C) the amount of the loan;
- (D) the date of the loan;
- (E) the interest rate;
- (F) the maturity date;
- (G) the collateral for the loan, if any; and
- (H) if the loan has guarantors:
 - (i) the full name of each guarantor;
 - (ii) the address of each guarantor;
 - (iii) the principal occupation of each guarantor;
 - (iv) the name of the employer of each guarantor; and
 - (v) the amount guaranteed by each guarantor;

(15) the total amount of loans accepted during the period for \$50 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for those reported under paragraph (14) of this section ~~[subsection]~~;

(16) for political expenditures made during the reporting period that total more than \$100 (more than \$10 for a general-purpose committee reporting monthly) to a single payee:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure~~[- for example, the goods or services for which the expenditure was made]; [and]~~
- (E) the amount of the expenditure; and
- (F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(17) for each non-political expenditure made from political contributions:

- (A) the date of each expenditure [payment];
- (B) the full name of the person to whom the expenditure [payment] was made;
- (C) the address of the person to whom the expenditure [payment] was made;
- (D) the purpose of the expenditure [nature of the goods or services for which the payment was made];
- (E) the amount of the expenditure [payment]; and
- (F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(18) for each candidate or officeholder who benefits from a direct campaign expenditure made by the committee:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(19) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(20) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(21) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(22) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(23) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100;

(24) The full name and address of each person from whom an amount described by paragraph (20), (21), (22), or (23) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(25) [(20)] the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less (\$10 and less for a general-purpose committee reporting monthly);

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$100 and less (\$10 and less for a general-purpose committee reporting monthly); and

(E) the total amount of all political expenditures; and

~~[(21) if applicable, a statement that no reportable activity occurred during the reporting period; and]~~

~~(26) [(22)] an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."~~

~~[(b) Subsections (a)(16)(F) and (a)(17)(F) take effect on July 1, 2005.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105753

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-5800



CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the commission) proposes amendments to §22.11 and §22.13 and the repeal of §22.15, concerning reporting requirements under the campaign finance law.

Section 22.11 prohibits political contributions to statewide officeholders, legislators, and specific-purpose committees beginning on the 30th date before the beginning of a regular legislative session through the date of final adjournment and clarifies that the prohibition applies to contributions to a statewide officer-elect and a member-elect of the legislature.

Section 22.11 was intended to track §253.034 of the Election Code, which currently prohibits the contributions through the 20th date after the date of final adjournment. The statute also exempts contributions that are made by United States mail or by common or contract carrier. The proposed amendment would update §22.11 to match the statutory language.

Section 22.13 prohibits making or accepting political contributions while in the state capitol and defines the term "capitol" for purposes of the prohibition. Section 22.13 is based on §253.039 of the Election Code, which also prohibits political contributions

while in a courthouse. Section 22.13 is currently outdated, but the definition of the term "capitol" is useful for enforcing the statute. The proposed amendment would delete all language in §22.13 except for the definition of the term "capitol."

Section 22.15 prohibits a candidate, officeholder, or specific-purpose committee from supporting, opposing, or assisting a candidate or officeholder from using political contributions to purchase real property or pay the interest on or principal of a note for the purchase of real property. Section 22.15 is based on §253.038 of the Election Code, which has been amended since §22.15 was adopted. Section 22.15 is currently unnecessary in light of the statute.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that the rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

1 TAC §22.11, §22.13

The amendments to §22.11 and §22.13 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §22.11 and §22.13 affect Title 15 of the Election Code.

§22.11. *Prohibition on Contributions during Regular Session.*

(a) During the period that begins on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment ~~[ends on the day of final adjournment]~~, a person may not knowingly make a political contribution to:

- (1) a statewide officeholder or officer-elect;
- (2) a member of the legislature or member-elect; or
- (3) a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or officer-elect ~~[officeholder elect]~~ or member or member-elect of the legislature.

(b) An individual or committee described in subsection (a) of this section may not knowingly accept a political contribution, and shall refuse a political contribution that is received, during the period prescribed by subsection (a) of this section.

(c) A political contribution that is received and refused pursuant to this section shall be returned to the contributor not later than the 30th day after the date of receipt.

(d) A contribution made by United States mail or by common or contract carrier is not considered received during the period prescribed by subsection (a) of this section if it was deposited into an official repository of the United States Postal Service or delivered to a common or contract carrier with postage prepaid and properly addressed before the beginning of the period. The date of the postmark or common or contract carrier documents is considered to be the date the contribution was placed in the mail or delivered to the common or contract carrier unless proven otherwise.

(e) This section does not apply to a political contribution that was made and accepted with the intent that it be used:

(1) in an election held or ordered during the period prescribed by subsection (a) of this section in which the person accepting the contribution is a candidate if the contribution was made after the person appointed a campaign treasurer with the appropriate authority and before the person was sworn in for that office;

(2) to defray expenses incurred in connection with an election contest; or

(3) by a person who holds a statewide office or a member of the legislature, if the person or member was defeated at the general election held immediately before the session is convened, or by a specific-purpose political committee that supports or assists only that person or member.

~~[(f) This section does not apply to contributions offered or accepted during a special session.]~~

~~§22.13. Contributions in the Capitol Prohibited.~~

~~[(a) A person may not knowingly make or authorize a political contribution while in the Capitol to:]~~

~~[(1) a candidate or officeholder;]~~

~~[(2) a political committee; or]~~

~~[(3) a person acting on behalf of a candidate, officeholder, or political committee.]~~

~~[(b) A candidate, officeholder, or political committee or a person acting on behalf of a candidate, officeholder, or political committee may not knowingly accept a political contribution, and shall refuse a political contribution that is received in the Capitol.]~~

~~[(c) In §253.039 of the Election Code the [The] term "Capitol" [for purposes of this rule] includes the Capitol Building and the Capitol Extension, and any office that is being used as the official capitol office for a member of the legislature, the governor, the lieutenant governor, or the secretary of state.~~

~~[(d) This section does not prohibit contributions delivered in the Capitol through the United States Postal Service or a common or contract carrier.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105754

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-5800



1 TAC §22.15

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Ethics Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §22.15 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The repeal of §22.15 affects Title 15 of the Election Code.

§22.15. Prohibition on Payments Made To Purchase Real Property.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2011.

TRD-201105817

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-5800



TITLE 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §§111.13 - 111.18, 111.20, 111.23, 111.25, 111.27, 111.32, 111.33

The State Preservation Board (board) proposes amendments to existing rules at 13 Texas Administrative Code (TAC) Chapter 111, §§111.13 - 111.18, 111.20, 111.23, 111.25, 111.27; and new §111.32 and §111.33, concerning rules and regulations of the board.

Senate Bill 1338, 82nd Legislature, Regular Session (2011), amended Texas Government Code, Chapter 443, relating to the State Preservation Board. The proposed amendments and new rules include provisions necessary to implement the changes made by Senate Bill 1338 to Texas Government Code, Chapter 443. In addition, the proposed amendments clarify procedures of the board.

§111.13. Exhibitions in the Capitol and Capitol Extension.

The proposed amendment to §111.13(a)(2) adds vestibules, stairways, and light courts to the definition of public areas of the Capitol and Capitol Extension. This amendment clarifies which areas of the building are under the board's control.

The proposed amendment to §111.13(b) amends the provision to comply with the authority granted by the Legislature in Senate Bill 1338 to charge indirect costs to persons or entities using the Capitol or Capitol Extension for an exhibition. In addition, the amendment clarifies that these costs will be recovered in the form of a fee, as authorized by Texas Government Code §443.019(b). The language referring to amounts deducted from a deposit is removed as those costs will now be part of the fee.

The proposed amendment to §111.13(d) aligns the rule with the current practice of allowing exhibitions to be scheduled two weeks prior to exhibition, rather than four weeks.

§111.14. Events in the Capitol and Capitol Extension.

The proposed amendment to §111.14(b) amends the provision to comply with the authority granted by the Legislature in Senate Bill 1338 to charge indirect costs to persons or entities using the Capitol or Capitol Extension for an event. In addition, the amendment clarifies that these costs will be recovered in the form of a fee, as authorized by Texas Government Code §443.019(b). The language referring to amounts deducted from a deposit is removed as those costs will now be part of the fee.

The proposed amendments to §111.14(e) clarify the new procedures relating to inspection and clean-up. The organizer of the event will be responsible for any costs of additional clean-up or damage repair.

§111.15. Use of the Capitol, Capitol Extension, Capitol Grounds, and General Land Office for Film or Video Production.

The proposal amends the definition of "film or video production" to conform to the definition of "moving image project" in Texas Government Code §485.021(2).

§111.16. Changes to the Capitol Building, General Land Office Building, and Grounds.

The proposal expands the definition of "changes" to include the Capitol Extension building.

§111.17. Capitol Collections Policy.

The proposed amendments to §111.17(a), (c)(5), (f)(1), (3), and (4) remove references to the collections review committee, which has been abolished.

The proposed amendment to §111.17(c)(2) amends the provision to implement the authority granted to the board by the Legislature in Senate Bill 1338, 82nd Legislature, Regular Session (2011), which amended Texas Government Code, Chapter 443, to allow the board to use gifts of property for the purposes specified by the grantor, unless the purpose conflicts with the goal of preserving the historic character of the buildings.

The proposed amendment to §111.17(d)(2) clarifies procedures.

§111.18. Capitol Collections Management Manual.

The proposed amendments to §111.18(b), (b)(2), (b)(3), (b)(4), (c)(3), (d)(2), (d)(4), (d)(6), (d)(7), (e)(1), (e)(4), (f)(1), (f)(2), (g)(2), and (i)(5) clarify procedures and remove references to the collections review committee, which has been abolished.

The proposed amendments to §111.18(c)(1) and (d)(1) revise the provision to implement the authority granted to the board by the Legislature in Senate Bill 1338, 82nd Legislature, Regular Session (2011), which amended Texas Government Code, Chapter 443, to allow the board to use gifts of property for the purposes specified by the grantor, unless the purpose conflicts with the goal of preserving the historic character of the buildings.

§111.20. Use of the Capitol Grounds.

The proposed amendment to §111.20(b) amends the provision to comply with the authority granted by the Legislature in Senate Bill 1338 to charge indirect costs to persons or entities using the Capitol or Capitol Extension for an exhibition. In addition, the amendment clarifies that these costs will be recovered in the form of a fee, as authorized by Texas Government Code §443.019(b). The language referring to amounts deducted from a deposit is removed as those costs will now be part of the fee.

The proposed amendment to §111.20(c)(3) clarifies procedures of the board by adding language stating that scheduled events on the Capitol Grounds should conclude by 9:00 p.m.

The proposed amendment to §111.20(d)(2) aligns the rule with the current practice of allowing events to be scheduled one week before the date requested, rather than three weeks.

The proposed amendments to §111.20(d)(8) clarifies the new procedures relating to inspection and clean-up. The organizer of the event will be responsible for any costs of additional clean-up or damage repair.

§111.23. Fund-Raising Policy.

The proposed amendments to §111.23 clarify procedures of the board as related to fund-raising. The board may raise funds for various programs under its authority. The amended rule includes educational programming and the Bob Bullock Texas State History Museum as categories for donations.

§111.25. Memorials/Monuments on the Capitol Complex.

The proposal amends §111.25 to comply with the authority granted by the Legislature in Senate Bill 1928, 82nd Legislature, Regular Session (2011) to establish an African American Texans memorial monument on the historic Capitol grounds. In addition, the amendment modifies the rule to allow the board to place a Tejano memorial monument on the historic grounds as authorized by Texas Government Code §443.01525.

§111.27. General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds.

The proposed amendments to §111.27(a)(6) and (7) prohibit smoking in public areas and bringing balloons into the Capitol and Capitol Extension.

The proposed amendment to §111.27(c) amends the provision to comply with the authority granted by the Legislature in Senate Bill 1338 to charge indirect costs to persons or entities using the Capitol or Capitol Extension for an exhibition. In addition, the amendment clarifies that these costs will be recovered in the form of a fee, as authorized by Texas Government Code §443.019(b). The language referring to amounts deducted from a deposit is removed as those costs will now be part of the fee. As the costs will now be in the form of a fee, the language allowing the board the option of charging it as a fee will be removed.

The board proposes to add the following new sections.

§111.32. Standards of Conduct between State Preservation Board Employees and Private Donors.

The proposal adds new §111.32, concerning standards of conduct between State Preservation Board employees and private donors. The board is authorized to accept donations under Texas Government Code §443.010 and §445.011. The new section is proposed to establish standards of conduct governing the relationship between the donor and the board's officers and employees, as required by Texas Government Code, Chapter 2255.

§111.33. Relationship with Affiliated Non-Profit Organization.

The proposal adds new §111.33, concerning the relationship with affiliated non-profit organization. The board is authorized to establish an affiliated non-profit support organization for the Bob Bullock Texas State History Museum under Texas Government Code §445.013. In addition, Senate Bill 1338, 82nd Legislature, Regular Session (2011) amended Texas Government Code, Chapter 443, to allow the board to establish additional affiliated non-profit support organizations. The new section is proposed to establish standards of conduct governing the relationship between the private organization and the board and its officers and employees, as required by Texas Government Code, Chapter 2255.

Cindy Provine, Chief Financial Officer, State Preservation Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments.

John Sneed, Executive Director, State Preservation Board, has determined that for each year of the first five years the sections are in effect the public benefit will be consistency and clarifications of agency services in providing public use to the Capitol and Capitol Extension for organized activities. There will be no effect on small or micro businesses and there is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposed amendments and new sections may be submitted in writing to Julie Fields, Public Information Coordinator, P.O. Box 13286, Austin, Texas 78711. Comments may also be submitted electronically to julie.fields@tspb.state.tx.us or faxed to (512) 475-3366. The deadline for comments is Friday, February 10, 2012 by 5:00 p.m.

The amendments and new sections are proposed under Texas Government Code §443.007(b) which authorizes the board to adopt rules concerning the buildings, their contents, and their grounds; and Texas Government Code, Chapter 2255, which requires state agencies to adopt rules governing the relationship between private organizations, the board, and its employees.

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

§111.13. Exhibitions in the Capitol and Capitol Extension.

(a) Definitions. The following words and terms, when used in this section [chapter], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Exhibition--Any display of artwork, including paintings, sculptures, arts and crafts; photographs; public service and general interest presentations; and historical displays.

(2) Public areas of the Capitol and Capitol Extension--The hallways, entrances, vestibules, stairways, light courts, rotundas, and other areas adjacent to and near the rotunda.

(3) Public purpose--The promotion of the public health, education, safety, morals, general welfare, security, and prosperity of all of the inhabitants or residents within the state, the sovereign powers of which are exercised to promote such public purpose or public business. The chief test of what constitutes a public purpose is that the public generally must have a direct interest in the purpose and the community at large is to be benefitted. This does not include activities which promote a specific viewpoint or issue and could be considered lobbying. Political rallies, receptions, and campaign activities are prohibited in the public areas of the Capitol.

(4) State official sponsor--The Governor, the Lieutenant Governor, the Speaker of the Texas House of Representatives, a Texas Senator, or member of the Texas House of Representatives.

(b) Fee [Deposit] for use of Capitol and Capitol Extension. A fee [deposit] is required from persons or entities that use the Capitol and Capitol Extension, for an exhibition. The fee [deposit] is in an amount set by the office of the State Preservation Board designed to recover the estimated direct and indirect costs to the state of the exhibition, including the costs of labor, materials, and utilities directly or indirectly attributable to the exhibition. The fee [deposit] is required in the office of the State Preservation Board no later than 24 hours prior to the exhibit installation. [The office of the State Preservation Board may deduct from the deposit:]

~~{(1) the cost of damage to the Capitol and Capitol Extension that directly results from the exhibition;}~~

~~{(2) the costs of extra labor, materials, and utilities directly attributable to exhibition; and}~~

~~{(3) the costs of extra security requested by the person or entity for the exhibition.}~~

(c) Criteria for Exhibition Approval.

(1) Exhibitions shall be approved and scheduled by the office of the State Preservation Board upon the recommendation of a state official sponsor as described in subsection (a)(4) of this section.

(2) Exhibitions must be for a public purpose as defined in subsection [section] (a)(3) of this section.

(3) Request must be accompanied by:

(A) a detailed description of the exhibit, including dimensions of the space required, and how the exhibit will be displayed;

(B) a clear photograph of the entire exhibit, preferably as it will be displayed. A scale drawing may be submitted in lieu of a photograph if a photograph is not available;

(C) a brief statement of the purpose of the exhibit; and

(D) recommendation of a state official sponsor as described in subsection (a)(4) of this section.

(4) Incomplete requests will not be considered.

(5) Exhibits must be tastefully exhibited. Once erected, the office of the State Preservation Board reserves the right to require the exhibitor to make aesthetic changes to the exhibit.

(6) Exhibit space will be assigned based primarily on the size, scope, and design of the exhibit. Exhibitions will not be approved for display in the Capitol rotunda in order to maintain its historic presence.

(7) Exhibitors must bear all costs of assembling, displaying, and removing exhibits.

(8) All exhibits must be freestanding. Art and photographic exhibits must be secured to tripods, backdrops, or freestanding displays. Exhibits may not:

- (A) hang from or attach to walls or railings;
- (B) obstruct entrances;
- (C) interrupt traffic flow through the building;
- (D) damage walls, woodwork, or floors;
- (E) obstruct the view or access to fire-fighting equipment or fire alarm pull stations; or
- (F) involve the use of any flammable, hazardous, or odorous chemicals or materials, torches, or other open-flame illuminating devices or fires.

(9) Exhibits will not be considered for display in the Capitol and Capitol Extension if they:

- (A) feature one individual's artwork for the purpose of commercially advertising that person's artwork;
- (B) promote a commercial enterprise;
- (C) have no obvious public purpose; or
- (D) have an illegal purpose.

(10) If other than routine security provided by Capitol police is needed for the exhibit, the exhibitor will bear such costs. The State of Texas, the State Preservation Board, or any employee of the State Preservation Board shall not be held liable in case of damage or loss to an exhibit while it is on display in the Capitol and Capitol Extension.

(d) Scheduling exhibits.

- (1) Exhibits may be displayed for up to 5 working days.
- (2) The office of the State Preservation Board may extend the display time for major exhibitions.
- (3) No more than one exhibit will be approved for display on the same day in a designated area of the Capitol and Capitol Extension.
- (4) A written request using State Preservation Board forms to display an exhibit must be received by the office of the State Preservation Board no later than two ~~four~~ weeks prior to the first day of the time being requested. ~~[Exhibitors will be notified of the status of their request within two weeks following receipt of the request.]~~

§111.14. Events in the Capitol and Capitol Extension.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Event--Any performance, ceremony, or presentation held in the public areas of the Capitol, Capitol Extension, or on the Capitol Grounds.

(2) Public areas of Capitol and Capitol Extension--The hallways, entrances, rotundas, other areas adjacent to and near the rotunda, central gallery, state seal court.

(3) Public purpose--The promotion of the public health, education, safety, morals, general welfare, security, and prosperity of all of the inhabitants or residents within the state, the sovereign powers of which are exercised to promote such public purpose or public business. The chief test of what constitutes a public purpose is that the public generally must have a direct interest in the purpose and the community at large is to be benefitted. This does not include activities which pro-

mote a specific viewpoint or issue and could be considered lobbying. Political rallies, receptions, and campaign activities are prohibited in the public areas of the Capitol and Capitol Extension.

(4) State official sponsor--The Governor, the Lieutenant Governor, the Speaker of the Texas House of Representatives, a Texas Senator, or a member of the Texas House of Representatives.

(b) Fee ~~[Deposit]~~ for use of Capitol or Capitol Extension. A fee ~~[deposit]~~ is required from persons or entities that use the Capitol or Capitol Extension for an event or other scheduled activity. The fee ~~[deposit]~~ is in an amount set by the office of the State Preservation Board designed to recover the estimated direct and indirect costs to the state for the event, including the costs of labor, materials, and utilities directly or indirectly attributable to the event. The fee ~~[deposit]~~ is required in the office of the State Preservation Board no later than 24 hours prior to the event or other scheduled activity. ~~[The office of the State Preservation Board may deduct from the deposit:]~~

~~[(1) the cost of damage to the Capitol or Capitol Extension that directly results from the event;]~~

~~[(2) the costs of extra labor, materials, and utilities directly attributable to the event; and]~~

~~[(3) the costs of extra security requested by the person or entity for the event.]~~

(c) Event Approval Criteria for Capitol and Capitol Extension.

(1) Events shall be approved and scheduled by the office of the State Preservation Board upon the recommendation of a state official sponsor as described in subsection (a)(4) of this section.

(2) Events must be for a public purpose as defined in subsection (a)(3) of this section.

(3) Requests must be submitted on forms provided by the State Preservation Board and be accompanied by:

(A) a detailed description of the event, including equipment and props ~~[propose]~~ to be used, and anticipated length and scope;

(B) a brief statement of the purpose of the event;

(C) the area in the Capitol or Capitol Extension being requested;

(D) a list of all electrical equipment and power requirements for each piece of equipment;

(E) a recommendation from the state official sponsor as described in subsection (a)(4) of this section.

(4) Incomplete requests will not be considered.

(5) Events in the Capitol or Capitol Extension should not exceed 45 minutes in length.

(6) Performances in the Capitol rotunda are allowed only between 12:00 p.m. and 1:00 p.m.

(7) Events will not be approved if they:

(A) have no obvious public purpose;

(B) are determined by the office of the State Preservation Board to be inappropriate to the historical setting of the Capitol or Capitol Extension;

(C) promote a commercial enterprise;

(D) obstruct entrances or interrupt traffic flow through the building;

(E) have the potential to cause damage to state property (including, but not limited to, the Capitol's exterior walls, interior walls, doors, windows, woodwork, or floors);

(F) obstruct the view of or access to fire-fighting equipment, fire alarm pull stations, or fire hydrants;

(G) involve the use of any flammable, hazardous, or odorous chemicals or materials, torches, candles, or other open-flame illuminating devices or fire, or are determined to be a fire hazard by the Capitol Fire Marshal;

(H) involve use of signs or placards attached to objects that might cause damage to the Capitol, Capitol Extension or Capitol Grounds.

(8) Events may not interfere with any legislative session or regular use of the Capitol or Capitol Extension for transaction of state business.

(9) Sound equipment, chairs, podiums, or other equipment ordinarily required for ceremonies, presentations, or performances may be used only with prior approval by the office of the State Preservation Board, and shall be furnished by the requesting party. Installation approval is subject to inspection.

(10) The State of Texas, the State Preservation Board, or any employee of the State Preservation Board are not liable for any injury which may occur to any person during events.

(11) All art, photographic exhibits, banners, streamers, or posters, used during an event must be on freestanding displays. Such materials may not be hung from walls or railings.

(12) Fund-raising on the premises is not allowed unless the fund-raising directly benefits the Capitol, Capitol Extension or Capitol Grounds, or unless it is part of the gubernatorial inaugural, or a similar event approved by the board, and the funds are used to help defray the costs of the event.

(13) With the exception of businesses authorized by the State Preservation Board, vendors and/or the promotion of a commercial enterprise involving the exchange of money are prohibited.

(14) Security requirements other than that routinely provided by Capitol police are the responsibility of the organizers; however, the office of the State Preservation Board must approve any additional security arrangements.

(d) Scheduling Events in the Capitol and Capitol Extension.

(1) No more than two events will be scheduled for either the Capitol, Capitol Extension or Capitol Grounds in one working day.

(2) A written request to schedule an event must be received by the office of the State Preservation Board no later than one week before the date requested.

(e) General provisions. Upon completion of the event, organizers will be held responsible for clean-up of the area. State Preservation Board will conduct an inspection of the area to determine whether it was adequately cleaned. The organizer(s) will be responsible for the costs of any additional clean-up or damage repair. [Any deposit will be refunded following an inspection of the area to determine that the area has been adequately cleaned.] The organizer(s) may be present at this inspection by contacting the office of the State Preservation Board.

§111.15. Use of the Capitol, Capitol Extension, Capitol Grounds, and General Land Office for Film or Video Production.

(a) Definition and approval of film or video production.

(1) A film or video production is defined as a sound and visual production, including a film, television program, national or multistate commercial, or digital interactive media production. [the type of production which uses a film or video medium.] The rules listed in this section do not apply to news gathering by the press.

(2) All film or video production must be approved by the office of the State Preservation Board. The office of the State Preservation Board reserves the right to deny use of the Capitol for reasons involving security, preservation of the Capitol as a national historic landmark, impact on the buildings or their occupants, and the appropriateness of the proposed activities within a public building. A decision will be made after a careful review of the content, purpose, and impact on the buildings.

(3) Film or video production for commercial advertising purposes is strictly prohibited.

(b) Scheduling of film or video production.

(1) The office of the State Preservation Board will be responsible for scheduling production dates.

(2) All production companies will be required to fill out an application and submit a letter of intent to proceed with production.

(3) The office of the State Preservation Board will require production walk-throughs to discuss security, parking, electrical, and other special needs.

(4) All production companies will be required to enter into a location agreement which outlines a production schedule, shot-sheet, liability for damages and injury, proof of insurance, preparation work, and post-production clean-up.

(5) The State Preservation Board may charge a fee, in an amount set by the executive director, for use of the Capitol, Capitol Extension, or General Land Office Building. Income from fees under this paragraph shall be used for preservation of the buildings.

(6) The State Preservation Board shall be reimbursed for staff time allocated to any filming or videoing activity, including benefits and support costs.

(7) Production activities will generally be prohibited during standard business hours (8:00 a.m. to 5:30 p.m. weekdays) and during legislative sessions.

(c) Use of the Capitol.

(1) Film or video production activities must be compatible with the preservation of the historic preservation of the Capitol.

(2) Construction in the Capitol for production purposes is strictly prohibited.

(3) Film or video production is prohibited in the Historically Significant spaces listed [below]: House Chamber, Senate Chamber, Original Governor's Office, Treasury, Legislative Library, Supreme Courtroom, Appeals Courtroom, Agricultural Museum Room, Secretary of State's Office, Governor's Reception Room. The Texas House of Representatives and the Texas Senate may authorize the use of video in the House Chamber or Senate Chamber for governmental purposes or special activities scheduled by the House or Senate.

(4) Attachments to or contact with furnishings, artwork, or architectural surfaces is strictly prohibited.

(5) Any film or video production aids or equipment must be freestanding with a stable base.

§111.16. Changes to the Capitol Building, Capitol Extension Building, General Land Office Building, and Grounds.

(a) Definition and categories of change.

(1) Changes--Any alteration, addition, relocation, or other form of renovation to the Capitol building, Capitol extension building, General Land Office building, and/or their grounds.

(2) Changes may be divided into three categories:

- (A) construction, restoration, and repairs;
- (B) relocations/additions of furnishings and artwork;
- (C) maintenance and custodial.

(b) Construction, restoration, and repairs.

(1) All changes involving construction, restoration, and repairs, as defined in this subsection, shall be approved in writing by the office of the State Preservation Board before change may occur. Changes include, but are not limited to:

- (A) artwork (historical);
- (B) built-in appliances;
- (C) concrete work;
- (D) demolition;
- (E) earthwork and plantings;
- (F) electrical work;
- (G) excavation;
- (H) floor coverings;
- (I) furnishings (historical);
- (J) graphics;
- (K) hardware;
- (L) heating/ventilation/air-conditioning;
- (M) lighting;
- (N) masonry work;
- (O) metalwork (including roofing);
- (P) paint and other applied finishes (including color and reflectance selection);
- (Q) parking configuration;
- (R) plaster work;
- (S) plumbing;
- (T) removal of materials;
- (U) telecommunications installation;
- (V) window coverings;

(W) woodwork (including refinishing and bookshelves built in or attached to the building in a manner that makes the bookshelves permanent fixtures).

(2) A status report listing all changes approved during the previous period shall be provided by the executive director to all State Preservation Board members at or before each board meeting.

(3) Any change approved by the office of the State Preservation Board and of a dollar construction amount over \$10,000 shall subsequently require final approval by the State Preservation Board in open meeting.

(4) All changes, regardless of cost, that occur in areas under the jurisdiction of the State Preservation Board and result in a different room or area configuration from existing room or area use, alter existing wall partition configurations, substantially affect original materials, or that seek to restore the original appearance of an area will require to be approved by the State Preservation Board before change may occur.

(5) State agency directors, or their assignees, and state legislators, upon denial of a change request by the office of the State Preservation Board, may bring their request before the board at the next open meeting for a final ruling.

(c) Furnishings and artwork.

(1) A change request form must be filled out if a change (permanent additions, loans, location changes, and maintenance) related to the state-owned objects of historical significance in the buildings and on the grounds is sought.

(2) Changes to furnishings and artwork must be approved by the curator of the Capitol.

(d) Maintenance and custodial.

(1) Usual maintenance is defined as any work necessary for the continual upkeep of the grounds, building, and furnishings therein. Usual maintenance includes changing of light bulbs, repainting with identical color, texture, and reflectance value of paint; and preventative and routine maintenance of heating, air conditioning, or plumbing systems. The agency head, or assignee, is to make requests for usual maintenance, of a value under \$5,000, to the office of the State Preservation Board.

(2) Custodial or regular cleaning shall be directed by the occupying agency for their area. Public areas shall be maintained at the direction of the office of the State Preservation Board.

(3) Major maintenance is defined as any non-emergency upkeep of the buildings or grounds that exceeds the cost of \$5,000, such as repainting, baseboard replacement, wood refinishing, replacement of ceiling tiles or panels, and replacement of light fixtures.

§111.17. Capitol Collections Policy.

(a) Purpose.

[~~(1)~~] The State Preservation Board sets as its purpose to collect, preserve, protect, interpret, and maintain information on original or period objects of historical significance to the Capitol or the State of Texas, or appropriate to the early period of the Capitol's history (circa 1880-1920). The board will encourage study of its collections including publications concerning the objects, and will maintain the highest ethical standards in its interpretation of the collection.

[~~(2)~~] In order to assist the board in carrying out the purpose of this policy, a collections review committee composed of five members, will be formed, whose specific qualifications, appointments, and duties are further defined in the Capitol collections management manual. The collections review committee will be abolished on September 1, 2002 unless the board affirmatively votes to continue the existence of the committee.]

(b) Types of collections.

(1) It is recognized the Capitol is primarily a functioning building and not a museum. As a historic structure it is appropriately the repository for a limited number of original or period objects of the highest quality and significance to the history of the building or the State of Texas, or appropriate to the early period of the Capitol's history (circa 1880-1920).

(2) Unlike museums, however, that are equipped and designed to maintain secondary research or exchange collections, the board will only maintain a primary Capitol collection including paintings, furnishings, sculpture, decorative arts, and other related artifacts. The board will acquire only artifacts that are appropriate to the purpose of the Capitol collections policy. Objects that do not meet the standards noted in paragraph (1) of this subsection may be referred to other state or appropriate depositories.

(c) Methods of acquisition.

(1) The board shall acquire its collections through purchase, gift, bequest, or any other transaction consistent with applicable state or federal requirements by which title to objects is transferred to the board.

(2) To the extent practicable, the board shall use gifts of property made to the board for the purpose specified by the grantor. The board may refuse a gift if in the board's judgment the purpose specified by the grantor conflicts with the goal of preserving the historic character of the buildings under the board's control. ~~[The board shall acquire objects unencumbered by conditions imposed by the owner, donor, consignee, or by the nature of the material itself, unless otherwise approved by the board.]~~ The office of the State Preservation Board will report to the board on new acquisitions and request the board's formal approval of the acquisitions at each meeting of the board.

(3) The board may accept loans from individuals, institutions, organizations, or foundations only if they enhance the purposes and activities of the board. Loans will only be accepted for display or use in buildings or on grounds which are under the jurisdiction of the board. As a general rule, the board shall not approve the loan of items from the Capitol collection.

(4) In addition, the board maintains the right to deaccession items from the collection. Only material that is no longer considered relevant or useful to the purposes of the board will be considered for deaccessioning.

(5) To deviate from any of the policies will require ~~[the advisory review of the Collections Review Committee and]~~ the approval of the executive director of the State Preservation Board, curator of the Capitol, and the board.

(d) Care and documentation of collections.

(1) The curator of the Capitol is responsible for the care of the collections. Appropriate maintenance, security, and conservation procedures shall be developed and followed.

(2) Proper records on collected material, permanent or loan, shall be maintained by the curator of the Capitol, and a report to the board on the status of the collections will be made as requested ~~[on an annual basis]~~.

(e) Capitol collections management manual.

(1) A Capitol collections management manual in §111.18 of this title (relating to Capitol Collections Management Manual) shall be developed by the curator of the Capitol to effectively carry out the guidelines contained in the Capitol collections policy.

(2) The collections management manual shall expand the contents of the collections policy by detailing specific procedures for acquisitions, deaccessions, and loans. Complete accessioning, cataloging, care, and conservation procedures shall be outlined in the manual.

(f) Standards of conduct, other Capitol collections and related materials, revisions to the policy.

(1) As a general policy, all parties shall adhere to the ethical guidelines recommended by the American Association of Museums. No member of the board, the office of the State Preservation Board, ~~[the Collections Review Committee,]~~ or any other individuals specified by the board shall personally receive, directly or indirectly, any favor, promise, or thing of value which could or appear to induce, discourage, or influence a recommendation, decision, or action affecting accessions, deaccessions, loans, exhibitions, or activities related to the Capitol collection. All parties shall demonstrate a good faith effort to avoid even the appearance of a conflict of interest.

(2) While the board does not have complete location control over certain historical artifacts used in legislative members' offices in the historic Capitol, all other aspects of the collections policy and collections management manual apply to all such artifacts.

(3) Any revisions to the policy must be ~~[referred to the Collections Review Committee for advisory comment and]~~ approved by the office of the State Preservation Board, and the board.

(4) Upon recommendation of the ~~[Collections Review Committee and the]~~ curator of the Capitol and the executive director of the State Preservation Board, the board may approve exceptions to this policy.

(g) Items in the Capitol collection, unless on loan or in storage as provided under this chapter ~~[these rules]~~, shall be located in the Capitol, except that portraits originally identified with the supreme court or the court of criminal appeals initially displayed in the Capitol after 1915 shall be located, at the particular court's discretion, in the present quarters of the court to which the item is identified. An item located at the direction of a court remains part of the Capitol collection and is subject to preservation and protection by the board.

§111.18. *Capitol Collections Management Manual.*

(a) Goals of the manual.

(1) The Capitol Collections Management Manual has been developed by the curator of the Capitol to further define the Texas Capitol collections policy, detailing the specific procedures that are to be followed to fully carry out the guidelines of the collections policy.

(2) The overall goal of the policy and the management manual is to collect, preserve, protect, interpret, and maintain information on original or period objects of historical significance to the Capitol or the State of Texas or appropriate to the early period of the Capitol's history (circa 1880-1920).

(b) Responsibility for collections ~~[and Collections Review Committee]~~.

(1) The State Preservation Board was established as an agency in 1983 to preserve, maintain, and restore the State Capitol, its contents, and grounds (Texas Government Code, Chapter 443).

(2) In order to assist the State Preservation Board and the office of the State Preservation Board in carrying out the purpose of the collections policy, the curator may consult recognized authorities or scholars in one or more of the following fields: Texas material culture; American decorative arts (19th century emphasis); Texas paintings (historical); Texas history; or a related field ~~[a collections review committee shall be formed]~~.

~~{~~(3) ~~The Collections Review Committee shall be composed of five members appointed by the office of the State Preservation Board and approved by the State Preservation Board. The committee members shall be residents of the State of Texas and recognized authorities or scholars in one or more of the following fields: Texas material culture; American decorative arts (19th century emphasis); Texas paintings (historical); Texas history; or a related field. The term of the ap-~~

pointments shall be three years. To allow for staggered terms, two of the first appointments will be for the full three-year term, to be determined by random selection.]

~~[(4) The Collections Review Committee's responsibilities primarily focus on the advisory review of staff recommendations concerning acquisitions, deaccessions, and loans. The committee may conduct its advisory review process via correspondence, but shall meet as a group at least once a year prior to each year's first meeting of the State Preservation Board, and shall report to the board, along with the curator of the Capitol, on the status of the collections based on the prior year's activities. The curator of the Capitol and other related staff shall attend each committee meeting and shall assist with the formulation of the meeting's agenda.]~~

(c) Methods of acquisition.

(1) The office of the State Preservation Board shall acquire the collections through purchase, gift, bequest, or any other transaction consistent with applicable state or federal requirements by which title to objects is transferred to the board. To the extent practicable, the board shall use gifts of property made to the board for the purpose specified by the grantor. The board may refuse a gift if in the board's judgment the purpose specified by the grantor conflicts with the goal of preserving the historic character of the buildings under the board's control. ~~[The office of the State Preservation Board shall acquire objects unencumbered by conditions imposed by the owner, donor, consignee, or by the nature of the material itself, unless otherwise approved by the board.]~~ The curator of the Capitol will report to the board on new acquisitions and request the board's formal approval of the acquisitions at each meeting of the board.

(2) Prior to purchase, the office of the State Preservation Board will attempt to acquire the object or comparable material through gift, bequest, or transfer. Only items which the office of the State Preservation Board feels can be given proper care for an indefinite period of time will be acquired. Items known to have questionable provenance or title or obtained through illicit trade shall not be acquired. Only when the office of the State Preservation Board has determined to the best of its ability that material has been collected, exported, or imported in compliance with the laws and regulations of the country of origin, of the federal government of the United States, and of individual states within the United States, shall material be acquired by the board. The office of the State Preservation Board will conduct its collecting activities with a reasonable certainty that its approach is consistent with the spirit and intent of these laws and programs.

(3) If it determined that an object offered for acquisition is stolen property or has entered the United States illegally, the office of the State Preservation Board will report all pertinent facts, in writing, to ~~[the Collections Review Committee and]~~ the board.

(d) Donation, bequests, purchases, and other transactions.

(1) To the extent practicable, the board shall use gifts of property made to the board for the purpose specified by the grantor. The board may refuse a gift if in the board's judgment the purpose specified by the grantor conflicts with the goal of preserving the historic character of the buildings under the board's control. ~~[All donations shall be referred by the office of the State Preservation Board to the Collections Review Committee for advisory review and comment. Taking into consideration the comments of the Collections Review Committee, if a donation is unencumbered, and meets the purposes of the board, the office of the State Preservation Board may accept the material for receipt. If the item is encumbered in any manner, the donation shall be submitted for prior approval to the board.]~~ All encumbrances shall be stated clearly in an instrument of conveyance, shall be made part of the State Preservation Board permanent record, and shall be observed by

the executive director and the curator of the Capitol of the State Preservation Board. Whenever possible donations should be accompanied by funds which will be restricted to an endowment for conservation and collection. Applicable Internal Revenue Service rules related to donations shall be adhered to by all relevant parties.

(2) In the absence of indication to the contrary, the State Preservation Board, the executive director ~~and~~ the curator of the Capitol ~~and the Collections Review Committee~~ shall assume that all donors are sole owners and shall have no responsibility for confirming ownership. In addition, if the donor possesses copyright to material, he shall be encouraged to relinquish and transfer to the board all right, title, and interest in copyright and transfer the exclusive rights of reproduction, adaptation, and distribution to the board. If this is not agreed upon, the material shall be treated as an encumbered donation.

(3) The board reserved the right to accept or refuse any bequest of collection material or any part thereof made to it. In reviewing a bequest, the board shall follow the same procedures as for donations.

~~(4) [All items considered for purchase shall be referred by the curator of the Capitol to the Collections Review Committee for advisory review and comment.]~~ A written appraisal from a licensed appraiser shall be obtained by the curator prior to the purchase of items over \$10,000 and otherwise deemed advisable. Taking into consideration the comments ~~[of the committee and the recommendations]~~ of the curator of the Capitol, the office of the State Preservation Board may purchase items under \$10,000 given the availability of necessary funds. Items over \$10,000 shall require the approval of the board prior to purchase.

(5) The board may also acquire items through interagency transfer as provided by the Texas Government Code, §443.017 and other applicable state law.

(6) Any other transaction by which title to material is transferred to the board shall be approved by the board upon the recommendation of the executive director of the State Preservation Board ~~and~~ the curator of the Capitol ~~[and the advisory review of the Collections Review Committee]~~.

(7) Board members ~~or~~ staff of the State Preservation Board ~~or Collections Review Committee members~~ shall not give appraisals, either of donations, of privately owned materials, or otherwise; however, upon request of the curator of the Capitol may suggest possible appraisers to the potential donor. In most cases, at least three appraisers should be suggested.

(8) State law provides that in most cases all records of a governmental body are open to the public following procedures established under the Open Records Act. One exception to that rule is information pertaining to appraisals or the purchase price of personal property for public purposes prior to the formal award of the contract.

(e) Deaccessioning.

(1) The board may deaccession material in order to refine its collections and effect exchanges or purchases of material more in keeping with its purposes. All material considered for deaccessioning by the curator of the Capitol must be ~~[referred to the Collections Review Committee for advisory review, and then]~~ approved by the executive director of the State Preservation Board and the board prior to deaccession. No donated object shall be deaccessioned for any reason for two years and one day after the date of its acquisition.

(2) The procedures for deaccessioning material from the Capitol collections shall be consistent with those procedures established by Article 601b, Vernon's Civil Statutes. Items shall not be returned to donors. However, when applicable, the donor shall not be

precluded from purchasing material if it is offered at public sale. The curator of the Capitol shall make a reasonable attempt to notify the donors of the material 30 days prior to any such sale. All monies received from the deaccessioning of material shall be placed in a fund restricted for acquisitions or direct care of the collections.

(3) Prior to deaccessioning, the curator of the Capitol shall determine current fair market value of the material. Two independent appraisals shall be obtained for items valued potentially over \$10,000.

(4) No board [~~or Collections Review Committee~~] member, staff person of the office of the State Preservation Board, or other individuals designated by the board may purchase deaccessioned items from the board. Museum ethics as well as discretion should always be exercised in such instances.

(5) A complete file on all deaccessioned materials shall be maintained by the curator of the Capitol.

(6) In deaccessioning, the board shall give preference to retaining material that is part of the artistic, historical, or cultural heritage of the Capitol or the State of Texas.

(f) Loans to the board.

(1) Loans to the board shall only be approved when consistent with its programs and activities. ~~The [Loans shall be referred by the curator of the Capitol to the Collections Review Committee for advisory review and comment. Taking into consideration the comments of the committee, the]~~ curator of the Capitol may accept loans to buildings and grounds under the jurisdiction of the board.

(2) Items placed in the Capitol on a short-term exhibit basis that fall under §111.13 of this title (relating to Exhibitions and Events in the Capitol Building) are not included under this manual and shall be monitored by appropriate State Preservation Board staff [~~the curator of the Capitol~~] according to established procedures. All loans shall be for specific periods of time. Permanent or indefinite loans will not be accepted.

(3) All rules and regulations governing loans to the Capitol shall be clearly stated in a contractual document and agreed to by the lender and the office of the State Preservation Board prior to the latter's taking custody of loaned material. Items on loan for display in the Capitol shall be treated as permanent collection items, the curator of the Capitol being responsible for their maintenance and handling. However, insurance shall be carried by the lender unless other arrangements, in contractual format, are agreed upon in advance. If the loan has any unusual encumbrances, it must also be approved by the board. Items on loan for review as potential purchases or donations shall be treated as temporary custody items, and a contractual agreement with specific terms or conditions shall be completed.

(4) Every attempt shall be made to keep in yearly contact with the owner of the loaned material. In the event that the existence and location of the owner is unknown to the curator of the Capitol for longer than three years, the Texas Escheat Laws, located at the Texas Property Code Annotated, §72.101 et. seq., shall take effect and be followed by the office of the State Preservation Board. The office of the State Preservation Board shall only return lent material to the original lender or duly authorized agents. Heirs must present legal proof of ownership before the board will release lent material.

(5) Complete records of all loan transactions shall be kept by the curator of the Capitol.

(g) Loans from the board.

(1) Since the Capitol collections consist primarily of objects that are either being used or displayed in functional or public ar-

reas of the building, and because of limitations of staff and equipment, as a general rule the loan of items from the Capitol collections will not be approved. This loan policy does not apply to items released from conservation treatment or short-term storage.

(2) Any deviation from this loan policy must be approved by the curator of the Capitol, ~~the executive director of the State Preservation Board~~ [~~with the advisory review of the Collections Review Committee~~] and the board. In order to be considered, a potential borrower preferably should be an established museum, in most cases preferably accredited by the American Association of Museums. The borrowing institution's security, climate control, and other factors will be taken into consideration during the review process. In the event a loan from the collection is approved, insurance will be carried by the borrower who will provide the board with a wall-to-wall certificate of insurance. Any exceptions must be made in advance in a contractual document. All rules and regulations governing loans from the Capitol collections will be clearly stated in a contractual document and agreed to by the borrower and the office of the State Preservation Board prior to releasing material to the borrower.

(h) Documentation of collections.

(1) Items of historical significance under the purview of the State Preservation Board will be accessioned and catalogued according to standard museum methods.

(2) In addition to an item's state inventory number or any other number, each object will be assigned a Capitol historical artifact (CHA) number. The numbers will be assigned sequentially on a yearly basis. The prefix of the number will be the year of accession, followed by a sequential number (ie. 1988.1, 1988.2, 1988.3, and so on). An "R" preceding the CHA number shall identify items that are reproductions of original Capitol furnishings items. These items will be referred to as the Reproduction Capitol Historical Artifact Collection. A label will be affixed to each item noting that it is a Capitol historical artifact. In addition, the accession number will be permanently marked on the item following accepted museum methods. An annual inventory of the collection will be conducted by the curator of the Capitol.

(3) Each accession will be promptly entered into an accession book, in order by CHA number. The accession book will contain the following information for each item: CHA number, state inventory number (or other number), name brief description and measurements, source, date of accession, and location. In addition, all accession and basic catalog information on each CHA will be entered on a computer database.

(4) A catalog report will be completed for each item and updated as required. A black-and-white (color when necessary) contact print of the object will be affixed to each report. The original catalog reports will be placed in an archival sleeve and filed in the appropriate object file. Copies of the catalog reports will be kept in notebooks in order by CHA number. Additional files on the collections will be maintained, including:

(A) object files kept in archival file folders:

(i) original catalog report;

(ii) photographs of the object and, when generated, an eight-inch by ten-inch black-and-white photograph in archival sleeve;

(iii) copies or originals of any invoices, receipts, or other paperwork related to acquisition; and

(iv) background information and research on the object;

(B) photographic files:

(i) each CHA will be professionally photographed in 2 1/4-inch or four-inch by five-inch black-and-white format, and color when appropriate;

(ii) resulting negatives and transparencies will be labeled and kept in archival storage files by negative/transparency size, filed in CHA order;

(iii) an eight inch by ten inch black-and-white print will be developed, labeled and filed in each CHA object file as funding permits;

(iv) any additional 35mm black-and-white and color prints and negatives related to the collections will be assigned photo numbers and filed chronologically by date photographed in archival boxes;

(v) black-and-white (and color when applicable) condition photographs will be taken of any defects, flaws and/or damages to CHAs; one set will be filed in the object files, a copy set with negatives will be filed per clause (iv) of this subparagraph.

(C) maintenance log:

(i) a ledger will be maintained noting each repair or maintenance made to a CHA, including work done, by whom, cost, completion date, and photo numbers of any supporting photographic documentation;

(ii) this information will also be added to the collections computer database file for the affected CHA.

(D) deaccession files:

(i) a ledger listing all deaccessions in chronological order will be maintained;

(ii) background deaccession file information will be kept in the appropriate object file.

(E) room files (where applicable):

(i) layout of each room with each object noted on diagram;

(ii) copies of catalog reports;

(iii) list of any loan items in room; and

(iv) memos or other information related to the room.

(5) To assist in the public's understanding and appreciation of the Capitol collections, upon completion of the Capitol Interior Preservation Project, descriptive catalogues should be prepared for the various rooms where the objects are displayed (as applicable), providing both general information as well as specific data on each object in the room. At an appropriate point, funding should be secured to publish a permanent printed catalog of the Capitol's collections.

(6) Documentation shall also be maintained on the loan collections. The numbering system will consist of an "L" designating a loan, followed by a sequential number, determined by the order of the loan, followed by the year the loan was accepted; (L2.1993, L3.1993). The loans will be entered into a separate accessions book, clearly labeled loan collection. Files for each loan object will be maintained, including a simplified catalog report, the original signed loan agreement and other related paperwork, and a snapshot photograph. Information on loan objects should be included in the room catalogues mentioned in paragraph (5) of this subsection.

(7) To safeguard the primary documentation files, copies of the collections database printout and CHA catalog reports shall be

deposited with the Texas State Archives and updated on a quarterly basis.

(i) Care of collections and amendments.

(1) The curator of the Capitol is responsible for the care of the collections. Maintenance, repair, or restoration of objects in the collections shall be approved by the curator. All such work will be noted in the maintenance log, and the catalog reports will be updated as necessary, and repair receipts and invoices filed in the object files.

(2) As outlined in the Texas Government Code, §443.017, the State Preservation Board can require a state agency or other state entity to transfer certain items of historical significance from that state or entity's inventory to State Preservation Board inventory. The following additional procedures shall be followed to assist the curator in the care of such items.

(A) The curator of the Capitol shall provide to the appropriate personnel charged with property responsibility at each applicable state agency a list of all items being used by their agency that are Capitol historical artifacts under State Preservation Board inventory. This list shall include the object's state inventory number, its Capitol historical artifact number, and location.

(B) The appropriate personnel must inform the curator if they wish to change the location of a Capitol historical artifact. Such items may only be moved or handled under the direct supervision of State Preservation Board curatorial staff.

(C) The appropriate personnel must contact the curator to request any maintenance or restoration work on a Capitol historical artifact. Such work must be approved, supervised, and/or coordinated by the State Preservation Board curatorial staff.

(D) Deaccessioning (selling, disposing of, or otherwise deleting from inventory) of any Capitol historical artifact can only be approved and coordinated by the State Preservation Board (see subsection (e) of this section).

(3) At least every five years, the curator shall contract with a qualified conservator(s) to survey the collections and to prepare a report on their condition. The curator will maintain all reports on conservation actions taken by conservators and update the files accordingly.

(4) Due to the fact that the Capitol is a functioning state office building, the office of the State Preservation Board shall coordinate security, atmospheric and emergency concerns with the Capitol police. Museum standards will be followed when feasible and practical, including the development of an emergency procedures manual addressing staff responsibilities in the event of theft, flood, fire, storm, explosion, war, and nuclear disaster.

(5) The provisions of the manual may be revised, deleted, and amended upon ~~advisory review of the Collections Review Committee, and~~ the approval of the curator of the Capitol and the executive director of the State Preservation Board, and the State Preservation Board.

§111.20. *Use of the Capitol Grounds.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Event--Any performance, ceremony, presentation, or activity held on the grounds.

(2) Public purpose--The promotion of the public health, education, safety, morals, general welfare, security, and prosperity of all of the inhabitants or residents within the state, the sovereign powers of which are exercised to promote such public purpose or public business.

The chief test of what constitutes a public purpose is that the public generally must have a direct interest in the purpose and the community at large is to be benefitted. This does not include activities which promote a specific viewpoint or issue and could be considered lobbying. Political rallies, receptions, and campaign activities are prohibited on the Grounds.

(3) Capitol grounds--The area within the historic cast iron fencing; the area lying between the fencing and city streets that is owned by the state; the esplanade just outside the east entrance to the Capitol between the gateposts and San Jacinto Street; the Old General Land Office Building grounds between 11th and 12th Streets and the Capitol's eastern iron fence and the State Insurance Building; the area bordered by 11th Street to the south, Colorado Street to the east, Lavaca Street to the west, and the Westgate Building property to the north; property north of the Capitol bordered by Colorado Street on the west, San Jacinto Street on the east and 15th Street on the north, which is not occupied with other state buildings, or the Texas Employment Workforce Commission Building property and accompanying terraces. Street right-of-ways within these boundaries include 14th Street and Congress Avenue.

(4) State official sponsor--The Governor, the Lieutenant Governor, the Speaker of the Texas House of Representatives, a Texas Senator, or a member of the Texas House of Representatives.

(b) ~~Fee [Deposit]~~ for use of Capitol grounds. A ~~fee [deposit]~~ is required from persons or entities that use the grounds of the Capitol for an event or other scheduled activity. The ~~fee [deposit]~~ is in an amount set by the office of the State Preservation Board designed to recover the estimated direct and indirect costs to the state of the event or activity, including the costs of labor, materials, and utilities directly or indirectly attributable to the event or activity. The ~~fee [deposit]~~ is required in the office of the State Preservation Board no later than 24 hours prior to the event. ~~[The office of the State Preservation Board may deduct from the deposit:]~~

~~{(1) the cost of damage to the grounds of the Capitol that directly results from the event or other activity;}~~

~~{(2) the costs of extra labor, materials, and utilities directly attributable to the event or other activity; and}~~

~~{(3) the costs of extra security requested by the person or entity for the event or other activity.}~~

(c) Criteria for Approval of Grounds Events.

(1) All Capitol grounds events will be approved and scheduled by the office of the State Preservation Board upon the recommendation of a state official sponsor as described in subsection (a)(4) of this section.

(2) All events must have a clear public purpose as described in subsection (a)(2) of this section.

(3) An event of the grounds of the Capitol should not exceed 3 hours in length and should conclude by 9:00 p.m.

(4) Events will not be approved if they:

(A) promote a commercial enterprise;

(B) obstruct entrances or interrupt traffic flow through the building;

(C) obstruct the view of or access to fire fighting equipment, fire alarm pull stations, or fire hydrants;

(D) involve the use of flammable, hazardous or odorous chemicals or materials;

(E) involve use of signs or placards attached to objects that might cause damage to the building or its contents.

(5) Intended use may not interfere with any legislative session or regular use of the grounds of the Capitol for transaction of state business.

(6) Sound equipment, chairs, podiums, tents, or other equipment required for ceremonies, presentations, or performances must be approved by the office of the State Preservation Board, but furnished and installed by the requesting party. Installation approval is subject to inspection.

(7) The State of Texas, the State Preservation Board, or any employee of the State Preservation Board are not liable for any injury which may occur to any person during any event on the Capitol grounds.

(8) Security requirements other than that routinely provided by Capitol police are the responsibility of the organizers; however, the office of the State Preservation Board must approve any additional security arrangements.

(9) Fund-raising on the premises is not allowed unless the fund-raising directly benefits the Capitol or unless it is part of the gubernatorial inaugural, or a similar event approved by the board, and the funds are used to help defray the costs of the event.

(10) With the exception of businesses authorized by the State Preservation Board to operate in the Capitol, vendors and/or the promotion of a commercial enterprise involving the exchange of money are prohibited.

(d) Scheduling events.

(1) No more than two events will be scheduled for the Capitol grounds in one working day.

(2) A written request to schedule an event on the Capitol grounds must be received by the office of the State Preservation Board one week [three weeks] before the date requested. ~~[Those requesting to schedule an event will be notified within one week following the receipt of the request.]~~

(3) Requests must be accompanied by the State Preservation Board event agreement form and be accompanied by:

(A) a detailed description of the event, including equipment and props to be used, and anticipated length and scope;

(B) a brief statement of the purpose of the event;

(C) the areas on the Capitol Grounds being requested for the event;

(D) a list of all electrical equipment and power requirements for each piece of equipment;

(E) a recommendation from the state official sponsor as described in subsection (a)(4) of this section.

(4) Incomplete requests will not be considered.

(5) No signs or placards displayed or available for display during the event may be carried into the Capitol building. No signs or placards may be attached to any part of the Capitol, including but not limited to fences, lampposts, trees, etc. except as approved by the board.

(6) A properly approved and signed request to use the grounds for a lawful public purpose shall constitute tacit acceptance by the organizer of all legal and financial liability for any damage

to state property, or for any personal injury, caused by the described activity, or occurring as the approximate result of the activity.

(7) Approval shall not be granted when it is determined from the request that physical damage to state property (including but not limited to the Capitol's exterior walls, doors, windows or lighting, monuments, fencing, lampposts, walkways, driveways, curbs, signage, irrigation system, trees, grass, plants, or flower beds) may result from the described activity. No torches, candles, or other open-flame illuminating devices or fires are allowed for use on the grounds.

(8) Upon completion of the event, organizers will be held responsible for clean-up of the area. State Preservation Board will conduct an inspection of the area to determine whether it was adequately cleaned. The organizer(s) will be responsible for the costs of any additional clean-up or damage repair. [Any deposit will be refunded following an inspection of the area to determine that the area has been adequately cleaned.] The organizer(s) may be present at this inspection by contacting the office of the State Preservation Board.

§111.23. *Fund-Raising Policy.*

(a) Procedures for solicitation and acceptance of contributions of funds and securities by entities other than the State Preservation Board on behalf of the board to benefit the buildings, programs and grounds under State Preservation Board authority.

(1) Purpose. To provide guidelines and establish standards of procedure for the solicitation and acceptance of contributions of funds and securities to the State Preservation Board [~~which will protect and ensure the integrity of the Texas Capitol and the continuing preservation project~~].

(2) Procedure.

(A) All proposals for solicitation and contributions of money by entities other than the State Preservation Board must be submitted in writing to the office of the State Preservation Board for review. Approval will be deferred pending submittal of all required documentation and proper review.

(B) Letters or proposals concerning solicitations and/or contributions shall be reviewed, along with any pertinent legal documents and forms by the office of the State Preservation Board, legal counsel for the State Preservation Board, and any additional advisors considered appropriate to make recommendations for acceptance or denial. Letters must include:

(i) names and addresses of each individual, corporation, or organization (including officers and directors), soliciting and contributing funds or securities, and a copy of the group exemption letter showing compliance with Section 501(c)(3) of the Internal Revenue Code for all nonprofit corporations;

(ii) amount of funds or securities to be contributed;

(iii) source of funds or description of method of obtaining funds;

(iv) date(s) funds will be donated or securities transferred;

(v) contributors may specify their donations be used for a particular item or items, room renovation or conservation of a specific item(s). The costs will be determined by the office of the State Preservation Board and submitted in writing to the contributor. With prior approval by the [~~curator of the Capitol and the~~] executive director of the State Preservation Board, contributors may donate to the following categories:

(I) general preservation;

(II) antique and reproduction period furnishings;

(III) Capitol collection art acquisition and conservation;

(IV) preservation of the historical Capitol grounds;

(V) educational programming;

(VI) The Bob Texas State History Museum;

(VII) [~~(V)~~] other projects approved by the board;

(vi) current financial statement or annual report.

(C) Contributions will not be accepted if:

(i) the method of solicitation or the source of funds is determined by the office of the State Preservation Board to be inappropriate for contributions benefiting the Capitol or Museum;

(ii) administrative costs of solicitation effort exceed 25% of total budget;

(iii) the name of the agency [~~Capitol preservation~~] project is used in acquiring funds without written approval from the executive director of the State Preservation Board;

(iv) all required documentation is not received by the executive director of the State Preservation Board or is not in compliance with City of Austin, state, or federal regulations.

(b) Acceptance of funds from events.

(1) Proposals from organizers of events must be submitted in writing 60 days prior to the event.

(2) All event proposals must include:

(A) event name, purpose, description, location, and participants;

(B) names and addresses of all sponsoring individual(s), corporations, or organizations;

(C) proposed itemized budget;

(D) amount of guaranteed minimum donation.

(3) Prior to approval of an event using the agency [~~Capitol preservation~~] project name, a memorandum of agreement must be negotiated between the State Preservation Board, signed by the executive director, and the organizers of the event. The agreement must include:

(A) amount of guaranteed minimum donation;

(B) a time limit, not to exceed 120 days from the execution of the memorandum of agreement, for funds to be received by the office of the State Preservation Board;

(C) authorization by organizers for the office of the State Preservation Board to audit books of event;

(D) authorization for the office of the State Preservation Board to approve all printed materials pertaining to the event prior to their publication and distribution;

(E) proof of sufficient insurance coverage for event by the organizers;

(F) requirement for written notification of cancellation or modification of event to be submitted in writing to the office of the State Preservation Board 30 days prior to scheduled date of the event.

(c) Other provisions.

(1) The office of the State Preservation Board may require any additional documentation considered appropriate to determine the acceptance of funds or securities from an individual(s), corporation, or organization.

(2) The State of Texas, State Preservation Board, or the employees of the State Preservation Board shall not be held liable for any expenses incurred from a solicitation effort benefiting the agency project [~~Capitol Preservation Project~~] by an individual(s), corporation, or organization.

(d) Acknowledgments. All contributions of money may be acknowledged by the following: a letter from the office of the State Preservation Board stating the amount of donation, date of the donation, and its specified category or purpose and a State Preservation Board appreciation certificate.

§111.25. Memorials/Monuments on the Capitol Complex.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capitol complex--The state-owned property within the area bounded on the north by Martin Luther King, Jr., Boulevard, bounded on the east by Trinity Street, bounded on the south by 10th Street, and bounded on the west by Lavaca Street.

(2) Historic Capitol grounds--All area within the historic cast iron fencing line; the area lying between the fencing and city streets that is owned by the state to the south and west; the Old General Land Office Building grounds between the Capitol's eastern iron fence and the State Insurance Building, between 11th and 12th Streets.

(b) Purpose.

(1) To ensure the development and preservation of an appropriate historical setting that enhances and perpetuates the historic integrity of the Texas State Capitol.

(2) To ensure the continued public use and enjoyment of an appropriate historical landscape for the Capitol complex.

(3) To ensure that future commemorative works, such as constructed memorials and/or monuments, are integrally incorporated into appropriately designated areas that enhance the overall planning philosophy for the Capitol complex.

(4) To ensure that future commemorative works, such as constructed memorials and/or monuments, are: appropriately designed, constructed, and located; reflect a consensus of the lasting statewide significance of the subject involved; and are funded for appropriate design, construction, and maintenance.

(c) Procedures for approval of memorials/monuments in the Capitol complex.

(1) No additional memorials and/or monuments shall be placed on historic Capitol grounds except as authorized by Texas Government Code §443.01525 and §443.01526 [~~Section 448.034~~].

(2) For any monument authorized by the legislature to be constructed within the Capitol complex, the office of the State Preservation Board shall be consulted concerning potential sites available on the Capitol complex. A grounds monument location map will be incorporated into the master plan to define potential locations.

(3) A preliminary proposal shall be submitted to the office of the State Preservation Board for review at the time potential sites are reviewed. This preliminary proposal will include:

(A) administrative arrangements to oversee the project's fundraising, design, and construction;

(B) preliminary design intentions.

(4) Using the master plan, the office of the State Preservation Board shall submit the proposal and recommended site selection for the proposed monument to the State Preservation Board for preliminary site approval.

(5) After preliminary site approval, a final design proposal shall be submitted to the office of the State Preservation Board for review and recommendation.

(6) The executive director of the State Preservation Board will submit the final design proposal and his/her recommendations to the State Preservation Board. The State Preservation Board then shall be asked to give final approval for the design and site location.

(7) The executive director of the State Preservation Board shall issue a building permit for any memorials and/or monuments after a proposal has received board approval.

(8) Criteria for approval of memorials and/or monuments by the State Preservation Board will include the following.

(A) Site selection shall be consistent with the purposes stated previously and shall be based on the approved master plan.

(B) A military commemorative work may be established only to commemorate a war or similar major military conflict or to commemorate any branch of the armed forces. No commemorative work commemorating a lesser conflict or a unit of an armed force shall be permitted.

(C) A commemorative work commemorating an individual or group of individuals shall not be permitted until at least 25 years after the death of the individual or the last surviving member of the group.

(D) The construction of a commemorative work must be in the public's interest, must represent a subject of lasting historical significance to the history and heritage of Texas, and must reflect a consensus of the lasting historical statewide significance of the subject involved.

(E) No public funds shall be used to construct memorials and/or monuments. Funding must be secured and in-hand before a construction permit shall be issued.

(F) Knowledgeable persons qualified in the field of architecture and preservation/maintenance shall be consulted by the applicant to determine structural soundness and durability and to assure that the commemorative work meets high professional standards. Memorials and monuments shall be constructed of durable material suitable to the outdoor environment. Landscape features shall be compatible with the Capitol grounds master plan.

(G) Construction materials must be compatible with the design, historic importance, and building materials of the Capitol. Whenever possible, monuments shall be constructed of granite, bronze, copper, or compatible materials.

(H) The maximum height of any monument shall be 25 feet.

(I) The maximum cubic feet of any structure incorporated into a monument design shall be 4,000 cubic feet.

(J) The maximum site dimension for a proposed monument shall be 24 feet by 24 feet or 576 square feet.

(K) The maximum footprint dimension of any single structure incorporated into a proposed monument shall be 20 feet by 20 feet or 400 square feet.

(L) Names of donors shall not be permitted on any memorial and/or monument.

(M) The legislative authority for a memorial and/or monument should be reviewed at the end of the five-year period beginning on the date of the enactment of such authority, unless an appropriate construction permit by the office of the State Preservation Board for the work has been issued within that period.

(N) A maintenance contribution of 10% of the total construction cost of the memorial and/or monument shall be required.

(9) The office of the State Preservation Board shall have review and approval authority over the construction of the memorial or monument.

§111.27. General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds.

(a) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purpose are prohibited from:

(1) attaching signs, banners, or other displays to a part of the Capitol or to a structure, including a fence, on the grounds of the Capitol except as approved by the board;

(2) placing furniture in the Capitol or on the grounds of the Capitol for a period that exceeds 24 hours except as approved by the board;

(3) setting up or placing camping equipment, shelter, tents, or related materials in the Capitol or on the grounds of the Capitol except as approved by the board for special events;

(4) blocking ingress and egress:

(A) into the Capitol; or

(B) into rooms or hallways within the Capitol, except as approved by the board;

(5) conducting actions that pose a risk to safety;[-]

(6) smoking in the public areas of the Capitol and Capitol extension;

(7) bringing balloons into the Capitol or Capitol extension.

(b) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purposes shall be required to:

(1) leave the Capitol when the building is closed to the public; and

(2) restrain pets at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board. All pets except Seeing Eye dogs are not permitted in the Capitol.

(c) The board may require and collect a standardized fee [~~deposit~~] from a person or entity that uses the Capitol, the Capitol extension, or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The fee [~~deposit~~] is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit or activity, including the costs of labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or activity. The office of the State Preservation Board shall set the amounts of fees [~~deposits~~] required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities. [~~The board may deduct from the deposit:-]~~

~~[(1) the cost of damage to the Capitol, Capitol extension, or grounds of the Capitol that directly results from the event, exhibit, or other activity;]~~

~~[(2) the costs of extra labor, materials, and utilities directly attributable to the event, exhibit, or other activity; and]~~

~~[(3) the costs of extra security required by the person or entity for the event, exhibit or other activity.]-]~~

~~[(d) The office of the State Preservation Board may charge and collect the costs as detailed in subsection (e) of this section from a person or entity that uses the Capitol, Capitol extension, or the grounds of the Capitol for an event, exhibit, or other scheduled activity and that does not post a deposit as detailed in subsection (e) of this section.]-]~~

(d) ~~[(e)]~~ Except as provided by this subsection, the sale or consumption of alcoholic beverages, the possession of an open container of an alcoholic beverage, or the gift of an alcoholic beverage in an open container or for on-premises consumption is prohibited in the Capitol, in the Capitol extension, and on the Capitol grounds. This prohibition does not apply to:

(1) areas not under the control of the board, including offices, reception areas, and similar areas under the control of the legislature, a legislative agency, the governor, or another state officer; or

(2) events of significant importance to the history of the Capitol that are conducted in areas under the control of the board and for which the office of the State Preservation Board has approved consumption of alcoholic beverages in response to a written request from the sponsor of the event that documents the importance of the event to the history of the Capitol.

(e) ~~[(f)]~~ The buildings and grounds under the authority of the board shall not be used for the commercial benefit of any individual, business, corporation, special interest group or other entity.

(f) ~~[(g)]~~ For the safety of the public, skateboarding, roller skating, roller blading, and related activities are prohibited in the building, garages, and grounds under the authority of the State Preservation Board.

(g) ~~[(h)]~~ TV satellite trucks may not park on the Capitol drive. TV transmission cables may not be brought into the Capitol or Capitol extension.

§111.32. Standards of Conduct between State Preservation Board Employees and Private Donors.

(a) An employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his/her official conduct.

(b) An employee shall not accept employment or engage in any business or professional activity with a private donor which the employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position.

(c) An employee shall not accept other employment or compensation from a private donor which would reasonably be expected to impair the employee's independence of judgment in the performance of his/her official position.

(d) An employee shall not make personal investments in association with a private donor which could reasonably be expected to create a substantial conflict between the employee's private interest and the interest of the board.

(e) An employee shall not solicit, accept, or agree to accept any benefits for having exercised his/her official powers on behalf of a private donor or performed his official duties in favor of private donor.

(f) An employee who has policy direction over the board and who serves as an officer or director of a private donor shall not vote on

any measure, proposal, or decision pending before the private donor if the board might reasonably be expected to have an interest in such measure, proposal, or decision.

(g) An employee shall not authorize a private donor to use property of the board unless the property is used in accordance with a contract or memorandum of understanding between the board and the private donor, or the board is otherwise compensated for the use of the property.

§111.33. Relationship with Affiliated Non-Profit Organization.

(a) The Board is authorized to participate in the establishment and operation of affiliated nonprofit organizations whose purpose is to raise funds or provide services or other benefits to the board by Texas Government Code §443.030 and §445.013.

(b) The board may provide to an affiliated non-profit organization covered by this chapter:

- (1) fundraising and solicitation assistance;
- (2) staff services to coordinate activities;
- (3) administrative and clerical services;
- (4) office and meeting space;
- (5) training; and
- (6) other miscellaneous services as needed to further the

duties and purposes of the organization in support of the board.

(c) The affiliated non-profit organization may provide:

- (1) postage;
- (2) printing, including letterhead and newsletters;
- (3) special event insurance;
- (4) recognition of donors;
- (5) bond and liability insurance for organization officers;

and

(6) other miscellaneous services as needed to further the duties and purposes of the board.

(d) The affiliated non-profit organization and the board shall enter into a memorandum of understanding (MOU) which contains specific provisions regarding:

- (1) the relationship between the affiliated non-profit organization and the board, and a mechanism for solving conflicts or disputes;
- (2) fundraising and solicitation;
- (3) the use of all funds and other donations from fundraising or solicitation, less legitimate expenses as described in the MOU, for the benefit of the board;

(4) the maintenance by the affiliated non-profit organization of receipts and documentation of all funds and other donations received, including furnishing such records to the board; and

(5) the furnishing to the board of any audit of the affiliated non-profit organization by the Internal Revenue Service or a private firm.

(e) An employee of the board may not serve as an employee, elected officer or director of an affiliated non-profit organization. An employee of the board may serve as an ex officio, non-voting director of an affiliated non-profit organization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2011.

TRD-201105793

John Sneed

Executive Director

State Preservation Board

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-5495



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S

RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

The Texas Education Agency (TEA) proposes the repeal of §101.3005 and new §101.3031, concerning implementation of testing program. Section 101.3005 addresses required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The proposed new rule would adopt the *2012 Test Security Supplement* as part of the Texas Administrative Code. The proposed repeal and new rule would also reflect a reorganization of 19 TAC Chapter 101, Subchapter CC, due to the implementation of the State of Texas Assessments of Academic Readiness (STAAR) in the 2011-2012 school year.

Through 19 TAC §101.3005, adopted to be effective July 20, 2006, and amended to be effective February 28, 2008, the commissioner exercised rulemaking authority relating to the administration of assessment instruments adopted or developed under the Texas Education Code, §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses purpose, administrative procedures, training activities, and records retention. As part of the administrative procedures, school districts and charter schools are required to comply with test security and confidentiality requirements delineated annually in test administration materials. TEA legal counsel has advised that procedures related to test security be adopted as part of the TAC.

Proposed new 19 TAC §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, would adopt in rule the official TEA publication *2012 Test Security Supplement* as Figure: 19 TAC §101.3031(b)(2). The *2012 Test Security Supplement* describes the security procedures and guidelines that school districts and charter schools shall be required to follow. The proposed new rule would retain language from the current rule, 19 TAC §101.3005, which is proposed for repeal. The proposed repeal and new rule numbering would reflect a reorganization of 19 TAC Chapter 101, Subchapter CC, due to the implementation of the STAAR program.

The proposal would establish in rule the test security procedures for the 2012 *Test Security Supplement*. Applicable procedures would be adopted each year as annual versions of the test security supplement are published. The proposed rule actions would have no additional effect on the paperwork required and maintained by school districts and charter schools.

Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the repeal and new section are in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule actions.

Dr. Cloudt has determined that for each year of the first five years the repeal and new section are in effect the public benefit anticipated as a result of enforcing the repeal and new section will be to inform the public of the security procedures for the 2012 test administrations. There is no anticipated economic cost to persons who are required to comply with the proposed repeal and new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins January 6, 2012, and ends February 6, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 6, 2012.

19 TAC §101.3005

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the Texas Education Code, §39.0301, which authorizes the commissioner to establish procedures for the administration of assessment instruments adopted or developed under the Texas Education Code, §39.023, including procedures designed to ensure the security of the assessment instruments, and to establish record retention requirements for school district records related to the security of assessment instruments; and the Texas Education Code, §39.0304, which authorizes the commissioner to adopt rules necessary to implement training in assessment instrument administration.

The repeal implements the Texas Education Code, §39.0301 and §39.0304.

§101.3005. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2011.

TRD-201105785

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 5, 2012

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



19 TAC §101.3031

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §101.3031(b)(2) is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 6, 2012, issue of the Texas Register.)

The new section is proposed under the Texas Education Code, §39.0301, which authorizes the commissioner to establish procedures for the administration of assessment instruments adopted or developed under the Texas Education Code, §39.023, including procedures designed to ensure the security of the assessment instruments, and to establish record retention requirements for school district records related to the security of assessment instruments; and the Texas Education Code, §39.0304, which authorizes the commissioner to adopt rules necessary to implement training in assessment instrument administration.

The new section implements the Texas Education Code, §39.0301 and §39.0304.

§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

- (1) general testing program information;
- (2) requirements for ensuring test security and confidentiality described in the 2012 Test Security Supplement provided in this subsection;
Figure: 19 TAC §101.3031(b)(2)
- (3) procedures for test administration;
- (4) responsibilities of personnel involved in test administration; and
- (5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for a minimum of five years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2011.

TRD-201105786

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 5, 2012

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



CHAPTER 153. SCHOOL DISTRICT PERSONNEL SUBCHAPTER CC. COMMISSIONER'S RULES ON CREDITABLE YEARS OF SERVICE

19 TAC §153.1021, §153.1022

The Texas Education Agency (TEA) proposes amendments to §153.1021 and §153.1022, concerning creditable years of service. Section 153.1021 addresses recognition of creditable years of service. Section 153.1022 addresses the minimum salary schedule for certain professional staff. The proposed amendments would update the rules and implement the requirements of Senate Bill (SB) 1 and SB 8, 82nd Texas Legislature, First Called Session, 2011, including modifying the calculation of the minimum salary schedule.

19 TAC §153.1021, Recognition of Creditable Years of Service

Effective February 1, 1998, the commissioner adopted 19 TAC §153.1021 as authorized by the TEC, §21.403, 75th Texas Legislature, 1997. The provisions of law required the commissioner to adopt rules for determining the experience for which certain professional staff are to be given credit in placement on the state minimum salary schedule. The rule provides appropriate definitions and explains required documents, necessary credentials, and the service record. The rule details the provisions for creditable years of service, including recognized employing entities for service credit.

The proposed amendment to 19 TAC §153.1021 would update and clarify existing provisions, as follows.

In subsection (a), paragraph (18), relating to the definition of speech pathologist, would be deleted as this mandated pay raise expired on September 1, 2011. Subsequent paragraphs would be reordered accordingly.

In subsection (h), paragraph (9)(A), relating to posting of approved special education contract schools, would be updated to refer to the TEA website. Paragraph (13)(C), relating to requirements for foreign private schools, colleges, and universities, would be modified to delete reference to paragraph (13)(E). Paragraph (13)(E), relating to alternate means of recognition of accreditation of foreign private schools, colleges, and universities, would be deleted.

19 TAC §153.1022, Minimum Salary Schedule for Certain Professional Staff

The commissioner is authorized to adopt a minimum monthly salary schedule for certain professionals, including classroom teachers, full-time librarians, full-time counselors, and full-time nurses. The salary schedule is based on the employee's level of experience. In accordance with the TEC, §21.402, enacted by SB 4, 76th Texas Legislature, 1999, 19 TAC §153.1022 was adopted to be effective January 2, 2000. The rule establishes definitions of qualifying staff, details eligibility criteria for placement on the salary schedule, and explains the base pay. Salaries are adjusted using a factor, defined as "FS" in the TEC, §21.402(a).

SB 1 and SB 8, 82nd Texas Legislature, First Called Session, 2011, amended the TEC, §21.402, by amending subsections (a), (b), (c), and (c-1); repealing subsections (c-2), (c-3), (d), and (e); and adding subsections (e-1) and (i). These legislative changes to the TEC, §21.402, established a new definition of "FS" and revised the salary factors to correspond with the minimum salary schedule that is currently in effect under 19 TAC §153.1022(d). In addition, the repeal of the TEC, §21.402(d), removed the requirement for school districts to use the 2010-2011 local salary schedule as a salary base.

SB 8 also added new TEC, §21.4021, Furloughs; §21.4022, Required Process for Development of Furlough Program or Other Salary Reduction Proposal; and §21.4032, Reductions in Salaries of Classroom Teachers and Administrators. These new statutes allow districts to reduce furloughed employees' salaries in proportion to the number of days by which the service is reduced.

The proposed amendment to 19 TAC §153.1022 would update the rule in response to statutory changes, as follows.

Subsection (a) would be revised to reflect the current legislative mandate, clarify language relating to eligibility criteria, and remove outdated provisions.

Subsections (b)-(d) would be updated to modify the calculation of the minimum salary schedule for the 2011-2012 and 2012-2013 school years prescribed by the TEC, §21.402, as amended by SB 1 and SB 8, 82nd Texas Legislature, First Called Session, 2011. The proposed revisions would delete school years 2009-2010 and 2010-2011 as base years and delete the greater of \$80 or \$60 per WADA pay raise mandated by House Bill (HB) 3646, 81st Texas Legislature, 2009. No changes are required for the minimum monthly salary schedule adopted in rule as Figure: 19 TAC §153.1022(d).

The proposed amendments would have no procedural or reporting implications. The proposed amendments would have no locally maintained paperwork requirements.

Ann Smisko, associate commissioner for educator leadership and quality, has determined that for the first five-year period the amendments are in effect there will be no additional costs to entities or persons required to comply with the proposed amendment to 19 TAC §153.1021, Recognition of Creditable Years of Service. Dr. Smisko has determined that there are no additional costs to state or local government relating to the proposed amendment to 19 TAC §153.1022, Minimum Salary Schedule for Certain Professional Staff; however, there may be costs to persons. Dr. Smisko has also determined that the proposed amendment to 19 TAC §153.1022 would have positive fiscal implications for state government (the TEA and the Teacher Retirement

ment System (TRS)) and local government (school districts and open-enrollment charter schools).

Implications for the TEA

With the repeal of the pay raise mandated by HB 3646, 81st Texas Legislature, Regular Session, 2009, the TEA may realize an estimated savings of \$361,171,570 during each year of the biennium (fiscal years 2012 and 2013). Fiscal implications beyond fiscal year 2013 cannot be determined until the legislature reconvenes for the 83rd Texas Legislative Session.

Implications for the TRS

The TRS may realize some contribution reduction due to the repeal of HB 3646 and the 2010-2011 school year as a base year for the 2011-2013 biennium. The reduction in collection may be due to the fact that local governments may be able to reduce salaries to the state minimum. Hence, no additional membership dues will be collected by the TRS for any amount above the statutory minimum. Provided local governments reduce their salaries to the state mandated minimum salary schedule by eliminating all local supplements, an estimated reduction in membership contribution to the TRS may be approximately \$263,366,381 for each year of the biennium (fiscal years 2012 and 2013). Fiscal implications beyond fiscal year 2013 cannot be determined until the legislature reconvenes for the 83rd Texas Legislative Session.

Implications for school districts and charter schools

With the repeal of HB 3646 and the 2010-2011 school year as a base year for the 2011-2012 and 2012-2013 school years, local governments (including school districts and charter schools) may realize significant savings.

For the 2011-2012 school year, school districts and charter schools may realize an estimated savings of up to \$411,978,722, provided school districts revert to paying only the minimum salary adopted by the state during the 2010-2011 school year and that approximately 10% of their teachers signed their contracts on or after September 28, 2011, the effective date of SB 1 and SB 8.

For the 2012-2013 school year, school districts and charter schools may realize an estimated savings of up to \$4,119,787,216, provided the minimum salary schedule is implemented.

Fiscal implications beyond fiscal year 2013 cannot be determined until the legislature reconvenes for the 83rd Texas Legislative Session.

Dr. Smisko has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be clarification of terminology and requirements relating to recognition of creditable years of service for school district personnel and the minimum salary schedule for certain professional staff. There may be fiscal implications for persons who are required to comply with the proposed amendment to 19 TAC §153.1022.

Implications for Persons

Teachers may be forgoing a portion of their salaries if local governments revert back to paying only the statutory minimum by eliminating all local supplements. An estimated amount may not be calculated at this time due to the fact that individuals may have different types of annuities and "before taxes" reduction plans.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins January 6, 2012, and ends February 6, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 6, 2012.

The amendments are proposed under the Texas Education Code, §21.402, which authorizes the commissioner of education to adopt rules to govern the application of the minimum salary schedule for certain professional staff; and the Texas Education Code, §21.403, which requires the commissioner of education to adopt rules for determining the experience for which certain professional staff are to be given credit in placement on the minimum salary schedule.

The amendment implements the Texas Education Code, §21.402 and §21.403.

§153.1021. Recognition of Creditable Years of Service.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accredited institution--A public or private elementary, secondary, or post-secondary institution whose education program has been evaluated and deemed accredited by a state department of education or recognized regional accrediting agency.

(2) Charter school--A charter school that has been authorized to operate under the Texas Education Code (TEC), Chapter 12, Subchapter D or E.

(3) Assignment--Refers to the actual duties a person has with a school district or other educational entity.

(4) Authorized leave--Leave granted under the state's former minimum sick leave program, leave granted under the state's current minimum personal leave program, (which includes physical assault leave), or any leave granted under a local leave policy for which the employee is paid as if on regular duty.

(5) Certificate--A document issued by the State Board for Educator Certification (SBEC) authorizing the holder to teach in the public elementary and secondary schools of Texas.

(6) Certified--Status of a person who holds a valid Texas teaching certificate.

(7) Contractual year--The employment period between July 1 and the following June 30.

(8) Current valid certificate--A certificate that is or was valid at a given time, including the stipulation that after June 30, 1986, a Texas certificate is valid only if the certified person has successfully passed any certification that was mandated by either the State Board of Education or the SBEC.

(9) Faculty status--Employment by a college or university as a member of the professional administrative or instructional staff,

not as a graduate assistant, an assistant instructor, or an instructor on a fellowship.

(10) Full-time employment--Employment for 100% of an institution's normal work schedule.

(11) Full-time equivalency--The amount of time required of a staff member to perform a less than full-time assignment divided by the amount of time required in performing a corresponding full-time assignment. Full-time equivalency of assignment usually is expressed as a decimal fraction to the nearest tenth.

(12) Minimum salary--The minimum salary a classroom teacher, full-time librarian, full-time counselor, or full-time school nurse must be paid as prescribed in TEC, Chapter 21.

(13) Part-time employment--Employment for less than 100% of an institution's normal work schedule.

(14) Professional personnel--Teachers, full-time librarians, full-time counselors, full-time school nurses, other employees who are required to hold a certificate issued under TEC, Chapter 21, Subchapter B, and any other personnel reported by a school district to the Public Education Information Management System with a "professional" role-id.

(15) Regional accrediting agency--The recognized regional accrediting agencies are:

- (A) Southern Association of Colleges and Schools;
- (B) Middle States Association of Colleges and Schools;
- (C) North Central Association of Colleges and Schools;
- (D) New England Association of Schools and Colleges;
- (E) Western Association of Schools and Colleges;
- (F) Northwest Association of Schools and Colleges;
- (G) Commission on International and Trans-regional Accreditation;
- (H) International Baccalaureate Organization;
- (I) European Council of International Schools/Council of International Schools; and
- (J) National Council for Private School Accreditation.

(16) Salary increments--Increases in salary granted for teaching or work experience.

(17) School nurse--An educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice, and who has been issued a license to practice professional nursing in Texas.

~~{(18) Speech pathologist--An educator employed to provide full-time speech pathology services and who meets all the requirements to practice as a speech pathologist pursuant to the rules and regulations relating to professional speech pathology education, licensure, and practice and has been issued a license to practice professional speech pathology in Texas. This definition encompasses all speech pathologists that have been licensed by the Texas Education Agency, ending August 31, 1996, and by the Health and Human Services Commission, beginning September 1, 1996. This paragraph expires September 1, 2011.}~~

(18) ~~[(19)]~~ Service--A term of employment measured in school years in an entity in which the employment is recognized for salary increment purposes.

(19) ~~[(20)]~~ State school--A school that is funded by legislative action in the appropriations act. These schools include the Texas School for the Blind, the Texas School for the Deaf, and schools under the jurisdiction of the Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) and the Texas Youth Commission.

(20) ~~[(21)]~~ Substitute teacher--A certified teacher who works on call, does not have a full-time assignment, and provides instruction.

(21) ~~[(22)]~~ Teacher service record--The official document used to record years of service and days used and accumulated under the state's former minimum sick leave program or the state's current personal leave program.

(b) Required documentation. The following records on professional personnel must be readily available for review.

- (1) credentials (certificate or license);
- (2) service record(s) and any required attachments;
- (3) contract;
- (4) teaching schedule or other assignment record; and
- (5) absence from duty reports.

(c) Credentials for professional personnel. The credentials for professional personnel are as follows.

(1) A current valid Texas certificate, a special assignment permit, a nonrenewable permit, a non-certified instructor's permit, an emergency teaching permit, or the appropriate licensure from the State of Texas.

(2) For special education related service teachers, the credential must be appropriate licensure from the State of Texas.

(3) For those special education related service personnel who do not require Texas certification or licensure, proper credentials as described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) are required.

(d) Teacher service record. The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel is the teacher service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing school district or charter school to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

(1) The service record must be validated by a person designated by the school district or charter school to sign service records.

(2) Supporting documents are required for service in out-of-state private schools, foreign public and private institutions, the military, and colleges and universities. The type of supporting documentation for each particular entity is prescribed by subsection (h) of this section.

(3) If a person is employed by more than one school district or charter school during the same school year, a service record from each employing district or charter school is required.

(4) For personnel employed in a year-round school system, the actual dates of employment during that school's calendar must be indicated on the service record. The dates may not necessarily conform to the contractual year as defined by subsection (a) of this section.

(5) The service record shall be kept on file at the school district or charter school. When employment with the district or charter school is terminated, the original service record, signed by the employee shall be given to the employee upon request or sent to the next employing school district or charter school. The local school district or charter school must maintain a legible copy for audit purposes.

(6) Cooperative personnel employed by a fiscal agent/manager and itinerant personnel of a cooperative shall be considered to be employees of the fiscal agent/manager and the service record shall be the fiscal agent/manager's responsibility. Personnel employed by a member of a cooperative and assigned to the member are employees of the member and the service record shall be the member's responsibility.

(7) Work experience claimed by career and technology education personnel for salary increment purposes as prescribed by subsection (i) of this section must be recorded on a service record.

(8) State sick leave balances, days earned, and days used by personnel under the former state's minimum sick leave program and the state's current personal leave program must be recorded on the service record or another similar form containing the same information. State sick leave and state personal leave accumulated in Texas public elementary and secondary schools are transferable among these schools. State personal leave accrued by an employee of a Texas regional education service center, not to exceed five days per each year of employment, is transferable to a Texas public elementary and secondary school. State sick leave and state personal leave accrued by an employee of Harris County Department of Education and Dallas County Schools are transferable to Texas public elementary and secondary schools in accordance with the TEC, §22.003(a). Local leave accrued under the policy of any entity recognized for creditable service under subsection (g) of this section may be transferred to a Texas public elementary or secondary school at the discretion of the employing school district. The service record shall separately state the number of accumulated state days for which the employee is paid, if any, upon separation from the employing district.

(9) State days used to purchase additional years of service from the Teacher Retirement System of Texas (TRS) for retirement purposes must be deducted from the balance reflected on the service record.

(10) The issuing school district or charter school must submit the service record to the Texas Education Agency upon request.

(e) General provisions for years of creditable service. All service claimed for salary increment purposes must meet the requirements in subsections (f)-(h) of this section. The service record and any other required supporting documents must meet the requirements for such records and documentation in this section. All service shall be based on the contractual year (July 1-June 30). No more than one year of experience may be acquired in any one contractual year.

(f) Minimum requirements. The table in this subsection indicates the minimum number of days required to earn and receive credit for a year of experience.

Figure: 19 TAC §153.1021(f) (No change.)

(1) For service performed through the 1989-1990 school year, minimum days at less than 100% or at full-time equivalency are applicable only to service in Texas public schools, Texas education

service centers, and, beginning in 1978-1979, Texas public colleges and universities.

(2) Beginning with service performed during the 1990-1991 school year or any year thereafter, employment at less than 100% of the day is recognized in all entities where full-time employment is recognized, provided that documentation is presented to the employing district which verifies that the employment was for not less than three and one-half hours each day.

(3) The 90 days required at 100% of the day for years prior to 1972-1973 may be equivalent to four and one-half months, a full semester, or three six-weeks. Where the school year was less than 180 days for any year prior to 1972-1973, a minimum of 175 days at 50-99% of the day will be accepted, provided that the 175 days constituted two full semesters or six six-weeks.

(4) For experience from the 1978-1979 through the 1987-1988 school years, full-time equivalent days equal the total number of days employed at 100% of the day plus days employed at 50-99% of the day divided by two.

(5) Beginning with the 1988-1989 school year, full-time equivalent days equal the total number of days employed multiplied by the percent of day actually worked.

(6) Beginning with the 1998-1999 school year, the 90 days required at 100% of the day may be equivalent to four and one-half months or a full semester. The 180 days required at 50-99% of the day may be equivalent to 90 full-time equivalent days (percent of day employed multiplied by number of days employed).

(7) Extended day migrant program employment shall be calculated in accordance with this section and the resulting equivalent must meet the same minimum requirements for professionals for the year in question.

(A) For service prior to the 1970-1971 school year, the days employed in the migrant program shall be multiplied by a factor of 1.37.

(B) For service during the 1970-1971 through the 1975-1976 school years, the days employed in the migrant program shall be multiplied by a factor of 1.31.

(g) Entities recognized for years of service. Service in any of the entities listed in this subsection shall be recognized for professional personnel. The minimum employment requirements in subsection (f) of this section must be met. Requirements concerning service in each type of entity in subsection (h) of this section must also be met. Professional service in the following entities is creditable:

- (1) Texas public elementary and secondary schools, including charter schools;
- (2) State regional education service centers;
- (3) State departments of education;
- (4) Texas Department of Corrections--Windham Schools;
- (5) Public elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;
- (6) Overseas schools operated by the U.S. Government;
- (7) Texas public or private colleges or universities;
- (8) Texas private elementary and secondary schools;
- (9) Texas non-public special education contract schools;

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation)--state hospitals and state schools;

(11) Texas veterans' vocational schools;

(12) Public or private colleges or universities and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(13) Foreign public or private colleges or universities, or elementary and secondary schools;

(14) U.S. Department of Interior--Bureau of Indian Affairs;

(15) U.S. service academies;

(16) U.S. military service;

(17) Job Corps; and

(18) Peace Corps (in a professional capacity only).

(h) Requirements. Requirements for entities recognized for professional personnel are as follows:

(1) Texas public elementary and secondary schools, including charter schools.

(A) Requirements specific to Texas public elementary and secondary schools.

(i) All professional personnel must be certified by the State of Texas, must hold the proper state or national licensure as required by the position held, or must have the educational requirements for the job assigned. Regardless of the funding source, classroom teachers, full-time librarians, full-time counselors, and full-time school nurses must be paid at least the minimum salary specified in the Texas State Public Education Compensation Plan.

(ii) Professional personnel placed on developmental leaves of absence must be paid at least one-half of their state minimum salary by the school district to receive service credit for increment purposes.

(iii) Instructors in Reserve Officer Training Corps (ROTC) programs conducted by local school districts must be certified or hold an emergency teaching permit and must be paid at least the state minimum salary to receive service credit for increment purposes. An emergency teaching permit need not be renewed as long as the person continues in the ROTC assignment.

(B) Requirements specific to charter schools.

(i) Employment must have been in a professional capacity as defined by subsection (a) of this section.

(ii) Texas charter schools are not required to hire certified teachers other than those in special education and bilingual education, or as stated in the charter application.

(2) State regional education service centers.

(A) Personnel employed in cooperatives for which the education service center is acting as fiscal agency must meet the same requirements as personnel employed in Texas public elementary and secondary schools.

(B) All other personnel must meet the same requirements as personnel employed in state departments of education.

(3) State departments of education. Employment must have been in a professional capacity. For Texas department of education employment, professional positions are defined as personnel

employed in positions starting in state pay grade classification B4/A12 and above.

(4) Texas Department of Corrections--Windham schools. Requirements in this subsection shall apply.

(5) Public elementary and secondary schools in all other states of the United States or within the boundaries of any of its territorial possessions. Employment prior to 1990-1991 must have been on a full-time basis.

(6) Overseas schools operated by the U.S. government. Schools operated by the United States Government for military dependents and dependents of personnel assigned to an embassy, consulate, etc., are treated as public schools in other states of the U.S. and policies pertaining to public schools in other states apply.

(7) Texas public or private colleges or universities.

(A) For private colleges and universities, accreditation by the Southern Association of Colleges and Schools is required.

(B) Officer Training Corps programs conducted by accredited colleges or universities must have been employed full-time on a faculty status level. Beginning in 1998-1999, service as an instructor in an agricultural extension service operated by an accredited college or university may be recognized for salary increment purposes as long as the person held a valid Texas teaching certificate at the time the service was rendered.

(C) All college or university experience must be recorded on the teacher service record. A supporting letter or form must be attached to the teacher service record verifying that either the full-time or part-time employment was at faculty status or its equivalent and that the schedule of work and the pay constituted that of other similar faculty employees. It is the responsibility of the employing school district to secure verification of college or university experience.

(8) Texas private elementary and secondary schools.

(A) For experience prior to the 1986-1987 school year, accreditation by the Texas Education Agency or the Southern Association of Colleges and Schools is required.

(B) For experience in the 1986-1987, 1987-1988, and 1988-1989 school years, service shall be acceptable if the school was accredited by the Texas Education Agency, or a recognized regional accrediting agency.

(C) For experience in the 1989-1990 school year and thereafter, service shall be acceptable if the school was accredited by the Texas Private School Accreditation Commission.

(D) During the 1986-1987, 1987-1988, and 1988-1989 school years, private schools accredited by the Texas Education Agency, a recognized regional accrediting agency, or an association recognized by the commissioner of education will be listed in the Texas School Directory.

(E) Beginning with the 1989-1990 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed in the Texas School Directory.

(F) Beginning with the 2004-2005 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed on the Texas Education Agency website.

(9) Non-public special education contract schools.

(A) Approval from the Texas Education Agency to provide special education services during the year service was rendered is required. A list of approved schools is maintained by the Texas Education Agency and posted on the Texas Education Agency [agency's school finance] website.

(B) The person must have been certified in an area of special education.

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) state hospitals and state schools.

(A) The assignment must have been in an educational program operated in conjunction with a public school program or in a non-educational professional capacity.

(B) Persons employed in an educational program must have held a valid Texas teaching certificate and must have been paid at least the state minimum salary of a teacher in a Texas public school.

(11) Texas veteran's vocational school.

(A) The assignment must have been as an instructor or coordinator.

(B) Service during the period of July 1, 1946, through June 30, 1955, must have been at a school under the jurisdiction of the Texas Education Agency (this service can be verified by the agency).

(C) Service after June 30, 1955, must have been at a veteran's vocational school operated by a Texas county board of school trustees under the jurisdiction of the Veterans Administration.

(12) Public or private colleges and universities, and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions.

(A) Employment must have been, and in the case of colleges and universities, must be verified in the same manner as for Texas colleges or universities.

(B) Accreditation by a recognized state or regional accrediting agency listed in subsection (a)(15) of this section is required. In states or territories that have no provisions for accrediting, licensing, or approving private elementary or secondary schools, service shall be acceptable provided the person held, while employed, a valid teaching certificate from the state in which the school is located or a valid Texas teaching certificate.

(C) It is the responsibility of the employing school district or charter school to have evidence on file of the accreditation status of private schools in other states.

(13) Foreign public or private elementary and secondary schools, colleges, and universities.

(A) Employment in colleges or universities must be verified in the same manner as for Texas colleges or universities.

(B) For foreign public schools, colleges, and universities, accreditation by a recognized agency of the foreign country or by a recognized accrediting agency in the United States is required.

(C) For foreign private schools, colleges, and universities, accreditation must be by a recognized regional accrediting agency listed in subsection (a)(15) of this section[~~, unless the requirements in subparagraph (E) of this paragraph are met~~].

(D) The accreditation status must be verified in the same manner as for public or private schools in the United States.

~~[(E) Experience from foreign private schools, colleges, and universities that have been accredited by a recognized accrediting agency of the foreign country may be recognized for salary increment purposes, provided the minimum requirements in subsection (f) of this section are met. All relevant and credible information concerning accreditation must be provided to the Texas Education Agency. The recognized accrediting entity in the foreign country is the Department of Education or the Higher Education Authority of that foreign country. It is the responsibility of the foreign country to provide such relevant, credible, and accurate information before any credit is given. Such experience will be considered on an individual country basis. The placement on the minimum salary schedule will begin with the following contractual year (July 1-June 30) after the final approval is granted by the Texas Education Agency. The district or charter school is not liable for any previously non-compensated salary related to such experience.]~~

(14) United States Department of the Interior--Bureau of Indian Affairs. Service must have been full-time.

(15) United States service academies.

(A) Employment must have been at a faculty status level and must be verified in the same manner as other college or university service.

(B) The service academies are as follows:

(i) Air Force Academy, Colorado Springs, Colorado;

(ii) Coast Guard Academy, New London, Connecticut;

(iii) Military Academy, West Point, New York;

(iv) Naval Academy, Annapolis, Maryland; and

(v) Merchant Marine Academy, Kings Point, New York.

(16) United States military service. Service with the military forces of the United States of America may be counted for salary increment purposes if the following conditions are met:

(A) The person was a professional employee of any entity recognized for creditable service for salary increment purposes within twelve months of entry into active duty.

(B) Form DD-214 or other official discharge papers must be filed with the teacher service record showing:

(i) that military service was in the capacity of an enlisted man or woman or commissioned officer;

(ii) that release or separation from active duty was under honorable conditions; and

(iii) dates of entry and release from active duty.

(C) The person claiming military service was on active duty during the periods September 1, 1940, through August 31, 1947, or September 1, 1950, through August 31, 1954, or for other periods if:

(i) the military service was a result of involuntary induction into active duty; or

(ii) the military service was a result of voluntary entry into active duty for the first time for the individual, and such initial period of voluntary military service claimed as years of service for teacher salary increments does not exceed four years.

(D) Beginning with the 1983-1984 school year, for purposes of determining the total years of military experience creditable for increment purposes, a year shall be considered to begin on July

1 and end June 30. During this period, four and one-half months of service must be acquired for an individual to be entitled to one year of experience. Only one year of experience may be earned during any 12-month period. Prior to the 1983-1984 school year, credit for military service was calculated based on the 12-month period from September 1-August 31. Credit granted on that basis shall continue to be effective.

(E) The requirement in subparagraph (A) of this paragraph must be met before any credit is given.

(17) Job Corps. The person must have held a valid teaching certificate or appropriate license that would qualify for service credit during the period of employment.

(18) Peace Corps.

(A) Employment must have been with a school system (Grades K-12) in a foreign country.

(B) The person must have held a valid teaching certificate or appropriate license that would qualify for service credit from any state in the United States during the period of employment.

(i) Credit for career and technology teachers. In accordance with TEC, §21.403, effective with the 1982-1983 school year, certified career and technology education teachers employed for at least 50% of the time in an approved career and technology position may count up to two years of work experience for salary increment purposes if the work experience was required for career and technology certification.

(1) For purposes of this section, an emergency teaching permit shall be the equivalent of a teaching certificate.

(2) Once credit for work experience has been granted, the credit shall be continued regardless of the position held. For personnel granted credit under this section whose employment is split between career and technology and non-career and technology positions, the years granted shall apply to both the career and technology and the non-career and technology positions.

(j) Adult basic education program credit. A person teaching adult basic education is eligible for creditable service if the program was operated by a public school and the person held a valid teaching certificate.

(k) Substitute teachers. Beginning with the 1998-1999 school year, a substitute teacher, as defined in subsection (a) of this section, employed in an entity recognized for years of service as prescribed by subsection (g) of this section is eligible for creditable service.

(l) Salary schedule. The commissioner of education shall publish annually the state minimum salary schedule.

(m) Teacher aides. Beginning with the 2004-2005 contractual year, a teacher aide who subsequently attains certification may count up to two years of full-time equivalency of direct student instruction for salary increment purposes. Such experience must be verified on the teacher service record form (FIN-115) or a similar form containing the same information.

§153.1022. *Minimum Salary Schedule for Certain Professional Staff.*

(a) Definitions and eligibility. The following definitions and eligibility criteria apply to [the increases in] the minimum salary schedule in accordance with Texas Education Code (TEC), Chapter 21.

(1) The staff positions employed by public school districts that are entitled to the minimum salary schedule under TEC, §21.402, are [that qualify for the salary increase include] classroom teachers, [and] full-time librarians, full-time counselors, and full-time nurses [employed by public school districts and who are entitled to a minimum salary under TEC, §21.402].

(A) A classroom teacher is an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting pursuant to TEC, §5.001, focusing on the delivery of the Texas essential knowledge and skills and holds the relevant certificate issued by the State Board for Educator Certification (SBEC) under the provisions of TEC, Chapter 21, Subchapter B. Although non-instructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment such as instructional planning and transition between instructional periods should be applied to creditable classroom time.

(B) A school librarian is an educator who provides full-time library services and holds the relevant certificate issued by the SBEC under the provisions of TEC, Chapter 21, Subchapter B.

(C) A school counselor is an educator who provides full-time counseling and guidance services under the provisions of TEC, Chapter 33, Subchapter A, and holds the relevant certificate issued by the SBEC pursuant to the provisions of TEC, Chapter 21, Subchapter B.

(D) A school nurse is an educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

~~[(E) A speech pathologist is an educator employed to provide full-time speech pathology services and who meets all the requirements to practice as a speech pathologist pursuant to the rules and regulations relating to professional speech pathology education, licensure, and practice and has been issued a license to practice professional speech pathology in Texas. This definition encompasses all speech pathologists that have been licensed by the Texas Education Agency, ending August 31, 1996, and by the Health and Human Services Commission, beginning September 1, 1996. This subparagraph expires September 1, 2011.]~~

(2) An eligible educator who is employed by more than one district in a shared service arrangement or by a single district in more than one capacity among any of the eligible positions qualifies for the salary increase as long as the combined functions constitute full-time employment.

(3) Full-time means contracted employment for at least ten months (187 days) for 100% of the school day in accordance with definitions of school day in TEC, §25.082, employment contract in TEC, §21.002, and school year in TEC, §25.081.

(4) A local supplement is any amount of pay above the state minimum salary schedule for duties that are part of a teacher's classroom instructional assignment.

(5) Current placement on the salary schedule means a placement based on years of service recognized for salary increment purposes up to the current year.

(6) Salary schedule means a system of providing routine salary increases based upon an employee's total teaching experience and/or an employee's longevity in a school district.

(b) Base monthly salary for the 2011-2012 and 2012-2013 [2009-2010 and 2010-2011] school years. The base monthly salary is the monthly salary that is at least equal to the monthly salary as determined by TEC, §21.402(c-1). [the employee received during the 2008-2009 school year, provided the district has adopted a 2008-2009 local salary schedule for those eligible individuals. Each eligible individual must be paid, at a minimum, the amount that was received

on the 2008-2009 local salary schedule, for their level of creditable years of experience, pursuant to §153.1021 of this title (relating to Recognition of Creditable Years of Service). This amount includes any local supplement and any money representing a career ladder supplement the employee would have received on the district's salary schedule during the 2009-2010 and 2010-2011 school years, and the greater of \$80 or a uniform monthly amount determined by multiplying \$60 by the number of students in weighted average daily attendance (WADA), then dividing that product by the total number of months of employment of eligible employees during the 2009-2010 school year. For the purpose of determining the uniform monthly amount, the product of \$60 multiplied by the number of students in WADA may be reduced by related social security coverage costs and by related payments made by the district under Government Code, §825.405.]

(1) Eligible classroom teachers employed by school districts are entitled to the minimum salary schedule that is at least equal to the monthly salary as determined by TEC, §21.402(c-1).

[(1) An educator eligible for the salary increase is entitled to a minimum salary in the 2009-2010 and 2010-2011 school years equal to the greater of the salary corresponding to their current placement on the state salary schedule pursuant to TEC, §21.402(a), or the salary corresponding to their current placement on the employing district's 2008-2009 salary schedule, provided the district has adopted a 2008-2009 local salary schedule, plus the greater of \$80 or a uniform monthly amount determined by multiplying \$60 by the number of students in WADA, then dividing that product by the total number of months of employment of eligible employees during the 2009-2010 school year. For the purpose of determining the uniform monthly pay raise amount, the product of \$60 multiplied by the number of students in WADA may be reduced by related social security coverage costs and by related payments made by the district under Government Code, §825.405. If employed by the same district, the minimum must include any local and career ladder supplements the employee would have received in the 2008-2009 school year. (Attorney General Opinion No. GA-0785)]

(2) Eligible full-time counselors, full-time nurses, and full-time librarians employed by school districts are entitled to the minimum salary schedule that is at least equal to the monthly salary as determined by TEC, §21.402(c-1). [a minimum salary in the 2009-2010 and 2010-2011 school years equal to the greater of the salary corresponding to their current placement on the state salary schedule pursuant to TEC, §21.402(a), or the salary corresponding to their current placement on the employing district's 2008-2009 salary schedule, provided the district has adopted a 2008-2009 local salary schedule, plus the greater of \$80 or a uniform monthly amount determined by multiplying \$60 by the number of students in WADA, then dividing that product by the total number of months of employment of eligible employees during the 2009-2010 school year. For the purpose of determining the uniform monthly amount, the product of \$60 multiplied by the number of students in WADA may be reduced by related social security coverage costs and by related payments made by the district under Government Code, §825.405. These eligible employees are placed on the state schedule according to the same criteria that applies to classroom teachers and full-time librarians pursuant to §153.1021 of this title.]

[(3) Eligible speech pathologists are entitled to receive the monthly salary they received during the 2008-2009 school year, under the district's salary schedule, as if that schedule had been in effect for the 2009-2010 and 2010-2011 school years, including any local supplement, plus the greater of \$80 or a uniform monthly amount determined by multiplying \$60 by the number of students in WADA, then dividing that product by the total number of months of employment of eligible employees during the 2009-2010 school year. For the purpose of de-

termining the uniform monthly amount, the product of \$60 multiplied by the number of students in WADA may be reduced by related social security coverage costs and by related payments made by the district under Government Code, §825.405. This paragraph expires September 1, 2011.]

[(4) A beginning eligible employee who has not previously been on the state salary schedule is entitled to any local supplement that would have been offered to a beginning eligible employee on the employing district's 2008-2009 salary schedule, including the pay raise that was mandated by House Bill 3646, 81st Texas Legislature, 2009, for the 2009-2010 school year (the greater of \$80 per month or an amount that represents \$60 multiplied by the number of students in WADA), as if that schedule had been in effect during the 2009-2010 and 2010-2011 school years. (Attorney General Opinion No. GA-0785)]

[(5) Educators who are eligible for the salary increase and who are employed for more than ten months are entitled to the greater of \$80 or a uniform monthly amount determined by multiplying \$60 by the number of students in WADA, then dividing that product by the total number of months of employment of eligible employees during the 2009-2010 school year. For the purpose of determining the uniform monthly amount, the product of \$60 multiplied by the number of students in WADA may be reduced by related social security coverage costs and by related payments made by the district under Government Code, §825.405. These individuals are eligible for an increase in pay for each full month of additional service.]

[(6) Classroom teachers who are eligible for the salary increase, pursuant to TEC, §5.001, but who are not employed full-time (work either less than 100% of the day or for a portion of the year) are entitled to a proportionate pay increase. For classroom teachers working less than 100% of the day, the increase is proportionate to the percent of the day employed. For classroom teachers employed less than a full year, the increase is valid only for the months employed.]

[(7) Full-time nurses, full-time librarians, full-time speech pathologists, and full-time counselors who are employed for less than a full school year or who are placed in an eligible assignment for less than a full school year are entitled to a pay increase in proportion to the months employed in which they are eligible.]

(c) Determination of "FS." "FS" is the amount, as determined by the commissioner under TEC, §21.402(b), of the basic allotment as provided by TEC, §42.101(a) or (b), for a school district with a maintenance and operations tax rate at least equal to the state maximum compressed tax rate, as defined by TEC, §42.101(a). [state and local funds per weighted student, including funds provided under TEC, §42.2516, available to a district eligible to receive state assistance under TEC, §42.302, with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under TEC, §42.2516, multiplied by \$1.50, except that the amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Texas Legislature, Regular Session, 2001.]

(d) Monthly minimum salary rates. The minimum monthly salary rates applicable for the 2011-2012 and 2012-2013 [2009-2010 and 2010-2011] school years, in accordance with this section and TEC, §21.402, shall be as set forth in the table in this subsection. If the minimum monthly salary determined under TEC, §21.402(a), for a particular level of experience is less than the minimum monthly salary for that level of experience in the preceding year, the minimum monthly salary is the minimum monthly salary for the preceding year.

Figure: 19 TAC §153.1022(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2011.

TRD-201105787

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 5, 2012

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 177. BUSINESS ORGANIZATIONS

The Texas Medical Board (Board) proposes amendments to §§177.5, 177.16 and 177.17, concerning Business Organizations.

The amendment to §177.5, relating to Special Requirements for §162.001(b) Health Organizations, provides changes consistent with SB 1661 (82nd Regular Session). Changes include requiring non-profit health organizations to adopt and enforce policies to ensure that physicians employed by the organization exercise independent medical judgment when providing care to patients.

The amendment to §177.16, relating to Physician Assistants, provides that if a grandfathered entity under this section contracts with a new supervising physician to provide services, then the restrictions on ownership interest under this section shall apply.

The amendment to §177.17, relating to Exceptions to Corporate Practice of Medicine Doctrine, consistent with SB 894 (82nd Regular Legislative Session), provides that physicians have certain rights when employed by a hospital that provides professional liability coverage.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to provide rules consistent with recent statutory changes and that are intended to prevent improper influence of medical decisions by non-physicians who have an ownership interest in non-profit health organizations; to provide limitations to the grandfathering provisions consistent with the legislative intent of HB 2098 (82nd Regular Session) and that PA-Physician Jointly owned entities have appropriate safeguards to protect the public and to heighten awareness of physicians employed by hospitals under SB 894 to their new liability coverage rights and protections, as granted under the bill.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with these rules as proposed is undetermined but for those entities affected by changes to §177.16, there will be potential costs for reorganization of the entity and required transfer of some ownership interests. The effect on small or micro businesses is unde-

termined but for those entities affected by changes to §177.16, there will be potential costs for reorganization of the entity and required transfer of some ownership interests.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER B. NON-PROFIT HEALTH ORGANIZATIONS

22 TAC §177.5

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §§166.022, 162.053, and 204.209, Texas Occupations Code and §311.063, Health and Safety Code.

No other statutes, articles or codes are affected by this proposal.

§177.5. Special Requirements for 162.001(b) Health Organizations.

(a) In addition to the general by-law requirements set forth herein for health organizations seeking certification under §162.001(b) of the Act, any health organization in which a member is either a person who is not a physician actively engaged in the practice of medicine or an entity or organization that is not wholly owned and controlled by physicians actively engaged in the practice of medicine must comply with the following requirement:

(1) All credentialing, quality assurance, utilization review and peer review policies shall be made exclusively by the board of directors; however, following consultation with the board of directors, the member(s) may retain the right to approve, or in the case of a health organization seeking to obtain or maintain tax exempt status the right to make, any financial decision of the health organization including, but not limited to, decisions regarding capital and operating budgets, physician compensation and benefits, expenditures of monies, and managed care contracts in which the health organization is at financial risk, the substance of which requirements shall be provided for in the by-laws of the health organization.

(2) Subsequent to the appointment of the initial board of directors, a member may not appoint or elect any director without the approval of at least a majority of the board of directors unless required by law including requirements to obtain or maintain tax exemption.

(3) Without the approval of at least a majority of the board of directors, the member may not unilaterally amend the bylaws of the health organization unless required by law including requirements to obtain or maintain tax exemption.

(b) The board of directors for the organization must develop policies and the organization must adopt, maintain, and enforce policies to ensure that physicians employed by the organization exercise independent medical judgment when providing care to patients. The policies must include policies relating to:

- (1) credentialing and privileging;
- (2) quality assurance;
- (3) utilization review;
- (4) peer review;

- (5) due process;
- (6) medical decision-making; and
- (7) delegation.

(c) A health organization may not interfere with, control, or otherwise direct a physician's professional judgment in violation of the Act or Board rules. The health organization's policies must reserve the sole authority to engage in the practice of medicine to a physician participating in the health organization, regardless of the physician's employment status with the health organization. A health organization may not discipline a physician for reasonably advocating for patient care.

(d) The requirements set out in Texas Occupations Code Chapter 162, Subchapter A, may not be voided or waived by contract. However, a member of a health organization may establish ethical and religious directives and a physician may contractually agree to comply with those directives.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 23, 2011.

TRD-201105815
 Mari Robinson, J.D.
 Executive Director
 Texas Medical Board

Earliest possible date of adoption: February 5, 2012
 For further information, please call: (512) 305-7016



SUBCHAPTER C. JOINTLY OWNED ENTITIES

22 TAC §177.16

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §§166.022, 162.053, and 204.209, Texas Occupations Code and §311.063, Health and Safety Code.

No other statutes, articles or codes are affected by this proposal.

§177.16. *Physician Assistants.*

(a) Corporations.

(1) Pursuant to §22.0561 of the Business Organizations Code, a physician and a physician assistant may form a corporation to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

- (A) be an officer of the corporation;
- (B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the corporation;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) own individually or in combination with other physician assistants more than a minority ownership interest in an entity created under this subsection; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(b) Partnerships.

(1) Pursuant to §152.0551 of the Business Organizations Code, physicians and physician assistants may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be a general partner or participate in the management of the partnership;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the partnership; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(c) Professional Associations and Professional Limited Liability Companies.

(1) Pursuant to §301.012 of the Business Organizations Code, physicians and physician assistants may form and own a professional association or professional limited liability company to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be an officer in the professional association or professional limited liability company;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the professional association or professional limited liability company;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the partnership; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(d) All physicians and physician assistants who jointly own an entity must annually submit a joint form to the Board providing date of formation of the entity, each licensee's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title (relating to Fees and Penalties).

(e) Physician assistants who solely own an entity or jointly own an entity with a non-physician must annually submit a form to the Board providing the date of formation of the entity, each person's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title.

(f) Restrictions on ownership interests, shall apply only to those entities formed on or after June 17, 2011. However, if the ownership interests of an entity changes, or an entity contracts with a new supervising physician to provide services, then the restrictions on ownership shall apply to the entity.

(g) This section shall not apply to pain management clinics owned and operated pursuant to Chapter 195 of this title (relating to Pain Management Clinics).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 23, 2011.

TRD-201105814

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 305-7016



SUBCHAPTER D. EMPLOYMENT OF PHYSICIANS

22 TAC §177.17

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §§166.022, 162.053, and 204.209, Texas Occupations Code and §311.063, Health and Safety Code.

No other statutes, articles or codes are affected by this proposal.

§177.17. *Exceptions to Corporate Practice of Medicine Doctrine.*

(a) Corporate Practice of Medicine Doctrine. The corporate practice of medicine doctrine is a legal doctrine, which generally prohibits corporations, entities or non-physicians from practicing

medicine. The prohibition on the corporate practice of medicine is based on numerous provisions of the Medical Practice Act, including §§155.001, 155.003, 157.001, 164.052(a)(8), (13), and 165.156. Section 165.156 of the Medical Practice Act makes it unlawful for any individual, partnership, trust, association or corporation by use of any letters, words, or terms, as an affix on stationery or advertisements or in any other manner, to indicate the individual, partnership, trust, association or corporation is entitled to practice medicine if the individual or entity is not licensed to do so.

(b) Applicability. Upon satisfaction of the requirements of their physician employment enabling statute and to the extent authorized by their enabling statutes, the following entities may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at:

(1) A hospital that primarily provides medical care to children younger than 18 years of age as provided under §311.061 of the Health and Safety Code, and that:

(A) Is owned or operated by a nonprofit fraternal organization; or

(B) Has a governing body the majority of members of which belong to a nonprofit fraternal organization.

(2) A hospital, including health care facilities owned or operated by the hospital, that is:

(A) designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1395i-4;

(B) a sole community hospital, as that term is defined by 42 U.S.C. §1395ww(d)(5)(D)(iii); or

(C) located in a county with a population of 50,000 or less.

(3) Baylor County Hospital District (Texas Special District Code, §1005.063)

(4) Bexar County Hospital District, (Texas Health and Safety Code, §281.0283)

(5) Burleson County Hospital District, (Texas Special District Code, §1010.059)

(6) City of Amarillo Hospital District (Texas Special District Code, §1001.060)

(7) Dallam-Hartley Counties Hospital District (Texas Special District Code, §1018.061)

(8) Dallas County Hospital District (Texas Health and Safety Code, §281.0282)

(9) El Paso County Hospital District (Health and Safety Code, §281.0285)

(10) Frio Hospital District (Texas Special District Code, §1030.063)

(11) Harris County Hospital District (Texas Health and Safety Code, §281.0283)

(12) Jackson County Hospital District (Texas Special District Code, §1046.062)

(13) Martin County Hospital District (HB 4730, 81st session)

(14) Matagorda County Hospital District (Texas Special District Code, §1057.057)

(15) Mitchell County Hospital District (Texas Special District Code, §1062.060)

(16) Moore County Hospital District (Texas Special District Code, §1005.063)

(17) North Wheeler County Hospital District (Texas Special District Code, §1083.062)

(18) Ochiltree County Hospital District, (Texas Special District Code, §1071.062)

(19) Travis County Healthcare District (Texas Health and Safety Code, §281.0281)

(20) Commissioners court of a county with a population of 3.3 million or more for the purpose of providing health care services to inmates in the custody of the sheriff

(21) U.S. Government and Military Forces

(22) Private non-profit medical school (Texas Occupations Code, Chapter 162)

(23) School districts (Texas Education Code, §33.208 and §38.016)

(24) State institutions:

(A) academic institution as defined under §172.8 of this title (relating to Faculty Temporary Permits);

(B) state hospitals as defined under Chapter 552 of the Texas Health and Safety Code; and

(C) prisons.

(c) Reports to the Board. To the extent required by their enabling statutes, entities permitted to hire physicians, shall appoint or otherwise ensure that a physician is selected to be the chief medical officer or member of a hospital district medical executive board, and the chief medical officer or members of the hospital district medical executive board shall report to the Texas Medical Board any action of event that they reasonably and in good faith believe constitutes a compromise of the independent medical judgment of a physician in caring for a patient. The Texas Medical Board may provide such reports to the Department of State Health Service and other regulatory agencies as necessary.

(d) Discontinuation of Eligibility. If an entity no longer meets the criteria to employ physicians, the entity must change its contractual relationships with physicians in order to establish an independent contractor relationship with the physicians.

(e) Professional Liability Coverage. If a hospital provides professional liability coverage for a physician employed by the hospital, the physician shall have the following rights, to the extent required by the hospital's enabling statute:

(1) the physician may participate in the selection of the professional liability coverage;

(2) the physician has the right to an independent defense if the physician pays for that independent defense; and

(3) the physician shall retain the right to consent to the settlement of any action or proceeding brought against the physician.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 23, 2011.

TRD-201105813

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 305-7016



PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.11

The Texas Funeral Service Commission (commission) proposes an amendment to §201.11, concerning Disciplinary Guidelines.

The amendment is proposed to add paragraph (1)(A)(vii) which states that failure to comply with the demand for a report of implementation will result in the assessment of a \$100 administrative penalty against the license(s) involved.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each year of the first five-year period the proposed amendment is in effect, the public benefit anticipated will be to ensure the commission the authority to administer administrative actions and/or penalties against licensees failing to comply with Chapter 651 of the Texas Occupations Code.

Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic costs to persons who are required to comply with the amendment as proposed, and there is no impact on local employment or economics.

Comments on the proposal may be submitted in writing for a 30-day period to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or electronically to info@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§201.11. Disciplinary Guidelines.

When the commission finds that a licensee has violated Occupations Code Chapter 651; Health and Safety Code Chapter 695, §§711.003, 711.008, 711.010, 711.011, 711.021 - 711.035, 711.038, 711.041, 711.042, 711.061, 711.062, Chapter 716 or any of the commission's rules, it shall:

(1) (No change.)

(2) The following guidelines will be utilized in the setting of administrative penalties.

(A) Texas Occupation Code §651.451, Certain Fraudulent and Deceptive Acts.

(i) - (v) (No change.)

(vi) Presentation of false certificate of work done as a provisional licensee (8)--\$100 - \$2,000;[-]

(vii) Failure to comply with the demand for a report of implementation will result in the assessment of a \$100 administrative penalty against the license(s) involved.

(B) - (J) (No change.)

(3) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105808

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 936-2469



CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.1

The Texas Funeral Service Commission (commission) proposes an amendment to §203.1, concerning Definitions.

The amendment uses the term broadcast as a synonym for advertise and the term learning about cremation as a synonym for cremation society. The new paragraphs are added as (1) and (8) and the numerical sequence of definitions is changed.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment, beyond what is already required under the existing rule.

Mr. Robbins has also determined that for each year of the first five-year period the amendment is in effect, a public benefit will be an awareness that the commission considers the term "broadcast" as used in the Texas Occupations Code, §651.001 to be interchangeable with the term "advertise" as used by the Federal Trade Commission, and the term "learning about cremation" as used in the Texas Occupations Code, §651.001 to be interchangeable with the term "cremation society" as used by the Federal Trade Commission.

Comments on the proposal may be submitted in writing for a 30-day period to O. C. "Chet" Robbins, Executive Director, Texas

Funeral Service Commission at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or electronically to info@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

(1) Advertise--To make publicly and generally known; to announce publicly especially by a printed notice or a broadcast.

(2) ~~[(4)]~~ Alternative container--An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(3) ~~[(2)]~~ At-need--The [the] time of need of funeral services or merchandise when a human being has become deceased.

(4) ~~[(3)]~~ Cash Advance item--Any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers, musicians or singers; nurses; obituary notices; gratuities and death certificates.

(5) ~~[(4)]~~ Casket--A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(6) ~~[(5)]~~ Commission--The Texas Funeral Service Commission.

(7) ~~[(6)]~~ Cremation--A heating process which incinerates human remains.

(8) Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area or outside their local area.

(9) ~~[(7)]~~ Direct Cremation--Disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(10) ~~[(8)]~~ Funeral ceremony--A service commemorating the deceased with the body present.

(11) ~~[(9)]~~ Funeral goods--Goods which are sold or offered for sale directly to the public for use in connection with funeral services. Also referred to as funeral merchandise.

(12) ~~[(10)]~~ Funeral provider--Any person, partnership or corporation that sells or offers to sell funeral merchandise and funeral services to the public at need.

(13) ~~[(11)]~~ Graveside service--A [a] funeral ceremony with the body present held at the burial site.

(14) ~~[(12)]~~ Holding the body hostage--Refusing for any reason to transfer or allow the transfer of a dead human body to the person responsible for making arrangements for final disposition.

(15) [(43)] Immediate burial--Disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(16) [(44)] Memorial service--A ceremony commemorating the deceased without the body present.

(17) [(45)] Morgue--A place where bodies of unidentified persons or those who have died of violence or unknown causes are kept until release for burial or other lawful disposition.

(18) [(46)] Person--Any individual, partnership, corporation, association, government or governmental subdivision or agency or other entity.

(19) [(47)] Pre-need--Prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for funeral services or funeral merchandise as defined by Chapter 154 Texas Finance Code.

(20) [(48)] Refrigeration of body--Maintenance of an unembalmed dead human body at a temperature of 34-40 degrees Fahrenheit.

(21) [(49)] Unreasonable Time--The [the] retention of excess funds for a period that exceeds ten days from the time the funds were received by the funeral establishment or its agent.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105806

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 936-2469



22 TAC §203.7

The Texas Funeral Service Commission (commission) proposes an amendment to §203.7, concerning Price Disclosure.

The amendment proposes new paragraph (5)(B)(xiv) to add the price for filing a claim seeking life insurance proceeds on behalf of the beneficiaries to the general price list. Also, new paragraph (8) is proposed to state that "providing the cost of the logo is included as a part of the obituary; the exact amount should be disclosed to the consumer for the cost of the logo."

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be greater transparency for the funeral consumer who is making a decision with respect to the purchase of funeral-related items.

Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses, there is no anticipated eco-

nomical costs to persons who are required to comply with the amendment as proposed; and there will be no impact on local employment or economics.

Comments on the proposal may be submitted in writing for a 30-day period to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or electronically to info@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.7. Price Disclosure.

(a) (No change.)

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.9(b)(1) of this title (relating to Other required purchases of funeral goods or funeral services), funeral providers must:

(1) - (4) (No change.)

(5) General price list.

(A) (No change.)

(B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(i) - (xi) (No change.)

(xii) hearse; [and]

(xiii) limousine; and[-]

(xiv) filing a claim seeking life insurance proceeds on behalf of the beneficiaries.

(C) - (D) (No change.)

(6) - (7) (No change.)

(8) Providing the cost of the logo is included as a part of the obituary. The exact amount should be disclosed to the consumer for the cost of the logo.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105804

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 936-2469



22 TAC §203.29

The Texas Funeral Service Commission (commission) proposes an amendment to §203.29, concerning Funeral Establishment Names.

The amendment clarifies advertising media forms used by funeral establishments, crematories, commercial embalming establishments, and cemeteries.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins has also determined that for each year of the first five-year period the amendment is in effect, a public benefit anticipated as a result of enforcing the amendment will be elimination of false, misleading, or deceptive advertising.

Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses, that there is no anticipated economic costs to persons who are required to comply with the amendment as proposed and that there is no impact on local employment or economics.

Comments on the proposal may be submitted in writing for a 30-day period to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or electronically to info@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.29. ~~[Funeral]~~ *Establishment Names and Advertising.*

(a) Each ~~[Funeral]~~ establishment's application for licensure shall contain the name to be used on the license.

(b) Upon receiving an application for a new or changed ~~[funeral]~~ establishment license, the executive director shall review establishment names in the commission's database. The executive director shall issue the license in the requested name when all licensing requirements are satisfied, unless the director determines that the name is deceptively or substantially similar to the name of another licensed ~~[funeral]~~ establishment in the same county, metropolitan area, municipality, or service area. A license shall not be issued to an establishment for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.

(c) An ~~[A funeral]~~ establishment's name may be changed by following the procedure for obtaining the original name.

(d) An applicant for approval of a new or changed name may appeal the executive director's denial of the request to the commission. The commission's decision is final.

(e) All advertising by a Texas licensed entity licensed by the Texas Funeral Service Commission must operate as follows:

(1) The name on the website must be the licensed name of the entity, or a registered trademark belonging to the licensed entity.

(2) Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to consummate a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Texas Funeral Service Commission.

(3) Any agents of a licensed entity or funeral provider shall be disclosed to the consuming public. All locations advertised shall be licensed by the Texas Funeral Service Commission.

~~[(e) No funeral establishment may advertise under an assumed name, unless the entity has filed an assumed name certificate with the appropriate county clerk or the secretary of state, as required by the Texas Assumed Business or Professional Name Act.]~~

(f) No ~~[funeral]~~ establishment, commercial embalming establishment, crematory, or cemetery shall advertise in a manner which is false, misleading, or deceptive.

(g) Cremation society websites or any advertising shall be linked with a licensed funeral establishment or licensed crematory establishment. The licensed funeral establishment and its location shall be provided to the consuming public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105805

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 936-2469



22 TAC §203.39

The Texas Funeral Service Commission (commission) proposes an amendment to §203.39, concerning Embalmer in Charge.

The commission has determined that this amendment will clarify that an individual cannot be designated as the embalmer and funeral director in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins has further determined that for each year of the first five-year period the amendment is in effect the public benefit will be increased accountability for the designated embalmer and/or funeral director in charge.

Mr. Robbins has also determined that there will be no effect on large, small or micro-businesses; there is no anticipated economic cost to persons who are required to comply with the amendment as proposed; and there is no impact on local employment or economies.

Comments on the proposal may be submitted in writing for a 30-day period to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or electronically to info@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.39. *Embalmer in Charge.*

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

(d) An individual may not be designated as the embalmer and/or a funeral director in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, same general management, and no establishment is more than 60 miles from any other establishment held under the same ownership conditions.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105807

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 936-2469



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.68

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Insurance (Department) proposes the repeal of §7.68, concerning the requirements for filing 2005 quarterly statements, 2005 annual statements, other reporting forms, and electronic data filings with the Department and the National Association of Insurance Commissioners (NAIC). The section is proposed for repeal because the Department is proposing a new §7.68 to specify the requirements for filing the annual statements, the quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. The proposed new §7.68 is also published in this issue of the *Texas Register*.

FISCAL NOTE. Danny Saenz, Deputy Commissioner, Financial Regulation Division, has determined that, for each year of the first five years the repeal of the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that, for each year of the first five years the repeal of the

section will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of obsolete regulations. There will be no economic cost to any individuals, or insurers or other Department regulated entities, regardless of size, as a result of the proposed repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply the repeal of obsolete rules. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 6, 2012, to Sara Waitt, Acting General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-910. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, oral and written comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The repeal of the section is proposed under the Insurance Code §802.001 and §36.001. Section 802.001 authorizes the Commissioner to change the form of any annual statements required of insurance companies of any kind, as necessary to obtain an accurate indication of the company's condition and method of transacting business. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes in the Insurance Code are affected by this proposed repeal: Chapters 2201, 2210, and 2211 and §§32.041, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 1506.058, 2210.008, 2210.101, 2210.102, 2210.152, 2211.058, 2551.001, and 2551.152.

§7.68. *Requirements for Filing the 2005 Quarterly and 2005 Annual Statements, Other Reporting Forms, and Electronic Data Filings with the Texas Department of Insurance and the NAIC.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2011.

TRD-201105794

Sara Waitt

Acting General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-6327



28 TAC §7.68

The Texas Department of Insurance (Department) proposes new §7.68, concerning requirements for the filing of the annual statements, the quarterly statements, other reporting forms, and electronic data filings with the Department and the National Association of Insurance Commissioners (NAIC). The requirements are applicable to insurance companies, including limited purpose subsidiary life insurance companies established under the Insurance Code Chapter 841, Subchapter I; health maintenance organizations (HMOs); nonprofit legal service corporations; the Texas Health Insurance Pool; the Texas FAIR Plan Association; and the Texas Windstorm Insurance Association (TWIA). These insurance companies, HMOs, and other regulated entities are referred to collectively as "carriers" in this proposal.

The carriers will file the annual and quarterly statements and other reporting forms with the Department and the NAIC as directed in the proposed rules. The proposed new section adopts by reference the annual statement blanks, the quarterly statement blanks, the annual and quarterly supplemental reporting forms, and the related instruction manuals as adopted and published by the NAIC each year, as well as the Texas-specific reporting forms specified in this proposed section. The reporting forms and instructions include the (i) NAIC annual statement blanks; (ii) NAIC quarterly statement blanks; (iii) related NAIC annual statement and quarterly statement instruction manuals; (iv) NAIC separate accounts annual statement blank and instructions; (v) NAIC combined property/casualty annual statement blank and instructions; (vi) various NAIC supplemental to the NAIC blanks, including, but not limited to Schedule SIS, management discussion and analysis, and supplemental compensation exhibit; (vii) Texas-specific annual statement form and instructions for farm mutual insurers not subject to proposed subsection (f); (viii) Texas specific annual statement forms and instructions for statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations, including an annual statement, a release of contributions, a 3-1/2 percent Chamberlain reserve table (reserve valuation), a reserve summary, an inventory of insurance in force by age of issue or reserving year, and a summary of inventory of insurance in force by age and calculation of net premiums; (ix) Texas-specific annual statement form and instructions for nonprofit legal service corporations; (x) Texas-specific overhead assessment exemption form for insurance company examination expenses; (xi) Texas-specific analysis of surplus form; (xii) Texas-specific supplemental forms and instructions for county mutual insurance

companies and HMOs; and (xiii) Texas-specific annual statement forms and instructions for Mexican casualty companies.

The carriers will use these forms to report their calendar year financial condition and business operations and activities each year. The information provided by the completion of the forms is necessary to allow the Department to monitor the solvency, business activities, and statutory compliance of the carriers. The proposed new section will be applicable to annual filings with the Department and the NAIC, beginning with the year ending December 31, 2011, and each year thereafter; and to the quarterly filings with the Department and the NAIC, beginning with the quarter ending on March 31, 2012, and each quarter thereafter.

Additionally, the proposed new section is necessary to outline a process for annual notice by the Department of the annual filing requirements, and the opportunity to petition for adoption of a rule amendment to this section. Specifically, the proposal states that the Department annually will publish the annual, quarterly, and supplemental filing checklists that reference the latest editions of the annual statement, quarterly statement, forms and instructions adopted by the NAIC and the Texas-specific filing forms and instructions. The proposed section further points out a process for any interested person to petition the Department for the adoption of a rule amendment to this section under §1.60 of this title (relating to Petition for Adoption of Rules), or its successor, for exceptions to the latest editions of the blanks, supplemental reporting forms, and instructions adopted by the NAIC or the Department.

Further, the proposed new section is necessary to implement HB 3161, 82nd Regular Session, by specifying the financial and actuarial filing requirements for limited purpose subsidiary life insurance companies established under the Insurance Code Chapter 841, Subchapter I.

The proposed new section also defines terms relevant to the statement blanks and reporting forms and provides the dates by which certain reports are to be filed. Proposed subsection (a) explains the purpose of the section. Proposed subsection (b) explains the scope and applicability of the section. Proposed subsection (c) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Proposed subsection (d) adopts by reference the forms described in the section. Proposed subsection (e) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section, and other Department regulations and the NAIC instructions specified in the new section.

Proposed subsections (f) - (q) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Specifically, proposed subsection (f) specifies the filing requirements applicable to every domestic carrier described in proposed subsections (i) - (m). Proposed subsection (g) requires each foreign HMO and foreign insurer permitted or allowed to do the business of HMOs in Texas to make the filings specified in proposed subsection (f)(1) - (4) electronically with the NAIC and in paper copy with the Department. Proposed subsection (g) further requires each foreign HMO and foreign insurer permitted or allowed to do the business of HMOs in Texas to make the filings specified in proposed subsection (m) electronically and in paper copy with the Department. Proposed subsection (h) enumerates the filing requirements applicable to every foreign carrier described in proposed subsections (i) - (l).

Proposed subsection (i) requires each life; life and accident; life and health; accident; accident and health; mutual life; or life, accident and health insurance company; stipulated premium company; limited purpose subsidiary life insurance company; group hospital service corporation; and the Texas Health Insurance Pool to complete and file the blanks, forms, and electronic filings with the NAIC and the Department, as directed in proposed subsections (f) and (h), with the exceptions or additional filings provided in this proposed subsection.

Proposed subsection (j) requires each fire; fire and marine; general casualty; fire and casualty; or U.S. branch of an alien insurer; county mutual insurance company; mutual insurance company other than life; Lloyd's plan; reciprocal or inter insurance exchange; domestic risk retention group; life insurance company that is licensed to write workers' compensation; any farm mutual insurance company that filed a property and casualty annual statement for the previous calendar year or had gross written premiums in excess of \$6 million for the current calendar year; domestic joint underwriting association; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association, as directed in proposed subsections (f) and (h) and this proposed new subsection. Specifically, proposed subsection (j)(4) and (5) enumerate the filing requirements for TWIA and the FAIR Plan Association, respectively.

Proposed subsection (k) requires fraternal benefit societies to complete and file the blanks, forms, and electronic filings described in subsections (f) and (h) with the exceptions or additional filings provided in this subsection.

Proposed subsection (l) requires each title insurance company to complete and file the blanks, forms, and electronic filings described in proposed subsections (f) and (h).

Proposed subsection (m) requires each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 and each insurer that is subject to life insurance statutes and is permitted or allowed to do the business of health maintenance organizations to complete and file the blanks, forms, and electronic filings described in proposed subsections (f) and (g), and the additional filings specified in this subsection.

Proposed subsections (n) - (q) specify the Texas-specific filing requirements for certain types of insurers. Specifically, proposed subsection (n) enumerates the Texas-specific filing requirements for farm mutual insurance companies not subject to proposed subsection (f). Proposed subsection (o) enumerates the Texas-specific filing requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations. Proposed subsection (p) states the Texas-specific filing requirements for nonprofit legal service corporations. Proposed subsection (q) specifies the Texas-specific filing requirements for Mexican casualty insurance companies.

Proposed subsection (r) provides that nothing in this section prohibits the Department from requiring any insurer or other regulated entity from filing other financial reports with the Department or the NAIC.

Proposed subsection (s) outlines a process for annual notice of the annual, quarterly, and supplemental filing checklists that reference the latest editions of the annual statement, quarterly statement, forms and instructions adopted by the NAIC and the Texas-specific filing forms and instructions. Proposed subsection (s) further addresses a process for any interested person to

petition the Department for the adoption of a rule amendment to this section under §1.60 of this title (relating to Petition for Adoption of Rules), or its successor, for exceptions to the latest editions of the blanks, supplemental reporting forms, and instructions adopted by the NAIC or the Department.

The forms and instructions are available for inspection in the office of the Texas Department of Insurance, Financial Regulation Division, Financial Analysis, in the William P. Hobby Jr. State Office Building at 333 Guadalupe, Tower Number III, Third Floor, Austin, Texas. The NAIC forms and instructions may also be reviewed at www.naic.org. The new section will replace the existing §7.68, which is proposed for repeal and also published in this issue of the *Texas Register*. Existing §7.68 addresses the requirements for the filing of the 2004 quarterly statements and 2004 annual statements.

FISCAL NOTE. Danny Saenz, Deputy Commissioner, Financial Regulation Division, has determined that, for each year of the first five years the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the Department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurance companies, HMOs, and other regulated entities licensed in Texas to better assure financial solvency.

Existing §7.67 specifies the requirements for the filing of the 2010 annual statements, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. Except for some new filing requirements for limited purpose subsidiary life insurance companies, substantially the same requirements in existing §7.67 for the filing of annual statements, quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC are also included in this proposal. Therefore, the same types of costs that were estimated for compliance with the §7.67 requirements are also estimated for compliance with the requirements in this proposal, with the addition of estimated costs for the new limited purpose subsidiary life insurance companies filing requirements. The Department does not anticipate any change in these estimated costs, except for the estimated costs for limited purpose subsidiary life insurance companies to prepare and submit any new filings required under proposed §7.68(f), (h), and (i) from those estimated for compliance with the §7.67 requirements. Therefore, except for the additional estimated costs to limited purpose subsidiary life insurance companies, the estimated costs described in this proposal are consistent with the estimated compliance costs for the §7.67 requirements, which are re-stated in the Public Benefit/Cost Note and Economic Impact Statement and Regulatory Flexibility Analysis For Small and Micro Businesses sections of this proposal.

Also, although not strictly required by the Government Code §2006.002(c), the proposed section contains a number of accommodations that will mitigate the impact of proposed §7.68 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.68(i)(2) provides stipulated premium companies with one additional month to file their annual statements and an ad-

ditional month to make certain other related filings. Proposed §7.68(n) authorizes a simplified financial statement form for farm mutual insurance companies that write less than \$6 million in premium. Proposed §7.68(n) also does not require farm mutual insurance companies that write less than \$6 million in premium to (i) pay NAIC filings fees, (ii) acquire software to prepare financial statement filings with the NAIC, or (iii) file quarterly financial statements with the Department. Proposed §7.68(o) authorizes a simplified annual financial statement form for statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations; and does not require these types of carriers to (i) acquire software to prepare financial statement filings with the NAIC; or (ii) file quarterly financial statements with the Department. Under proposed §7.68(p), nonprofit legal service corporations are not required to pay NAIC filings fees or to acquire software to prepare financial statement filings with the NAIC. Under proposed §7.68(q), Mexican casualty insurance companies are not required to pay NAIC filing fees or acquire software to prepare financial statement filings with the NAIC.

The probable economic cost to persons required to comply with the proposed section depends on several factors including the size, type and complexity of the carrier. Each carrier subject to proposed §7.68 is required by statute to provide the Department with various annual reports on its operations. The Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. The reports and forms required by this proposal generally request information that is already captured or created by the carrier as necessary to its business operations. Therefore, the additional cost involved generally relates to the transfer of that information from the carrier's records to the required report or form. It is anticipated that a carrier, regardless of size, will utilize employees who are familiar with the records of the carrier and accounting practices in general. Based on information obtained by the Department, such individuals are estimated to be compensated from \$17 to \$50 per hour.

The Department anticipates that larger business carriers, because of the larger size and relatively more complex operations, will take more time to transfer the required information from their records to the financial forms and reports to be adopted by this proposal. The Department also anticipates that large business carriers will likely compensate staff at the higher end of the salary range. Therefore, based on the Department's experience, the overall labor costs for large business carriers to transfer the required information from their records to the required financial forms and reports will generally be more than the overall labor costs for small or micro business carriers. The overall costs to transfer the information from a carrier's records also may vary based upon factors such as the type of carrier (e.g., life, accident and health, or property and casualty), the nature of the risks insured, and the type of software used by the carrier.

Beginning with the year-end 2010 financial reporting requirements, the TWIA was required by the proposed section to submit to the Department annual and quarterly financial statements prepared in accordance with GAAP, in addition to the prior requirements to submit financial statements prepared in accordance with SAP. The requirement for the TWIA to prepare and submit financial statements prepared in accordance with GAAP is necessary for the TWIA and the Department to comply with financial reporting requirements in the Government Code Chapter 2101, Subchapter B, relating to a component unit of a statewide report-

ing entity, which are administered by the Comptroller. The Department anticipates that the TWIA will use existing staff to comply with these requirements, in which case no additional costs to the TWIA are required as a result of this proposal.

If the TWIA determines that it must hire additional staff resources to comply with the Government Code §2101.011(d) and this proposed section, the cost of compliance will relate to the cost of that additional staff's salary and related benefits times the amount of hours necessary to prepare the required GAAP financial statements. The Department anticipates that the number of hours necessary to produce the GAAP financial statements, and thus the TWIA's costs of compliance, will vary significantly depending upon a number of factors, including: (i) the adequacy and accuracy of the TWIA's books and records; (ii) the level of automation of the TWIA's financial reporting systems; (iii) the sufficiency of the TWIA's system of internal control over financial reporting, including whether any unremediated material weaknesses exist; (iv) the number and qualifications of the TWIA's accounting personnel; and (v) whether the financial statements cover a period that includes one or more catastrophic loss events for the TWIA. Based upon these factors, the Department anticipates that the time and cost for the TWIA to prepare a set of GAAP financial statements could vary from 16 to 80 hours. Moreover, the Department anticipates that the TWIA could hire an accountant to prepare these GAAP financial statements at the mean salary rate of \$31.63 per hour, as set forth for similar accountant positions in the May 2009 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm.

The Department believes that the TWIA has the information necessary to estimate its own compliance costs. Further, the Government Code §2101.011(d) requires the reporting of the financial information for any entity that the Comptroller determines is a component unit of a statewide reporting entity in accordance with GAAP as prescribed or modified by the GASB or its successor. Since the TWIA has been deemed a component unit of a statewide reporting entity under §2101.011(d), any costs to the TWIA for preparing and filing the annual GAAP financial statements with the Department, results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Most carriers are required under proposed §7.68 to file actuarial opinions on the reasonableness of their reserves with the company's annual statement, and to obtain a corresponding Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter. Beginning with the 2010 Property and Casualty Annual Statement, the TWIA was similarly required, under existing §7.67(e)(1)(N) and proposed §7.68(j)(2) and (4), to obtain an actuarial opinion on its reserves and a corresponding Actuarial Opinion Summary. In order to obtain the actuarial opinion and Actuarial Opinion Summary in accordance with the proposed section, the TWIA, like other carriers, will need to obtain the services of an actuary who will perform the necessary analysis and prepare the necessary work papers to support expressing an opinion on the reasonableness of the reserves held by the TWIA. The corresponding cost for the TWIA to obtain this actuarial opinion will vary depending on a number of factors, including whether a current employee of the TWIA or an outside consulting firm is utilized to prepare the required actuarial opinion and Actuarial Opinion Summary, the adequacy and accuracy of the books and records maintained by the TWIA, the complexity of the actuarial techniques that are necessary to perform this analysis, the level of legal proceedings related to unresolved claims,

and recent storm activity. The Department anticipates that the TWIA will elect to use the services of an existing staff actuary, in which case no additional costs to the TWIA are required as a result of this proposal. If the TWIA elects to use the services of an outside consulting actuary, it will incur actuarial costs to prepare the actuarial opinion and the Actuarial Opinion Summary. The proposed section requires the appointed actuary to prepare an actuarial opinion in accordance with the Annual Statement Instructions, Property and Casualty. The proposed section also requires the appointed actuary to prepare the Actuarial Opinion Summary in accordance with §7.9. Based upon the factors listed previously, the Department anticipates that the time for a consulting actuary to prepare an actuarial opinion and Actuarial Opinion Summary could vary from 50 - 75 hours. The Department further anticipates that the TWIA could hire an outside consulting actuary to prepare an actuarial opinion and Actuarial Opinion Summary at the mean salary rate of \$50.33 per hour, as set forth for similar accountant positions in the May 2009 State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor at http://www.bls.gov/oes/current/oes_tx.htm. While the TWIA may elect, at its discretion, to incur additional costs, the TWIA controls that decision and the Department believes that such additional costs are not required by the proposed section.

Most carriers are required under proposed §7.68 to file electronic copies of the company's annual statement and quarterly statements with the NAIC. Beginning with the 2010 Property and Casualty Annual Statement and the 2011 Property and Casualty Quarterly Statements, the TWIA and the Texas FAIR Plan Association were required, under existing §7.67(e)(4) and proposed §7.68(f) and (j)(4) and (5), respectively, to prepare and file electronic filings with the NAIC, in addition to preparing and filing paper copies of these carriers' annual statements and quarterly statements. The TWIA and the Texas FAIR Plan Association must complete and file the NAIC electronic filings in accordance with the NAIC's annual statement and quarterly statement instructions for property and casualty, and the NAIC data specifications and instructions and shall include PDF format filing. In order to prepare and file the financial statements with the NAIC in accordance with the proposed section, the Department anticipates that the TWIA and the Texas FAIR Plan Association, like other carriers, will need to purchase software. The cost of software used to prepare the financial statements is approximately \$2,280 for a single carrier. The cost of software may be greater or less depending on the amount charged by the vendor and any extra services that are agreed to between the carrier and the vendor.

The fees associated with each carrier to file electronically with the NAIC database are estimated to range from \$247, for carriers with the smallest premium volume, to \$69,428, for carriers with the largest premium volume with a limit for insurer groups of \$208,284. The Insurance Code §802.055 requires an insurance company to pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052. Therefore, any costs to an insurance company for preparing and filing the annual statement with the NAIC, including software and filing fee costs, results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

The Department anticipates that the cost of compliance as detailed in this Public Benefit/Cost Note will be relatively more significant for carriers licensed in Texas for less than one year. This is due to the additional time required for carrier staff to become

familiar with the requirements of this proposal, initial software acquisitions costs, and the need to implement systems to capture the information required to be reflected in the financial statements filed with the Department and the NAIC. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by this proposal, most of these costs for carriers licensed for one year or more have already been incurred.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that proposed §7.68 will not have an adverse economic effect on small or micro businesses. As previously stated in the Public Benefit/Cost Note part of this proposal, except for some new filing requirements for limited purpose subsidiary life insurance companies, substantially all of the requirements in existing §7.67, that apply to the most recent annual and quarterly statement filings, are also proposed in this proposal for the filing of the annual statements, the quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. Therefore, with the exception of the new filing requirements for limited purpose subsidiary life insurance companies, the same types of costs that were identified for compliance by small and micro business carriers for the filings under §7.67 are also identified for small and micro business carriers for compliance with the requirements in this proposal.

Further, the Department does not anticipate any change in the estimated costs for this proposal from those estimated for compliance with the §7.67 filing requirements, except for the estimated cost to limited purpose subsidiary life insurance companies to prepare and file any new paper copy filings with the Commissioner and/or electronic copies of their financial statements with the NAIC under proposed §7.68(i). The Department also does not anticipate any difference in the economic impact on small and micro business carriers from that determined for compliance with the §7.67 filing requirements. Therefore, the Department's economic impact statement and regulatory flexibility analysis for compliance by small and micro businesses with the requirements in this proposal is consistent with the economic impact statement and regulatory flexibility analysis for §7.67.

The Department has determined that this proposal, like the proposal for existing §7.67, contains several requirements that must be analyzed in order to determine costs to small and micro business carriers required to comply with this proposal. First, proposed §7.68(b) and (f) - (q) require that each carrier provide the Department with financial reports and related information. Second, proposed §7.68(b) and (f) - (m) require that each carrier make concurrent filings of their financial statement with the NAIC that results in related filing fees. Third, proposed §7.68(b) and (f) - (m) essentially require that each carrier purchase software to prepare its financial statements and make the related filings with the NAIC. Each carrier is required by statute to provide the Department with various annual reports on its operations. As noted in the Public Benefit/Cost Note portion of this proposal, the Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Therefore, any costs to an insurance company for preparing and filing the annual statement with the NAIC, including costs of software and filing fees, results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Proposed §7.68(b) and (f) - (q); Preparation of Financial Statements. As required by the Government Code §2006.002(c), the Department has determined that approximately 75 to 150 of the carriers specified in proposed §7.68(b) are small or micro business carriers that will be required to comply with the requirements in proposed §7.68(f) - (q) to prepare financial statements that reflect the carriers' condition and to file these statements with the Department and the NAIC. These small or micro business carriers will incur routine costs associated with completing the financial statements.

Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 75 to 150 small or micro business carriers. These routine costs of compliance will vary between large business carriers and small or micro business carriers based upon the carrier's type and size and other factors, including the (i) character of the carrier's assets; (ii) kinds and nature of the risks insured; (iii) type of software used by the carrier to complete its annual statement; and (iv) employee compensation expenses. The Department's cost analysis and resulting estimated routine costs for carriers in the Public Benefit/Cost Note portion of this proposal are equally applicable to small and micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these routine costs will likely be less for small or micro business carriers, primarily because small or micro business carriers will incur less overall labor costs in transferring information from their records to the required financial forms and reports. This results from their smaller size and relatively less complex operations, which will generally require less time to transfer the information from their records to the financial forms and reports required in this proposal. Small or micro business carriers may also incur relatively lower labor costs on a per hour basis because small or micro business carriers will often compensate staff at the lower end of the salary range.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., preparing the financial forms and reports, will not have an adverse economic effect on small or micro business carriers, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule.

Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposal contains several provisions that will mitigate the impact of proposed §7.68 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.68(i)(2) provides stipulated premium companies with one additional month to file their annual statements and related filings than the time required for large business carriers. Section 7.68(i)(2) further exempts stipulated premium companies from the requirement that applies to most other life carriers to file quarterly financial statements with the Department, if certain conditions are met. Proposed §7.68(n) authorize a simplified financial statement form for farm mutual insurance companies that write less than \$6 million in premium. Unlike the requirements that apply to all other property and casualty carriers, proposed §7.68(n) do not require that farm mutual insurance companies that write less than \$6 million in premium to file

quarterly financial statements with the Department. Proposed §7.68(o) authorizes a simplified financial statement form for statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations. Unlike the requirements that apply to other life carriers, proposed §7.68(o) does not require that quarterly financial statements be filed with the Department by statewide mutual assessment associations, local mutual aid associations, mutual burial associations or exempt associations.

The Department anticipates that the cost of compliance as detailed in the Public Benefit/Cost Note will be relatively more significant for carriers licensed in Texas for less than one year. This is because of the additional time required for the carrier's staff to become familiar with the requirements of the proposal and the need to implement systems to capture the information required to be reflected in the financial statements filed with the Department and the NAIC. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by the proposal, most of these costs for carriers licensed for one year or more have already been incurred.

Proposed §7.68(b) and (f) - (m); NAIC Filing Fee. As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in proposed §7.68(b) are small or micro business carriers that will be required to comply with the requirements in proposed §7.68(f) - (m) to make concurrent financial statement filings with the NAIC. These small or micro business carriers will incur routine costs associated with related filing fees.

Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. The Department's cost analysis and resulting estimated costs for carriers to make concurrent financial statement filings with the NAIC in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these costs of compliance will vary between large business carriers and small or micro business carriers based upon the carrier's premium volume. These fees are on a sliding scale basis and will be less for small or micro business carriers that write smaller amounts of premium and greater for large carriers that write larger amounts of premium. These fees are estimated to range from \$247 for carriers with the smallest premium volume, to progressively greater amounts for carriers with the largest premium volume. As examples, a carrier with \$100,000 in premium will incur a filing fee of \$247; a carrier with \$6 million in premium will incur a filing fee of \$1,444; and a carrier with \$4 billion in premium will incur a filing fee of \$69,428. These fees range from .002 of the premium for carriers with the smallest premium volume up to .00002 of the premium for carriers with the highest premium volume. In each instance, the Department believes that costs correspond to a nominal and routine cost of business. Accordingly, these routine costs will be less for small or micro business carriers because of their relatively smaller premium base.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the De-

partment has determined that the routine costs to comply with this proposal, i.e., making concurrent filings with the NAIC, will not have an adverse economic effect on small or micro businesses, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule. Moreover, the Insurance Code §802.055 requires an insurance company to pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Accordingly, the cost to insurance companies of preparing and filing the annual statement with the NAIC results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposed section contains a number of provisions that will mitigate the impact of proposed §7.68 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.68(n) does not require farm mutual insurance companies that write less than \$6 million in premium to pay these filing fees. Proposed §7.68(o) does not require statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations to pay these filing fees. Proposed §7.68(p) does not require nonprofit legal service corporations to pay these filing fees. Proposed §7.68(q) does not require Mexican casualty insurance companies to pay these filing fees.

Proposed §7.68(b) and (f) - (m); Software Expenses. As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in proposed §7.68(b) are small or micro business carriers that will essentially be required by proposed §7.68(f) - (m) to purchase software to prepare their financial statements and make the related filings with the NAIC. These small or micro business carriers will incur routine costs associated with purchasing this software.

Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. The Department's cost analysis and resulting estimated costs for carriers to purchase this software contained in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro business carriers. As indicated in the Public Benefit/Cost Note analysis, these costs of compliance may vary based upon a number of factors. The cost of software to prepare the financial statements is approximately \$2,280 for a single company. The cost of software may be greater or less depending on the amount charged by the vendor, the type of software needed and any extra services that are agreed to between the company and the vendor.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this proposal, i.e., the purchase of software, will not have an adverse economic effect on small or micro business carriers, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule. Moreover, the Insurance Code §802.055 requires an in-

urance company to pay all costs of preparing and furnishing to the NAIC the information required under the Insurance Code §802.052, including any related filing fees. Accordingly, the cost to an insurance company of preparing and filing the annual statement with the NAIC results from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal. Furthermore, each carrier subject to this proposal is required by statute to provide the Department with various annual reports on its operations, and therefore, the related costs result from statutory requirements and not as a result of the adoption, enforcement, or administration of this proposal.

Nevertheless and although not strictly required by the Government Code §2006.002(c), the proposed section contains several provisions that will mitigate the impact of proposed §7.68 for certain carriers that, because of their carrier type, are more likely to be small or micro business carriers. Specifically, proposed §7.68(i)(2) exempts stipulated premium companies from the requirement that applies to most other life carriers to file quarterly interim financial statements with the Department, if certain conditions are met. This exemption will lessen the software needs of stipulated premium companies. Proposed §7.68(n) does not require that farm mutual insurance companies that write less than \$6 million in premium to acquire this software and thereby incur the related expense. Proposed §7.68(o) does not require statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations to acquire this software and thereby incur the related expense. Proposed §7.68(p) does not require that nonprofit legal service corporations to acquire this software and incur the related expense. Proposed §7.68(q) does not require Mexican casualty insurance companies to acquire this software and incur the related expense.

Additionally, the Department anticipates that the cost of compliance as detailed in this Public Benefit/Cost Note part of the proposal will be relatively more significant for carriers licensed in Texas for less than one year because of initial software acquisitions costs. Because the Department for many years has routinely required the preparation and filing of substantially similar financial statements, which are also required by the proposal, most of these software costs for carriers licensed for one year or more have already been incurred.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 6, 2012, to Sara Waitt, Acting General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held,

oral and written comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the following provisions of the Insurance Code. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners. Chapters 2201, 2210, and 2211 and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1301.009, 1506.057, 1506.058, 2210.008, 2210.101, 2210.102, 2210.152, 2211.058, 2551.001, and 2551.152 require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking or regulatory authority to the Commissioner relating to those insurers and other regulated entities.

Sections 982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306 provide the conditions under which foreign and alien insurers are permitted to do business in this state and require foreign and alien insurers to comply with the provisions of the Insurance Code. Sections 844.001 - 844.005, 844.051 - 844.054, and 844.101 specify statutory requirements relating to nonprofit health corporations and authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the Insurance Code, Title 2, Chapter 844.

Section 2210.008 authorizes the Commissioner to adopt rules in the manner prescribed in the Insurance Code, Chapter 36, Subchapter A, as reasonable and necessary to implement Chapter 2210. Section 2210.101 provides that the board of directors of the Texas Windstorm Insurance Association is responsible and accountable to the Commissioner. Section 2210.102 requires the Commissioner to appoint the board of directors of the Texas Windstorm Insurance Association. Section 2210.152 requires the plan of operation for the Texas Windstorm Insurance Association to provide for the efficient, economical, fair, and nondiscriminatory administration of the Association, and to include provisions as considered necessary by the Department to implement the purposes of Chapter 2210.

Section 2211.057 charges the Commissioner with the authority to supervise the Texas FAIR Plan Association and the inspection bureau. Section 2211.057(1) grants the Commissioner the power to examine the operations of the Texas FAIR Plan Association and the inspection bureau through free access to all books, records, files, papers, and documents related to the operation of the Texas FAIR Plan Association and the inspection bureau. Section 2210.057(4) grants the Commissioner the power to require reports from the Texas FAIR Plan Association concerning the risks the Texas FAIR Plan Association insurers under Chapter 2211 as the Commissioner considers necessary.

Section 421.001 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance.

Section 32.041 requires the Department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: The Insurance Code Chapters 2201, 2210, and 2211 and §§32.041, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 1506.058, 2210.008, 2210.101, 2210.102, 2210.152, 2211.058, 2551.001, and 2551.152.

§7.68. Requirements for Filing the Annual Statements, the Quarterly Statements, Other Reporting Forms, and Electronic Filings with the Texas Department of Insurance and the NAIC.

(a) Purpose. This section specifies the requirements for insurers and other regulated entities to file the annual statements, the quarterly statements, other reporting forms, and electronic data filings with the department and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers.

(b) Scope and Applicability. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; limited purpose subsidiary life insurance companies under the Insurance Code Chapter 841, Subchapter I; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. Insurers and other regulated entities must properly report each calendar year to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate paper copy annual and quarterly statement blanks, other reporting forms, and electronic filings specified in this section. This section shall be applicable to annual filings with the department and the NAIC, beginning with the year ending December 31, 2011, and each year thereafter; and to the quarterly filings with the department and the NAIC, beginning with the quarter ending on March 31, 2012, and each quarter thereafter.

(c) Definition. In this section, "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(d) NAIC and TDI Specific Forms and Instructions. The commissioner adopts by reference the annual statement blanks, the quarterly statement blanks, the annual and quarterly supplemental reporting forms, and the related instruction manuals as adopted and published by the NAIC each year; and the Texas-specific reporting forms specified in this section. The Texas-specific forms are available from the Texas Department of Insurance, Financial Regulation Division, Financial Analysis, Mail Code 303-1A, P.O. Box 149104, Austin, Texas 78714-9104. Copies of the latest editions of the blanks, supplemental reporting forms, and related instruction manuals adopted and published by the NAIC may be obtained from the NAIC, and can be filed electronically using software available from vendors.

(e) Conflicts with Other Laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirements of this section shall take precedence and in all respects control.

(f) General Filing Requirements for Domestic Insurers and Other Domestic Regulated Entities. Every domestic insurer and other domestic regulated entity must complete and file the following reports and forms using the latest editions of the annual and quarterly statement blanks, forms, and related instruction manuals adopted by the NAIC that are appropriate for the type of business written by the insurer or regulated entity:

(1) an annual statement, in paper copy with the department and electronically with the NAIC, due on or before March 1 for the preceding year ending December 31;

(2) quarterly statements, in paper copy with the department and electronically with the NAIC, due on or before May 15, August 15, and November 15;

(3) all the annual and quarterly supplements adopted by the NAIC including, but not limited to, the Management's Discussion and Analysis, in paper copies with the department and electronically with the NAIC, prepared and filed in accordance with and on or before dates specified in the latest editions of the forms, instructions, and guidelines adopted by the NAIC;

(4) a Statement of Actuarial Opinion, in paper copy with the department and electronically with the NAIC, due on or before March 1 for the preceding year ending December 31;

(5) a Schedule SIS, in paper copy only with the department, due on or before March 1 for the preceding year ending December 31;

(6) a Supplemental Compensation Exhibit, in paper copy only with the department, due on or before March 1 for the preceding year ending December 31;

(7) a Texas Overhead Assessment Exemption Form (Texas Edition), in paper copy only with the department, due on or before March 1 for the preceding year ending December 31. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(8) an Analysis of Surplus (Texas Edition), in paper copy only with the department, due on or before March 1 for the preceding year ending December 31; and

(9) an advertising certificate of compliance with its annual statement filing, in paper copy only with the department, prepared and filed in accordance with §21.116 of this title (relating to Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance).

(g) General Filing Requirements for Foreign Health Maintenance Organizations and Foreign Insurers Doing Health Maintenance Organization Business or Capitation. Every foreign health maintenance organization and foreign insurer permitted or allowed to do the business of health maintenance organizations must file the filings specified in subsection (f)(1) - (4) of this section electronically with the NAIC and in paper copy with the department; and the filings specified in subsection (m) of this section electronically and in paper copy with the department.

(h) General Filing Requirements for Foreign Insurers and Other Foreign Regulated Entities. Each foreign insurer or other foreign regulated entity described in subsections (i) - (l) of this section:

(1) must prepare and file electronically with the NAIC the filings specified in subsection (f)(1) - (4) of this section on or before the due dates required under those provisions;

(2) if filing only electronically with the NAIC and not filing a paper copy with the department, must file with the department, in paper copy, a signed annual statement jurat page, along with the advertising certificate of compliance required under §21.116 of this title, on or before March 1; and a signed jurat page for each quarter on or before May 15, August 15, and November 15, respectively, in lieu of filing the entire paper filings;

(3) the commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC; and

(4) a foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 annually must file an Analysis of Surplus (Texas Edition) in paper copy with the department, on or before March 1 for the prior year ending December 31.

(i) Filing Requirements for Life, Accident and Health Insurers. Each life; life and accident; life and health; accident; accident and health; mutual life; or life, accident and health insurance company; stipulated premium company; limited purpose subsidiary life insurance company; group hospital service corporation; and the Texas Health Insurance Pool must complete and file the blanks, forms, and electronic filings as directed in subsections (f) and (h) of this section and this subsection. The electronic filings of these forms or reports with the NAIC must be completed and filed in accordance with the NAIC data specifications and instructions for electronic filing and must include PDF format filing. Insurers and other regulated entities specified in this subsection and engaged in business authorized under the Insurance Code Chapters 843 or 848 may have additional reporting requirements under subsections (g) and (m) of this section. Domestic and foreign insurers or other regulated entities described in this subsection must prepare and file the reports and forms specified in subsections (f) and (h) of this section, with the following exceptions or additional filings:

(1) a separate accounts annual statement (required of companies maintaining separate accounts), in paper copy with the department and electronically with the NAIC, due on or before March 1 for the preceding year ending December 31.

(2) for stipulated premium companies not subject to the Insurance Code §884.406, all filings with due dates of March 1 under subsection (f) or (h) of this section, are due on or before April 1. Additionally, a stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly data filings with the department or with the NAIC, if it meets all three of the following conditions:

(A) it is authorized to write only life insurance on its certificate of authority;

(B) it collected premiums in the prior calendar year of less than \$1 million; and

(C) it had a profit from operations in the prior two calendar years.

(3) The Statement of Actuarial Opinion required under subsections (f)(4) and (h)(1) of this section must be prepared and filed in accordance with the following:

(A) Companies filing the NAIC Life, Accident and Health Annual Statement and the Statement of Actuarial Opinion, attached to the NAIC Life, Accident and Health Annual Statement must follow the applicable provisions of Chapter 3, Subchapter Q, of this title (relating to Actuarial Opinion and Memorandum Regulation), except for companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title (relating to Asset Adequacy Analysis Exemption). Notwithstanding §3.1608 of this title, limited purpose subsidiary life insurance companies annually must prepare and file the asset adequacy analysis required under Chapter 3, Subchapter Q of this title. For those companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the format provided by instructions I - 12 of the NAIC Annual Statement Instructions, Life, Accident and Health, must be followed.

(B) Companies filing the NAIC Health Annual Statement and the Statement of Actuarial Opinion attached to the NAIC Health Annual Statement must follow the NAIC Annual Statement Instructions, Health. In addition, for those companies not exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the Statement of Actuarial Opinion must follow the applicable provisions of §§3.1601 - 3.1608 of this title that are not covered in the NAIC Annual Statement Instructions, Health, including those provisions relating to asset adequacy analysis.

(C) Any company required by §3.4505(b)(3)(G) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, must attach this opinion to the NAIC Life, Accident and Health Annual Statement or the NAIC Health Annual Statement, as applicable.

(4) The Texas Health Insurance Pool must prepare and file the following, in paper copies only with the department:

(A) the NAIC Health Annual Statement with only pages 1 - 6, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1 for the preceding year ending December 31; and

(B) the NAIC Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1 - Cash, and Part 2 - Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15;

(5) Each limited purpose subsidiary life insurance company must complete and file:

(A) the paper copy filings with the department and the electronic filings with the NAIC specified under subsection (f)(1) - (9) of this section;

(B) an actuarial memorandum and a regulatory asset adequacy issues summary, in paper copy only with the department, in accordance with and on or before the due dates provided in Chapter 3, Subchapter Q, of this title; and

(C) the actuarial certification required under the Insurance Code §841.419, in paper copy only with the department, due on or before March 1 for the preceding year ending December 31.

(j) Requirements for Certain Property and Casualty Insurers. Each fire; fire and marine; general casualty; fire and casualty; or U.S.

branch of an alien insurer; county mutual insurance company; mutual insurance company other than life; Lloyd's plan; reciprocal or inter insurance exchange; domestic risk retention group; life insurance company that is licensed to write workers' compensation; any farm mutual insurance company that filed a property and casualty annual statement for the previous calendar year or had gross written premiums in excess of \$6 million for the current calendar year; domestic joint underwriting association; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association must complete and file the blanks, forms, and electronic filings as described in subsections (f) and (h) of this section and this subsection. The electronic filings with the NAIC must be completed and filed in accordance with the NAIC data specifications and instructions and must include PDF format filing, as applicable. Domestic and foreign insurers or other regulated entities described in this subsection annually must prepare and file the reports and forms specified in subsections (f) and (h) of this section with the following exceptions or additional filings:

(1) a combined property/casualty annual statement, if required, due on or before May 1, for the preceding year ending December 31, in paper copy with the department and electronically with the NAIC. The combined property/casualty annual statement is required only for those affiliated insurers that wrote more than \$35 million in direct premiums as a group in the previous calendar year, as disclosed in Schedule T of the NAIC annual statement(s).

(2) an Actuarial Opinion Summary prepared and filed in accordance with §7.9 of this subchapter (relating to Examination of Actuarial Opinion for Property and Casualty Insurers).

(3) for Texas county mutual insurance companies, a Texas Supplement for County Mutuals (Texas Edition) and a Texas Supplemental "A" for County Mutuals (Texas Edition), in paper copy only with the department, due on or before March 1. Texas county mutual insurance companies are not required to file an Analysis of Surplus (Texas Edition) as described in subsection (f)(8) of this section.

(4) The Texas Windstorm Insurance Association must complete and file in paper copy with the department and electronically with the NAIC the filings specified under subsection (f) of this section and paragraph (2) of this subsection, on or before the due dates required under those provisions. Additionally, the Texas Windstorm Insurance Association must prepare and file in paper copy with the department only:

(A) annual financial statements for each year ending December 31, due on or before March 1, in accordance with the Insurance Code Chapter 2210, prepared in accordance with generally accepted accounting principles as prescribed or modified by the Governmental Accounting Standards Board or its successor, and in compliance with the Government Code §2101.011(d) and any related regulations, guidelines, procedures, or reporting requirements prescribed by the Comptroller of Public Accounts; and

(B) quarterly financial statements for the first three quarters of each calendar year, due on or before May 15, August 15, and November 15, prepared in accordance with generally accepted accounting principles as prescribed or modified by the Governmental Accounting Standards Board or its successor.

(5) Notwithstanding §5.9927 of this title (relating to Annual and Quarterly Financial Statements), the Texas FAIR Plan Association must complete and file in paper copy with the department and electronically with the NAIC the filings specified under subsection (f) of this section and paragraph (2) of this subsection, except that the annual statements, the Statement of Actuarial Opinions, and all annual supplements due on or before March 1 under the NAIC instructions

are due on or before March 31; and the Actuarial Opinion Summary is due on or before April 15.

(6) An insurer that files an application with the department for approval of a policyholder dividend must file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(k) Requirements for Fraternal Benefit Societies. Each fraternal benefit society must complete and file the blanks, forms, and electronic filings as described in subsections (f) and (h) and this subsection. The electronic data filings with the NAIC must be completed and filed in accordance with the NAIC data specifications and instructions and must include PDF format filing. Domestic and foreign insurers or other regulated entities described in this subsection must prepare and file the reports and forms specified in subsections (f) and (h) of this section, with the following exceptions or additional filings:

(1) a separate accounts annual statement (required of companies maintaining separate accounts), in paper copy with the department and electronically with the NAIC, due on or before March 1 for the preceding year ending December 31.

(2) The Statement of Actuarial Opinion required under subsections (f)(4) and (h)(1) of this section must be prepared in accordance with the following:

(A) The Statement of Actuarial Opinion, attached to the Fraternal Annual Statement, must follow the applicable provisions of §§3.1601 - 3.1608 of this title, except for companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title. For those companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the format provided by instructions 1 - 12 of the NAIC Fraternal Annual Statement Instructions must be followed; and

(B) Any company required by §3.4505(b)(3)(G) of this title to opine on the application of X factors, shall attach this opinion to the NAIC Fraternal Annual Statement, as applicable.

(l) Requirements for Title Insurers. Each title insurance company must complete and file the blanks, forms, and electronic filings as described in subsections (f) and (h) and this subsection. The electronic filings with the NAIC must be completed and filed in accordance with the NAIC data specifications and instructions and must include PDF format filing.

(m) Requirements for Health Maintenance Organizations. Each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 and each insurer that is subject to life insurance statutes and is permitted or allowed to do the business of health maintenance organizations must complete and file the following blanks, forms, and electronic filings as described in subsections (f) and (g) of this section and this subsection. The electronic filings with the NAIC must be completed and filed in accordance with NAIC data specifications and instructions and must include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department must be completed and filed in accordance with the instructions provided by the department. Domestic and foreign health maintenance organizations and insurers described in this section must prepare and file the reports and forms specified in subsections (f) and (g) of this section, with the following additional filings:

(1) with each quarterly statement filing with the department and the NAIC, include an up-to-date and completed Schedule E, Part 3 - Special Deposits, utilizing the format from the Health Annual Statement;

(2) a Texas HMO Supplement Annual (Texas Edition), in paper copy and electronically only with the department, due on or before March 1, containing annual data for the preceding year ending

December 31, to be completed according to the instructions provided by the department; and

(3) a Texas HMO Supplement Quarterly (Texas Edition), due on or before May 15, August 15, and November 15, in paper copy and electronically only with the department, containing quarterly statement data, to be completed according to the instructions provided by the department.

(n) Requirements for Farm Mutual Insurers not Subject to the Provisions of subsection (f) of this section. Farm mutual insurance companies not subject to subsection (f) of this section annually must complete and file the following blanks and forms with the department only, on or before March 1 for the preceding year ending December 31:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(3) Statement of Actuarial Opinion, unless exempted under §7.31 of this subchapter (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(o) Requirements for Statewide Mutual Assessment Associations, Local Mutual Aid Associations, Mutual Burial Associations, and Exempt Associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association, and exempt association must complete and file the following blanks and forms with the department only, on or before April 1 for the preceding year ending December 31:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(3) Release of Contributions Form (Texas Edition);

(4) 3-1/2 Percent Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3-1/2 Percent) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(p) Requirements for Nonprofit Legal Service Corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 961 annually must complete and file with the department only the following blanks and forms for the preceding year ending December 31. An actuarial opinion is not required. The following forms are to be filed on or before March 1:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed.

(q) Requirements for Mexican Casualty Insurance Companies. Each Mexican casualty insurance company doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 984, annually must complete and file the following blanks and forms with the department only for the preceding year ending December 31. All submissions must be printed or typed in English and all monetary values must be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection must be completed to the extent specified in paragraph (1) of this subsection and in accordance with the latest edition of the property and casualty annual statement instructions adopted by the NAIC. An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1:

(1) an annual statement using the latest edition of the property and casualty annual statement blank adopted by the NAIC; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) a copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) a copy of the official documents issued by the Comisión Nacional de Seguros y Fianzas approving the annual statement for the preceding year ending December 31; and

(4) a copy of the current license to operate in the Republic of Mexico.

(r) Other Financial Reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department or the NAIC.

(s) Annual notice and opportunity to petition for adoption of a rule amendment to this section. The department annually will publish notice of the annual, quarterly, and supplemental filing checklists that reference the latest editions of the annual statement, quarterly statement, forms and instructions adopted by the NAIC and the Texas-specific filing forms and instructions. On or before 30 days after the department publishes its notice, any interested person may petition the department for the adoption of a rule amendment to this section under §1.60 of this title (relating to Petition for Adoption of Rules), or its successor, for exceptions to the latest editions of the blanks, supplemental reporting forms, and instructions adopted by the NAIC or the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 21, 2011.

TRD-201105795

Sara Waitt

Acting General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 5, 2012

For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §520.2

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to §520.2(5), concerning the physical address of the Texas State Soil and Water Conservation Board state office.

The proposed amendment to §520.2(5) involves changing the current state office address listing from 311 North 5th Street (in Temple, Texas) to 4311 South 31st Street (in Temple, Texas).

Kenny Zajicek, Fiscal Officer for the State Board, has determined that for the first five-year period this amended rule is in effect there will be no fiscal implications for state or local government as a result of administering this amended rule.

Mr. Zajicek has also determined that for the first five-year period this amended rule is in effect, the public benefit anticipated as a result of administering this rule will result in customers having the correct address for contacting the state office.

There are no anticipated costs to small businesses or individuals resulting from this amended rule.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 x231.

The amendment is proposed under Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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

§520.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) State Office--The State Board headquarters office located at ~~311 North 5th Street~~ 4311 South 31st Street, Temple, Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 23, 2011.

TRD-201105816

Mel Davis

Special Projects Coordinator

Texas State and Soil Water Conservation Board

Earliest possible date of adoption: February 5, 2012

For further information, please call: (254) 773-2250 x252



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.4, relating to the employer health benefit surcharge under TRS-Care. Section 41.4 implements the statutory health benefit surcharge owed by a TRS-covered employer for each month that the employer reports that a retiree enrolled in TRS-Care is working in a TRS-covered position. An employer is not required to pay the surcharge for any retirees who retired from TRS before September 1, 2005.

The proposed amendments to §41.4 are mainly intended to facilitate administrative efficiency and more accurate payment of the TRS-Care surcharge. Currently, §41.4 directs each retiree to submit a TRS-generated form to his or her employer that provides the details of the retiree's TRS-Care coverage and to submit an updated copy of the same form when changes occur in coverage or employment status. The proposed amendments will allow TRS to provide directly to the employer the amount of the surcharge associated with the employment of a given retiree enrolled in TRS-Care.

The proposed amendments to §41.4 include the deletion of subsections (b) and (c), which direct the retiree to submit a TRS-generated health benefit surcharge information form to his or her employer. As noted above, with these proposed deletions, the retiree will no longer be required to provide the health benefit surcharge information form to the employer. However, under the current proposal, the retiree will still be required to inform the employer of the identification of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number; this requirement is being moved from the deleted subsection (b) to the re-lettered subsection (f).

The proposed changes to existing subsection (d), which will become the new subsection (b), provide that the employer will pay the surcharge established by the TRS Board of Trustees. The deletion of the language in existing subsection (d) that refers to the health benefit surcharge information form is consistent with the deletions in existing subsection (b), noted above; this deletion also provides greater flexibility in administering this rule.

Existing subsections (f), (g) and (n), along with the opening paragraph of existing subsection (h), all address various aspects of the surcharge that apply to specific time periods and deal with various timing issues associated with the application of this rule. However, with the passage of time, the language of these subsections is no longer needed and, for the sake of clarity, the proposed amendments would delete the language of these subsections from the rule.

The proposed addition of new subsection (k) states that the employer will maintain the confidentiality of any information provided to the employer under this rule.

The deletion of existing subsection (d), a restatement of existing law, is a non-substantive amendment to §41.4. Other proposed

non-substantive amendments are proposed for clarification purposes or to provide accurate internal references.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that proposed amended §41.4 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposal will be in effect, Brian Guthrie, Executive Director of TRS, and Mr. Welch have determined that the public benefit will be to relieve certain TRS retirees from the burden of submitting the health benefit surcharge information form to their employer and to provide employers with accurate information concerning the surcharge associated with an employed retiree.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amended rule will be in effect, there is no foreseeable economic cost to entities or persons required to comply with the proposed amended rule. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed amended rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments to §41.4 are proposed under the authority of §1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-Care program.

Cross-reference to Statute: The proposed amendments to §41.4 affect Chapter 1575 of the Insurance Code, which provides for the establishment and administration of the TRS-Care program.

§41.4. Employer Health Benefits Surcharge.

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

[(b) A retiree who is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report to the Teacher Retirement System of Texas ("TRS") shall submit the TRS-Care Employer Health Benefit Surcharge Information Form, promulgated by TRS, to the employer, providing details of the retiree's TRS-Care coverage tier, years of service credit, and category of enrollment, as well as the identification of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number, as required by the form. The criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership.]

[(c) The retiree must submit to the employer an updated Employer Health Benefit Surcharge form when changes occur in coverage or the employment status of any retiree or other individual enrolled under the same account identification number.]

(b) ~~[(d)]~~ For each report month a retiree is enrolled in the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report to the Teacher Retirement System of Texas ("TRS"), the employer that reports the retiree shall ~~[, using the information provided by the retiree to the employer on the Employer Health Benefit Surcharge form,]~~ pay monthly to the Retired School Employees Group Insurance Fund (the "Fund") a surcharge established by the Board of Trustees of TRS. ~~[amount that is derived by taking the difference, if any, between:]~~

~~[(1) the monthly full cost, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number; and]~~

~~[(2) the monthly total premium, as set by the trustee, for all individuals (including a spouse and children, if any) enrolled under the same account identification number.]~~

(c) The criteria used to determine if the retiree is working in a TRS-covered position are the same as the criteria for determining employment eligible for TRS membership.

(d) ~~[(e)]~~ The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is serving in a TRS-covered position, and who is considered an employee of that employer under §824.601(d) of the Government Code.

~~[(f) The surcharge under subsection (d) of this section is due from each employer that reports a retiree as working in a TRS-covered position on or after September 1, 2005, beginning with the report month for September 2005.]~~

~~[(g) For the 2005-2006 and 2006-2007 school years, the surcharge under subsection (d) of this section is not owed:]~~

~~[(1) by an employer for any retiree reported by that employer on the Employment of Retired Members Report for the report month of January 2005:]~~

~~[(2) by an employer for any retiree reported by a second employer on the Employment of Retired Members Report for the report month of January 2005, if both employers are school districts that consolidate into a consolidated school district on or before September 1, 2005; or]~~

~~[(3) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service.]~~

(e) ~~[(h)]~~ The [Beginning with the 2007-2008 school year, the] surcharge under subsection (b) ~~[(d)]~~ of this section is not owed:

(1) by an employer for any retiree employed by that employer who retired from TRS before September 1, 2005; or

(2) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title unless that retiree combines Substitute Service under §31.13 of this title with other TRS-covered employment in the same calendar month. For each calendar month that the retiree combines substitute service and other TRS-covered employment, the surcharge is owed by each employer as provided in this section.

(f) ~~[(i)]~~ A retiree who is enrolled in TRS-Care, is working in a TRS-covered position, and is reported on the Employment of Retired Members Report to TRS shall inform the employer the identification of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number. An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working in a TRS-covered position shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

(g) ~~[(j)]~~ If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under subsection (b) ~~[(d)]~~ of this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked each week by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(h) ~~[(k)]~~ If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position that is not eligible for TRS membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title. If the employment is with more than one employer, the surcharge will be paid according to subsection (g) ~~[(j)]~~ of this section by each employer.

(i) ~~[(l)]~~ If a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (g) ~~[(j)]~~ of this section by each employer.

(j) ~~[(m)]~~ If a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (g) ~~[(j)]~~ of this section by each employer on all subsequent employment, whether eligible for membership or not, with a TRS-covered employer for the same school year.

(k) The employer shall maintain the confidentiality of any information provided to the employer under this section and shall use the information only as needed to carry out the purposes stated in this section and related applicable rules or statutes.

~~[(n) Notwithstanding subsections (a) - (m) of this section, for the 2005-2006 school year only, a retiree]~~

~~[(1) who retired before September 1, 2005,]~~

~~[(2) who is enrolled in TRS-Care, and]~~

~~[(3) who is employed for a period of more than four and one-half months due to the enrollment of students displaced by Hurricane Katrina may be considered a temporary employee whose employment is not subject to the surcharge under this section.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105796

Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: February 5, 2012
For further information, please call: (512) 542-6438



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Service Commission (commission) adopts an amendment to §203.6, concerning Provisional Licensees, without changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6439) and will not be republished.

The amendment is adopted in accordance with Senate Bill 864, 82nd Legislature, Regular Session (2011), omitting the minimum number of hours worked per week or month, adding that actual work must be performed under the direct supervision of a licensed funeral director and/or embalmer, and adding that the provisional licensure period shall not exceed the maximum of 24 consecutive months.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105810

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: January 11, 2012

Proposal publication date: September 30, 2011

For further information, please call: (512) 936-2469



22 TAC §203.26

The Texas Funeral Service Commission (commission) adopts an amendment to §203.26, concerning Funeral Directors and Em-

balmers License Requirements and Procedure, without changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6439) and will not be republished.

The amendment is adopted in accordance with Senate Bill 1733, 82nd Legislature, Regular Session (2011), adding licensing of certain military spouses. Senate Bill 1733 amended Texas Occupations Code to require state agencies that issue occupational licenses to adopt rules to provide for the issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States. The applicant must either hold a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the Texas license or within the five years preceding the date the applicant held a license in Texas that expired while the applicant lived in another state for at least six months. The state agency rules must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining a license. The bill also allows a state agency to issue a license by endorsement.

The amendment adopts a new subsection (e) which establishes who qualifies to apply for a license; states the requirements for applying for a license; provides an explanation of what qualifies as the standard method of demonstrating competency to obtain a license; and lists the alternative methods for demonstrating competency to obtain a license issued by the agency.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 22, 2011.

TRD-201105809

O. C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: January 11, 2012

Proposal publication date: September 30, 2011

For further information, please call: (512) 936-2469



PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.19, §217.20

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.19, relating to Incident-Based Nursing Peer Review and Whistleblower Protections; and §217.20, relating to Safe Harbor Peer Review for Nurses and Whistleblower Protections, without changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7749) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §§301.352, 301.401, 301.4011, 301.402, 301.4025, 301.412, 301.413, 303.001, 303.005, and 301.151 and are necessary to implement the requirements of Senate Bill (SB) 192, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011.

SB 192 was enacted to improve the quality of patient care in this state by enhancing protections for nurses who report substandard and dangerous nursing practices to the Board or refuse to accept assignments that may endanger patients. (See Bill Analysis, Enrolled Version, August 4, 2011). Although patient advocacy protections currently exist in the Nursing Practice Act (NPA), SB 192 enhances these protections by: (i) extending non-retaliation protections to individuals who advise nurses about their right to engage in protected patient advocacy activities, (ii) extending nurse liability immunity to include immunity from criminal prosecution and liability when making a protected report; and (iii) deterring retaliation against nurses for engaging in protected patient advocacy activities.

The existing patient advocacy protections for nurses are primarily located in Chapter 301, Subchapter I, and Chapter 303 of the Occupations Code. Under these provisions, nurses, along with several other types of entities, are required to report to the Board substandard nursing care, a nurse's suspected impairment or substance abuse, patient abuse, patient exploitation, and conduct that poses a risk of harm to patients. These provisions also provide nurses who report such conduct protection from civil liability and other discriminatory action. Further, §301.352 of the Occupations Code provides nurses the right to refuse to engage in conduct that might violate the minimum standards of nursing practice, a provision of the NPA, or a Board rule. Section 301.352 also provides nurses who refuse to engage in such conduct protection from discriminatory action. Finally, Chapter 303 affords nurses the opportunity to request a peer review determination if they refuse to engage in conduct that might result in a risk of harm to a patient (herein collectively referred to as 'safe harbor').

In addition to the protections provided by the NPA, the Board has adopted extensive rules that define the process for invoking safe harbor; establish the minimum amount of due process a nurse is entitled to when requesting safe harbor peer review; provide guidance to facilities, agencies, and nursing employers in the development and application of peer review plans; and reiterate the protections provided by the NPA to nurses who invoke safe harbor or who file mandatory reports with the Board. Although these protections are designed to protect nurses who report substandard and dangerous nursing practices to the Board, nurses still face discrimination and employer retaliation for reporting such conduct. In order to encourage nurses to continue

to advocate for the safety of their patients by reporting substandard and dangerous nursing practices to the Board and refusing to accept assignments that may result in harm to their patients, SB 192 expands the statutory protections afforded to nurses by the NPA and prohibits retaliation against nurses for reporting, in good faith, substandard and dangerous nursing practices and invoking safe harbor. The adopted amendments to §217.19 and §217.20 are necessary to implement the additional protections afforded by SB 192.

The Board's existing rules already extensively address the protections afforded by the NPA for nurses who file mandatory reports with the Board or invoke safe harbor. As such, few changes are necessary to implement the additional protections afforded by SB 192. While few in number, the adopted changes are significant, as they strengthen the patient advocacy protections afforded by the NPA and encourage nurses to continue to advocate for the safety of their patients.

First, the adopted amendments define "peer review" in §217.19 and §217.20 to include information, advice, and assistance given to nurses and other persons regarding the rights and obligations of, and protections afforded to, nurses who file mandatory reports with the Board, request peer review, or raise concerns about patient safety. These adopted amendments are necessary for consistency with the additional protections afforded by SB 192. Second, the adopted amendments define "safe harbor" in §217.19 and §217.20 to include protection from employer suspension, termination, discipline, and discrimination for nurses who, in good faith, request safe harbor peer review. These amendments are also necessary for consistency with the additional protections afforded by SB 192. Third, the adopted amendments replace the term "without malice" with the term "in good faith" throughout both sections for consistency with the provisions of SB 192. Finally, the adopted amendments clarify that nurses or other persons who provide advice about a nurse's rights, obligations, and protections associated with mandatory reporting and invoking safe harbor are protected from discipline, retaliation, suspension, termination, and discrimination. This adopted change is also necessary for consistency with the provisions of SB 192.

How the Sections Will Function. Adopted §217.19(a)(14) defines "peer review" as the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term also includes the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of and protections for nurses who raise care concerns, report under Chapter 301, request peer review, and the resolution of workplace and practice questions relating to nursing and patient care. Further, the peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. Peer review conducted by any entity must comply with nursing peer review law and with applicable Board rules related to incident-based or safe harbor peer review.

Adopted §217.19(a)(15) defines "safe harbor" as a process that protects a nurse from employer retaliation, suspension, termination, discipline, discrimination, and licensure sanction when a nurse makes a good faith request for peer review of an assignment or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the NPA or Board

rules. Further, safe harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at anytime during the work period when the initial assignment changes.

Adopted §217.19(c), regarding the applicability of incident-based peer review, requires a person who regularly employs, hires or contracts for the services of ten (10) or more nurses (for peer review of an RN, at least 5 of the 10 must be RNs) to conduct nursing peer review for purposes of the Occupations Code §301.401(1) and §301.402(e) (NPA) (relating to alternate reporting by nurses to nursing peer review when a nurse engages in conduct subject to reporting), §301.403 (relating to nursing peer review committee reporting), §301.405(c) (relating to nursing peer review of external factors as part of employer reporting), and §301.407(b) (relating to alternate reporting by state agencies to peer review).

Adopted §217.19(j)(2) states that a nurse may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for filing a report in good faith under §217.19 and the Occupations Code §301.402(f) (retaliation for a report made in good faith prohibited) or advising a nurse of the nurse's rights and obligations under §217.19 and §301.402(f). A violation of §217.19(j) or the Occupations Code §301.402(f) is subject to the Occupations Code §301.413 that provides a nurse the right to file a civil suit to recover damages. Further, the nurse may also file a complaint with the regulatory agency that licenses or regulates the nurse's practice setting. Finally, the adopted paragraph states that the Board does not have regulatory authority over practice settings or civil liability.

Adopted §217.19(m)(4) states that a person may not suspend or terminate the employment of, or otherwise discipline, retaliate, or discriminate against, a person who reports, in good faith, under §217.19(m) or who advises a nurse of the nurse's rights and obligations under §217.19(m). A violation of §217.19(m) is subject to the Occupations Code §301.413 (NPA) that provides a nurse the right to file a civil suit to recover damages. Further, the nurse may also file a complaint with the regulatory agency that licenses or regulates the nurse's practice setting. Finally, the adopted paragraph states that the Board does not have regulatory authority over practice settings or civil liability.

Adopted §217.20(a)(14) defines "peer review" as the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term also includes the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of and protections for nurses who raise care concerns, report under Chapter 301, request peer review, and the resolution of workplace and practice questions relating to nursing and patient care. The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event. Further, peer review conducted by any entity must comply with nursing peer review law and with applicable Board rules related to incident-based or safe harbor peer review.

Adopted §217.20(15) defines "safe harbor" as a process that protects a nurse from employer retaliation, suspension, termination, discipline, discrimination, and licensure sanction when a nurse makes a good faith request for peer review of an assignment or conduct the nurse is requested to perform and that the nurse believes could result in a violation of the NPA or Board

rules. Further, safe harbor must be invoked prior to engaging in the conduct or assignment for which peer review is requested, and may be invoked at anytime during the work period when the initial assignment changes.

Adopted §217.20(e)(2) states that the Occupations Code §303.005(c) and (h) (nursing peer review law) and §301.352 provide the following protections: (i) a nurse may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for requesting safe harbor in good faith; and (ii) a nurse or other person may not be suspended, terminated, or otherwise disciplined, retaliated, or discriminated against for advising a nurse in good faith of the nurse's right to request a determination, or of the procedures for requesting a determination.

Adopted §217.20(l)(4) states that a person may not suspend or terminate the employment of, or otherwise discipline, retaliate, or discriminate against, a person who reports, in good faith, under §217.20(l)(4) or advises a nurse of the nurse's rights and obligations under §217.20(l)(4). A violation of §217.20(l) is subject to the Occupations Code §301.413 that provides a nurse the right to file civil suit to recover damages. Further, the nurse may also file a complaint with the regulatory agency that licenses or regulates the nurse's practice setting. Finally, the adopted paragraph states that the Board does not have regulatory authority over practice settings or civil liability.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.352, 301.401, 301.4011, 301.402, 301.4025, 301.412, 301.413, 303.001, 303.005, 301.151.

Section 301.352(a) states that a person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a nurse who refuses to engage in an act or omission as provided by §301.352(a-1) or a person who advises a nurse of the nurse's rights under §301.352.

Section 301.352(a-1) provides that a nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board under the Occupations Code, Subchapter I, that constitutes a minor incident, or that violates Chapter 301 or a Board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission: (i) constitutes grounds for reporting the nurse to the Board; or (ii) is a violation of Chapter 301 or a rule of the Board.

Section 301.352(b) states that an act by a person under §301.352(a) does not constitute a violation of §301.352(b) if a nursing peer review committee under Chapter 303 determines that: (i) the act or omission the nurse refused to engage in was not conduct reportable to the Board under §301.403; a minor incident; or a violation of Chapter 301 or a Board rule; or (ii) the act or omission in which the nurse refused to engage was conduct reportable to the Board, a minor incident, or a violation of Chapter 301 or a Board rule and the person rescinds any disciplinary or discriminatory action taken against the nurse; compensates the nurse for lost wages; and restores to the nurse any lost benefits.

Section 301.352(c) states that a nurse's rights under §301.352 may not be nullified by a contract.

Section 301.352(d) states that an appropriate licensing agency may take action against a person who violates §301.352.

Section 301.352(f) provides that a violation of §301.352 is subject to §301.413.

Section 301.401(1) defines "conduct subject to reporting" as conduct by a nurse that: (i) violates Chapter 301 or a Board rule and contributed to the death or serious injury of a patient; (ii) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse; (iii) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or (iv) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

Section 301.401(2) defines "minor incident" as conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person. Further, this term is synonymous with "minor error" or "minor violation of Chapter 301 or Board rule."

Section 301.401(3) defines "nursing educational program" as an educational program that is considered approved by the Board that may lead to an initial license as a registered nurse or vocational nurse.

Section 301.401(4) defines "nursing student" as an individual who is enrolled in a nursing educational program.

Section 301.4011 states that, in the Occupations Code Chapter 301, Subchapter I, a report is considered to be made in good faith if: (i) the person reporting believed that the report was required or authorized; and (ii) there was a reasonable factual or legal basis for that belief.

Section 301.402(b) states that a nurse shall report to the Board in the manner prescribed under §301.402(d) if the nurse has reasonable cause to suspect that: (i) another nurse has engaged in conduct subject to reporting; or (ii) the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

Section 301.402(d) states that a report by a nurse under §301.402(b) must: (i) be written and signed; and (ii) include the identity of the nurse or student and any additional information required by the Board.

Section 301.402(e) states that, instead of reporting to the Board under §301.402(b), a nurse may make a report required under: (i) §301.402(b)(1) to a nursing peer review committee under Chapter 303; or (ii) §301.402(b)(2) to the nursing educational program in which the student is enrolled.

Section 301.402(f) provides that a person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who reports in good faith under §301.402 or advises a nurse of the nurse's rights and obligations under §301.402.

Section 301.402(g) states that a violation of §301.402(f) is subject to §301.413.

Section 301.4025(a) states that, in a written, signed report to the appropriate licensing board or accrediting body, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to: (i) minimum standards of acceptable

and prevailing professional practice, for a report made regarding a practitioner; or (ii) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.

Section 301.4025(b) states that a nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. Further, for purposes of §301.4025(b), an employer or entity includes an employee or agent of the employer or entity.

Section 301.4025(c) states that a person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against a person who reports in good faith under §301.4025 or advises a nurse of the nurse's right to report under §301.4025.

Section 301.4025(d) states that a violation of §301.4025(c) is subject to §301.413.

Section 301.412 states that a person who in good faith makes a report required or authorized under the Occupations Code, Subchapter I, or a person who advises a nurse of the nurse's right or obligation to report under Subchapter I: (i) is immune from civil and criminal liability, that in the absence of the immunity, might result from making the report or giving the advice; and (ii) may not be subjected to other retaliatory action as a result of making the report or giving the advice.

Section 301.413(a) states that a person may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if: (i) the person is named as a defendant in a civil action or subjected to other retaliatory action as a result of filing a report required or authorized, or reasonably believed to be required or authorized, under the Occupations Code, Subchapter I as a result of refusing to engage in conduct as authorized by §301.352; requesting in good faith a nursing peer review committee determination under §303.005; or providing advice to a person regarding filing a report required or authorized, or reasonably believed to be required or authorized, under Subchapter I as a result of refusing to engage in conduct as authorized by §301.352; or requesting in good faith a nursing peer review committee determination under §303.005; and (ii) the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

Section 301.413(b) provides that a person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a person who: (i) reports in good faith under the Occupations Code, Subchapter I; (ii) requests, in good faith, a nursing peer review committee determination under §303.005; (iii) refuses to engage in conduct as authorized by §301.352; or (iv) advises a nurse of the nurse's right to report under Subchapter I, request a nursing peer review committee determination under §303.005; or refuse to engage in conduct as authorized by §301.352.

Section 301.413(b-1) states that a person suspected of violating §301.413(b) may be reported to the appropriate licensing agency and, notwithstanding any other provision, that agency may impose an administrative penalty not to exceed \$25,000 against the person if the agency finds a violation of §301.413(b). An administrative penalty imposed under §301.413(b-1) is in addition to other penalties the agency is authorized to impose and is sub-

ject to the procedural requirements applicable to the appropriate licensing agency.

Section 301.413(c) states that a person who reports under the Occupations Code, Subchapter I, refuses to engage in conduct as authorized by §301.352, or requests a nursing peer review committee determination under Section 303.005, or a person who advises a nurse of the nurse's right to report under Subchapter I, refuses to engage in conduct as authorized by §301.352, or requests a nursing peer review committee determination under §303.005, has a cause of action against a person who violates §301.413(b), and may recover: (i) the greater of actual damages, including damages for mental anguish even if no other injury is shown or \$5,000; (ii) exemplary damages; (iii) court costs; and (iv) reasonable attorney's fees.

Section 301.413(d) provides that, in addition to the amount recovered under §301.413(c), a person whose employment is suspended or terminated in violation of §301.413 is entitled to: (i) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and (ii) compensation for wages lost during the period of suspension or termination.

Section 301.413(e) states that a person who brings an action under §301.413 has the burden of proof. Further, it is a rebuttable presumption that the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against for reporting under the Occupations Code, Subchapter I for refusing to engage in conduct as authorized by §301.352, for requesting a peer review committee determination under §303.005, or for providing advice to a person regarding reporting under Subchapter I, refusing to engage in conduct as authorized by §301.352, or requesting a peer review committee determination under §303.005 if: (i) the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against within 60 days after the date the report, refusal, or request was made or the advice was given; and (ii) the Board or a court determines that the report that is the subject of the cause of action was authorized or required under §§301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410 and made in good faith; the request for a peer review committee determination that is the subject of the cause of action was authorized under §303.005 and made in good faith; or the refusal to engage in conduct was authorized by Section 301.352; or the advice that is the subject of the cause of action was given in good faith.

Section 301.413(f) states that an action under §301.413 may be brought in a district court of the county in which: (i) the plaintiff resides; (ii) the plaintiff was employed by the defendant; or (iii) the defendant conducts business.

Section 303.001(1) defines "Board" as the Texas Board of Nursing.

Section 303.001(2) defines "nurse" as a registered nurse or a vocational nurse licensed under Chapter 301.

Section 303.001(3) defines "nursing" as the meaning assigned by §301.002.

Section 303.001(4) defines "nursing peer review committee" as a committee established under the authority of the governing body of a national, state, or local nursing association, a school of nursing, the nursing staff of a hospital, health science center, nursing home, home health agency, temporary nursing service, or other health care facility, or state agency or political subdivision for the purpose of conducting peer review. Further, the committee in-

cludes an employee or agent of the committee, including an assistant, an investigator, an intervenor, an attorney, and any other person who serves the committee in any capacity.

Section 303.001(4-a) defines "patient safety committee" as a committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety, including: (i) the entity's medical staff composed of individuals licensed under Subtitle B; or (ii) a medical committee under the Health and Safety Code, Subchapter D, Chapter 161.

Section 303.001(5) defines "peer review" as the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term includes: (i) the evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse; (ii) a report made to a nursing peer review committee concerning an activity under the committee's review authority; (iii) a report made by a nursing peer review committee to another committee or to the Board as permitted or required by law; (iv) implementation of a duty of a nursing peer review committee by a member, an agent, or an employee of the committee; and (v) the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of an protections for nurses who raise care concerns or report under Chapter 301 or other state or federal law; the rights and obligations of an protections for nurses who request nursing peer review under Chapter 301; nursing practice and patient care concerns; and the resolution of workplace and practice questions relating to nursing and patient care.

Section 303.005(a) defines "duty to a patient", for purposes of §303.005, as conduct required by standards of practice or professional conduct adopted by the Board for nurses. The term includes administrative decisions directly affecting a nurse's ability to comply with that duty.

Section 303.005(a-1) states that, for purposes of §303.005, a nurse or nurse administrator acts in good faith in connection with a request made or an action taken by the nurse or nurse administrator if there is a reasonable factual or legal basis for the request or action.

Section 303.005(b) provides, if a person who is required to establish a nursing peer review committee under §303.0015 requests a nurse to engage in conduct that the nurse believes violates a nurse's duty to a patient, the nurse may request, on a form developed or approved by the Board, a determination by a nursing peer review committee under Chapter 301 of whether the conduct violates a nurse's duty to a patient.

Section 303.005(c) provides that a nurse who in good faith requests a peer review determination under §303.005(b): (i) may not be disciplined or discriminated against for making the request; (ii) may engage in the requested conduct pending the peer review; (iii) is not subject to the reporting requirement under the Occupations Code Chapter 301 Subchapter I, and (iv) may not be disciplined by the Board for engaging in that conduct while the peer review is pending.

Section 303.005(d) states that if a nurse requests a peer review determination under §303.005(b) and refuses to engage in the requested conduct pending the peer review, the determination of the peer review committee shall be considered in any decision by the nurse's employer to discipline the nurse for the refusal to

engage in the requested conduct, but the determination is not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. Further, §303.005 does not affect the protections provided by §303.005(c)(1) or §301.352.

Section 303.005(e) states that if the conduct for which the peer review is requested under §303.005(b) involves the medical reasonableness of a physician's order, the medical staff or medical director shall be requested to make a determination as to the medical reasonableness of the physician's order, and that determination is determinative of that issue.

Section 303.005(f) provides that a nurse's rights under §303.005 may not be nullified by a contract.

Section 303.005(g) states that an appropriate licensing agency may take action against a person who violates §303.005.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2011.

TRD-201105762

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: January 9, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 305-6822



22 TAC §217.22

Introduction. The Texas Board of Nursing (Board) adopts new §217.22, relating to Special Accommodations, without changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7755) and will not be republished.

Reasoned Justification. This section is adopted under the authority of the Occupations Code §54.003 and §301.151 and is necessary to implement the requirements of Senate Bill (SB) 867, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011.

For each licensing examination administered by a state agency, SB 867 requires the agency to provide reasonable examination accommodations to examinees who have been diagnosed as having dyslexia. SB 867 further requires the agency to adopt rules establishing the eligibility criteria an examinee must meet in order to receive examination accommodations.

The Board's current procedures already allow an individual with a documented disability, including dyslexia, to request reasonable examination accommodations. However, these procedures have not been formalized in Board rule. In compliance with the

mandates of SB 867, the adopted new section formalizes the Board's existing examination accommodation procedures in rule and specifies the criteria that an individual must meet in order to receive examination accommodations, including those individuals that have been diagnosed with dyslexia.

Under the adopted new section, an individual seeking examination accommodations must submit several pieces of documentation to the Board. First, the individual must submit a Special Accommodations Request Form to the Board. This form captures several necessary pieces of information about the individual, such as the individual's name and address; the individual's expected date of graduation; the approximate test date preferred by the individual; a description of the individual's disability; the specific testing accommodations sought by the individual; and a description of the testing accommodations that have been provided to the individual in the past. This information allows the Board to process the individual's request and to determine the type of testing accommodations that may be necessary for the individual.

Second, the individual must submit a Professional Documentation of Disability Form (Disability Form) to the Board. In order to be eligible for examination accommodations, an individual's disability must be documented by one of the following health-care providers: (i) for physical or mental disabilities other than learning disabilities, a licensed physician or psychologist with expertise in the area of the disability; (ii) for learning disabilities, a licensed psychologist or psychiatrist who has experience working with adults with learning disabilities; or (iii) for learning disabilities, a professional with a master's or doctorate degree in special education, education, psychology, educational psychology, or rehabilitation counseling who has training and experience in assessing intellectual ability level and interpreting tests of such ability; screening for cultural, emotional, and motivational factors; assessing achievement level; and administering tests to measure attention and concentration, memory, language reception and expression, cognition, reading, spelling, writing, and mathematics. The provider completing the Disability Form must also include a specific diagnosis of the individual's disability; a description of the nature, history, and extent of the individual's disability; and the provider's specific recommendations for examination accommodations for the individual. Further, the information must be completed within the three years immediately preceding the individual's accommodation request. These adopted requirements are necessary to: (i) ensure that the individual has been properly diagnosed with a verifiable disability, by a provider who is appropriately qualified through experience, education, and expertise to accurately diagnose disabilities and make recommendations about examination accommodations; (ii) determine the specific examination accommodations that may be necessary for the individual; and (iii) ensure that the information received by the Board is current and that the accommodations requested by the individual are necessary and appropriate.

Third, the individual must submit a completed Consent to Release Information Form to the Board. This form permits the individual's provider to release information about the individual's disability to the Board, in conjunction with the Board's review of the individual's request for examination accommodations.

Finally, the individual must submit a Nursing Program Verification Form (Verification Form) to the Board. The Verification Form must be completed by the dean or director of the nursing education program the individual attended. Further, the dean or di-

rector must provide a description of the examination accommodations that were provided by the nursing education program to the individual while the individual attended the nursing program. This information is necessary to verify the individual's stated disability and to identify examination accommodations that were provided to the individual in the past.

The adopted new section requires individuals to submit these forms to the Board at least 30 calendar days prior to registering for a licensing examination. This requirement is necessary to allow the Board adequate time to review the information submitted by the individual and to request additional and/or clarifying information, if necessary. If the Board needs additional and/or clarifying information and the individual has submitted his/her paperwork to the Board outside of this prescribed time period, the individual's licensing examination may have to be postponed or re-scheduled until all of the required information has been received and reviewed by the Board. All of the forms required by the adopted new section, as well as the Board's instructions and requirements for providers completing the Disability Form, are available on the Board's website, as is stated in the text of the adopted new section.

How the Section Will Function. Adopted new §217.22(a) states that the Board will provide reasonable accommodations for its licensing examinations according to the provisions of adopted new §217.22.

Adopted new §217.22(b) requires individuals requesting special examination accommodations to submit the following information to the Board: (i) a completed Special Accommodations Request Form; (ii) a Professional Documentation of Disability Form, completed within the three years immediately preceding the accommodation request by a diagnostician meeting the Board's requirements; (iii) a completed Consent to Release Information Form; and (iv) a Nursing Program Verification Form completed by the dean or director of the nursing program attended.

Adopted new §217.22(c) requires an individual requesting special examination accommodations to submit the information required by the adopted new section to the Board at least 30 calendar days prior to registering for the licensing examination. The adopted new subsection further clarifies that the Board will process an individual's accommodation request once all of the required information and documentation is received by the Board.

Adopted new §217.22(d) states that the Board's requirements for diagnosticians and the forms referenced in adopted new §217.22(b) may be found on the Board's website, which is located at <http://www.bon.texas.gov/olv/pdfs/SPECACC.pdf>.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. New §217.22 is adopted under the Occupations Code §54.003 and §301.151.

Section 54.003(a) defines "dyslexia" as having the same meaning assigned by the Education Code §51.970.

Section 54.003(b) states that, for each licensing examination administered by a state agency, the agency shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia.

Section 54.003(c) states that each state agency shall adopt rules necessary to implement §54.003, including rules to establish the

eligibility criteria an examinee must meet for accommodation under §54.003.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2011.

TRD-201105761

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Effective date: January 9, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 305-6822



TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.2

The State Board of Trustees of the Texas Emergency Services Retirement System adopts new §306.2, relating to merger of an existing plan into the Pension System, without changes to the proposed text as published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6651).

New §306.2 is adopted in order to provide a fairly uniform design for the incorporation of preexisting pension plans into the Pension System, in the interest of the actuarial soundness of the System and the interests of its constituent departments.

No public comments on the proposed new rule were received by the Agency during the period for public comments, which ended November 15, 2011.

The new rule is adopted under the authority of §862.004, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 23, 2011.

TRD-201105811

Sherri Walker
Commissioner
Office of the Fire Fighters' Pension Commissioner
Effective date: January 12, 2012
Proposal publication date: October 7, 2011
For further information, please call: (512) 299-4528



CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.3

The State Board of Trustees of the Texas Emergency Services Retirement System adopts the repeal of §310.3, relating to review of actuarial services, without changes to the proposal as published in the October 7, 2011, issue of *Texas Register* (36 TexReg 6652).

Section 310.3 is repealed in order to provide that the period for review and renewal of actuarial services be determined in negotiated contracts, rather than at an arbitrary period. The Board retains its flexibility to evaluate the quality of actuarial services at any time and respond to economic or actuarial realities.

No public comments on the proposed repeal were received by the Agency during the period for public comment, which ended November 15, 2011.

The repeal is adopted under the authority of §865.006(b), Texas Government Code, which directs the Board to employ an actuary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 23, 2011.

TRD-201105812
Sherri Walker
Commissioner
Office of the Fire Fighters' Pension Commissioner
Effective date: January 12, 2012
Proposal publication date: October 7, 2011
For further information, please call: (512) 299-4528



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.2, §364.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §364.2 and §364.3, concerning initial and temporary licensure, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6886) and will not be republished.

The amendments establish a requirement for applicants to send the board a copy of the applicant's receipt from the National Board for Certification in Occupational Therapy which shows that a score report has been ordered for the board.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by these amended sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2011.

TRD-201105760
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: January 9, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900



CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.3

The Texas Board of Occupational Therapy Examiners adopts an amendment to §369.3, concerning Use of Titles, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6887) and will not be republished.

The amendment allows an exemption for those who work in academia or publishing from listing their license title first when signing their names.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2011.

TRD-201105763
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: January 9, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900



CHAPTER 370. LICENSE RENEWAL

40 TAC §370.3

The Texas Board of Occupational Therapy Examiners adopts an amendment to §370.3, concerning Restoration of a Texas License, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6887) and will not be republished.

The amendment clarifies when the license needs to be restored, as opposed to late renewal.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2011.

TRD-201105764
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: January 9, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900



CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §372.1, concerning Provision of Services, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6888) and will not be republished.

The amendment uses the word "intervention" to replace the word "treatment", as much of occupational therapy practice is not medical. The amendment also adds a new subsection on documentation; allows evaluation before the medical referral is

received; and clarifies an occupational therapist's responsibility for writing the discharge.

The Board received one public comment regarding adoption of this amendment, specifically to subsection (f) Documentation. The commentator was concerned that the wording of the rule means that the Board expects the plan of care to be a literal collection of the documents listed in the rule, kept together as a physical file in the therapist's possession. Many therapists do not keep hard copies of the documents listed in the rule. The commentator also suggested that the words "progress notes" can be eliminated, since the commentator assumed a progress note to be the same thing as "...the documentation of each intervention session by the OT or OTA providing the service...."

The Board thinks there are many ways to interpret the term "progress notes," which are distinctly different from daily notes, and occur in many formats such as weekly progress notes, 60-day progress notes, and 6-month reviews or updates that occur for each grading period. Consequently the Board does not think the term "progress note" is redundant in the rule. As for the commentator's first point, the Board does not expect the licensee to carry around all the documentation for a client/patient. However, the Board expects all documentation to become part of the client/patient's file, whether in hard copy or in electronic form.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2011.

TRD-201105765
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: January 9, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900



CHAPTER 373. SUPERVISION

40 TAC §373.3

The Texas Board of Occupational Therapy Examiners adopts an amendment to §373.3, concerning Supervision of a Licensed Occupational Therapy Assistant, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6889) and will not be republished.

The amendment allows the Board to audit the occupational therapy assistants' Supervision Logs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2011.

TRD-201105766

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: January 9, 2012

Proposal publication date: October 14, 2011

For further information, please call: (512) 305-6900



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: 2012 Specialty Crop Block Grant Program

The Texas Department of Agriculture (TDA) is accepting proposals for the Specialty Crop Block Grant Program (Program). The Program is designed to solely enhance the competitiveness of specialty crops. Projects must demonstrate a positive measurable impact on the specialty crop industry. TDA will accept proposals postmarked by Thursday, February 16, 2012 from eligible applicants in Texas.

TDA encourages organizations to develop projects to solely enhance the competitiveness of specialty crops pertaining to the following issues affecting the specialty crop industry:

Food Safety - Possible projects include, but are not limited to, assisting entities in the specialty crop distribution chain in developing "Good Agricultural Practices", "Good Handling Practices", "Good Manufacturing Practices" or researching new methods to improve food safety.

Marketing - These projects may include marketing strategies that are geared at increasing the sales or consumption of specialty crops through media and advertising campaigns, in-store demonstrations, promotional events or development of educational opportunities and literature.

Nutrition - Projects may focus on increasing child and adult nutrition knowledge and consumption of specialty crops.

Plant Health - Projects investing in the prevention, control, or eradication of pests and diseases harmful to specialty crops.

Value Added Projects and Industry Development - Projects may include support for development of value added processing facilities, establishment of certification programs and improvement of distribution methods, industry feasibility or development of a new industry, marketing research or research on a new tool to improve marketability.

Applicants are responsible for selecting the key area their project best fits. Projects will be evaluated and ranked with all project within each key area.

Funding Parameters.

Selected projects will receive funding on a **cost reimbursement basis**. Funds will not be advanced to grantees. Selected applicants must have the financial capacity to pay all costs up-front.

Projects will be funded at varying levels depending on the nature of the project.

Projects must demonstrate strong justification for the requested budget as well as the potential for providing significant demonstrable benefits to Texas specialty crops.

Eligibility.

Responses will be accepted from other agencies, universities, institutions, and producer, industry or community-based organizations involved with specialty crops.

Projects must demonstrate that they enhance the competitiveness of Texas' specialty crop industry.

Project funds may only be used for activities benefiting specialty crops.

Projects must benefit more than one individual, institution or organization. Grant funds will not be awarded for projects that directly benefit or provide a profit to a single organization, institution or individual.

Submitting an Application.

Applications are currently being accepted and must be submitted on the form provided by TDA by the submission deadline. Application form (ER-121) and guidance documents are available on TDA's website at www.TexasAgriculture.gov or upon request from TDA by calling (512) 463-6908.

Applications must be complete and have all required documentation to be considered. TDA reserves the right to request additional information or documentation to determine eligibility.

Deadline for Submission of Responses.

Applications, with signature, must be postmarked no later than **Thursday, February 23, 2012**. Hand-delivered applications must be received at TDA's physical address by **Thursday, February 23, 2012**.

The applicant will also be required to submit the Project Narrative by email in a Microsoft Word document. PDF documents will not be accepted. Electronic versions may be emailed to Grants@TexasAgriculture.gov.

Complete applications with signature must be submitted to:

Physical Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701.

Mailing Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TDA will send an acknowledgement receipt by email indicating the response was received.

Assistance and Questions.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at grants@TexasAgriculture.gov.

Texas Public Information Act.

Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201105836

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: December 28, 2011

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/02/12 - 01/08/12 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/02/12 - 01/08/12 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201105831

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 28, 2011

Employees Retirement System of Texas

Request for Proposal to Provide Third-Party Administration Services for the Short and Long Term Disability Benefits Plan for the Texas Employees Group Benefits Program

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") seeking a qualified Third-Party Administrator ("TPA") to provide administration of a Short and Long Term Disability Benefits Plan for Participants covered under the Texas Employees Group Benefits Program ("GBP") on or after September 1, 2012 through an initial term of August 31, 2016. The TPA shall provide administrative services for the level of benefits required in the RFP and meet other requirements that are in the best interest of ERS, the GBP, its Participants and the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

A TPA wishing to respond to this request shall: 1) Maintain its principal place of business and provide all products and/or services including, but not limited to: call center, billing, eligibility, and programming, etc. within the United States of America, and shall have a valid Certificate of Authority and a third-party administrative license to do business in Texas as a TPA from the Texas Department of Insurance ("TDI") and be in good standing with all agencies of the state of Texas, including TDI; 2) have been providing coverage, administrative services, claim processing, to group benefit plans, at least one of which will have an enrollment of 10,000 covered employees working in multiple locations; and 3) TPA shall have a minimum capital and surplus in the amount of \$50 million and have been doing business in Texas for three (3) years as evidenced by a 2010 audited financial statement.

The RFP will be available on or after January 12, 2012 from ERS' website and will include documents for the TPA's review and response. To access the secured portion of the RFP website, the interested TPA shall email its request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the TPA's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP.

General questions concerning the RFP and/or ancillary bid materials should be sent to the iVendor Mailbox where the responses, if applicable, are updated frequently. The submission deadline for all RFP ques-

tions submitted to the iVendor Mailbox are due on January 27, 2012 at 4:00 p.m. CT.

To be eligible for consideration, the TPA is required to submit a total of six (6) sets of the Proposal in a sealed container. One (1) printed original shall be labeled as an "Original" and include fully executed documents, as appropriate, **signed in blue ink** and without amendment or revision. Three (3) additional duplicates of the Proposal, including all required exhibits, shall be provided in printed format. Finally, two (2) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of sample GBP-specific marketing materials, financial statements, and audited financial materials) may be reflected on the CD-ROMs. All materials shall be received by ERS no later than 12:00 Noon (CT) on February 9, 2012.

ERS will base its evaluation and selection of a TPA on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, operating requirements, and experience serving large group programs, past experience, administrative quality, program fees and other relevant criteria. Each Proposal will be evaluated both individually and relative to the Proposal of other qualified TPAs. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the GBP, its Participants and the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation thereof. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interest of ERS, the GBP, its Participants and the state of Texas.

TRD-201105798

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: December 22, 2011

Texas Commission on Environmental Quality

Agreed Order

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075 requires that notice of the proposed order and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is February 6, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of the AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to the proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the enforcement coordinator designated for the AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on February 6, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinator is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on the AO shall be submitted to the commission in writing.

COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2011-2336-AIR-E; IDENTIFIER: RN 102579307; RN 102212925; RN 102574803; LOCATION: Baytown, Harris County; TYPE OF FACILITY: refinery/olefins/chemical manufacturing; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4); Texas Health and Safety Code, §382.085(b); Permit Numbers 18287 and PSDTX730M4; and Federal Operating Permit Number O1229; by failing to prevent unauthorized emissions; VIOLATIONS FOR WHICH STIPULATED PENALTIES WILL BE ASSESSED: each emissions event during which the quantity of unauthorized emissions, as defined in 30 TAC §101.1, from any source at the Baytown Complex exceeds the applicable reportable quantity, as defined in 30 TAC §101.1 and for each excess opacity event, as defined in 30 TAC §101.1; PENALTY: \$98,000; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Ave, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201105844

David Timberger

Director, General Law Division

Texas Commission on Environmental Quality

Filed: December 28, 2011



Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is February 6, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas

78711-3087 and must be received by 5:00 p.m. on February 6, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Acton Municipal Utility District; DOCKET NUMBER: 2011-1780-PWS-E; IDENTIFIER: RN101438927; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level for total coliform for the month of May and September 2011; and 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *escherichia coli* samples from all active sources within 24 hours of being notified of a distribution total coliform positive result during the month of May 2011; PENALTY: \$1,430; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ADDISON ENTERPRISES INCORPORATED dba Atwell 66; DOCKET NUMBER: 2011-1579-PST-E; IDENTIFIER: RN102411766; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,100; ENFORCEMENT COORDINATOR: Jaime Geil, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: ANA, INCORPORATED dba Ana facility; DOCKET NUMBER: 2011-1751-PST-E; IDENTIFIER: RN100708361; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,300; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Carroll Water Supply Corporation; DOCKET NUMBER: 2011-1446-PWS-E; IDENTIFIER: RN101204774; LOCATION: Van, Smith County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice (BWN) within 24 hours of a water outage or low pressure event using the prescribed notification format as specified in 30 TAC §290.47(e), and by failing to provide a copy of BWN to the executive director; and 30 TAC §290.46(f)(3)(E)(iv), by failing to maintain an accurate and complete record of all water works operation and maintenance activities; PENALTY: \$570; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2011-1683-AIR-E; IDENTIFIER: RN102320850; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for Incident Number 153829 not later than 24 hours after the discovery of an emissions event that began on April 26, 2011 at 3:30 p.m.; 30 TAC §116.715(a), THSC, §382.085(b), and Flexible Permit Number 21918, Special Conditions Number 1, by failing to prevent unauthorized

emissions during an event that began on April 26, 2011 (Incident Number 153829); and 30 TAC §122.146(2), THSC, §382.085(b), and Federal Operating Permit Number O2165, General Terms and Conditions, by failing to submit a permit compliance certification within 30 days from the end of the certification period; PENALTY: \$18,876; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: City of Cisco; DOCKET NUMBER: 2011-1248-MWD-E; IDENTIFIER: RN101389104; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: water treatment with an associated wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010424002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$7,320; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Streetman; DOCKET NUMBER: 2011-1624-MWD-E; IDENTIFIER: RN101919991; LOCATION: Streetman, Freestone County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010471001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17), §319.7(d); and TPDES Permit Number WQ0010471001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17), §319.4 and TPDES Permit Number WQ0010471001, Monitoring and Reporting Requirements Number 1, by failing to timely submit results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010471001, Sludge Provisions, by failing to timely submit the annual sludge report by September 1, 2010, for the monitoring period ending July 31, 2010; PENALTY: \$5,844; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Clean Harbors Deer Park, LLC; DOCKET NUMBER: 2011-1348-IHW-E; IDENTIFIER: RN102184173; LOCATION: La Porte, Harris County; TYPE OF FACILITY: industrial and hazardous waste disposal facility; RULE VIOLATED: 30 TAC §335.152(a)(13) and §335.2(b) and 40 Code of Federal Regulations §264.344 and Hazardous Waste Permit Number 50089, Permit Provisions IV.B.3.d., by failing to prevent the disposal of unauthorized hazardous waste; PENALTY: \$5,450; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Coastal Investment Group, LLC dba Super Stop Discount Beer and Wine; DOCKET NUMBER: 2011-1454-PST-E; IDENTIFIER: RN103028346; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,004; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Crosstex North Texas Gathering, L.P.; DOCKET NUMBER: 2011-1727-AIR-E; IDENTIFIER: RN105225734; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: natural gas

processing and compressor; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to obtain authorization prior to operation; 30 TAC §117.435(a)(1) and (3) and THSC, §382.085(b), by failing to conduct engine testing within 60 days of initial startup; and 30 TAC §106.8(c)(2)(B) and §106.512(2)(c)(ii) and THSC, §382.085(b), by failing to maintain records for a period of at least two years; PENALTY: \$6,475; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: DIXIE IN INCORPORATED dba Dixie Drive In; DOCKET NUMBER: 2011-1818-PST-E; IDENTIFIER: RN102376639; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,920; ENFORCEMENT COORDINATOR: Kimberly Walker, (512) 239-2596; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Gerardo M. Romero and Marivel Romero dba Sol Y Mar; DOCKET NUMBER: 2011-1483-PWS-E; IDENTIFIER: RN105377410; LOCATION: San Juan, Hidalgo County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.106(e), by failing to provide the results of quarterly nitrate sampling to the executive director; and 30 TAC §290.113(e), by failing to provide the results of annual stage 1 disinfectant by product sampling to the executive director; PENALTY: \$3,010; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: HAIQA, INCORPORATED dba Haiqa Fuels; DOCKET NUMBER: 2011-1675-PST-E; IDENTIFIER: RN100533785; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$2,525; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Horizon Retail LLC dba MJs All Season Food Store; DOCKET NUMBER: 2011-1897-PST-E; IDENTIFIER: RN104813092; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,425; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: IDEAL BUSINESS, INCORPORATED dba QUICK MART; DOCKET NUMBER: 2011-1615-PST-E; IDENTIFIER:

RN102031473; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: \$2,129; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: JAI SHREE OM CORPORATION DBA Scot-ties Van; DOCKET NUMBER: 2011-1578-PST-E; IDENTIFIER: RN101792141; LOCATION: Van, Van Zandt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: Jee Sung Oh dba RCP Quick Stop; DOCKET NUMBER: 2011-1872-PST-E; IDENTIFIER: RN102229036; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(B) and TWC, §26.3475(c)(2), by failing to ensure that all spill and over-fill prevention devices are maintained in a manner that will prevent any spilling or overfilling of regulated substances; PENALTY: \$770; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Kashmir Singh dba City Mart; DOCKET NUMBER: 2011-1651-PST-E; IDENTIFIER: RN101542322; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(B)(ii), by failing to timely renew an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$2,505; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: KOTRIWALLA, L.L.C. dba ZS Corner Food Mart; DOCKET NUMBER: 2011-1655-PST-E; IDENTIFIER: RN101746204; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Kimberly Walker, (512) 239-2596; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Luna Bell dba Express Food Mart; DOCKET NUMBER: 2011-1688-PST-E; IDENTIFIER: RN102231560; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide proper release detection for the product piping associated with the UST system;

PENALTY: \$2,379; ENFORCEMENT COORDINATOR: Marcia Alonso, (512) 239-2616; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: MeadWestvaco Texas, L.P.; DOCKET NUMBER: 2011-1402-MLM-E; IDENTIFIER: RN102157609 (Facility 1) and RN100611821 (Facility 2); LOCATION: Evadale, Jasper and Hardin Counties; TYPE OF FACILITY: wastewater treatment and a packing paper and plastics film facility; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000493000, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits at Outfall 002 at Facility 1; TPDES Permit Number WQ0000493000, Monitoring and Reporting and Requirements Number 1, and 30 TAC §305.125(1) and §319.1, by failing to submit complete effluent monitoring results at the intervals specified in the permit at Facility 1; and 30 TAC §335.4 and TWC, §26.121(a), by failing to prevent unauthorized discharge of industrial solid waste at Facility 2; PENALTY: \$7,966; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Monticello Drive Estates, Incorporated; DOCKET NUMBER: 2011-0554-PWS-E; IDENTIFIER: RN101213874; LOCATION: Springtown, Parker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: \$1,570; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: N H A J, L.C. dba Bestop 4; DOCKET NUMBER: 2011-1658-PST-E; IDENTIFIER: RN101839207; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the piping associated with the UST; PENALTY: \$6,229; ENFORCEMENT COORDINATOR: Kimberly Walker, (512) 239-2596; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: NEW MART CORPORATION dba Go 4 It Food Store; DOCKET NUMBER: 2011-1705-PST-E; IDENTIFIER: RN101432433; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 36 months; PENALTY: \$2,424; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: NIXON PARTNERS LLC. dba Happy Sac; DOCKET NUMBER: 2011-1663-PST-E; IDENTIFIER: RN106116882; LOCATION: Nixon, Gonzales County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.7(a)(1) and §334.8(c)(4)(B), by failing to register with the commission, on authorized agency forms, USTs in existence on or

after September 1, 1987, by submitting a properly completed UST registration and self-certification form to the agency within 30 days after the date any regulated substance was placed into the USTs; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the piping associated with the USTs; PENALTY: \$30,919; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: RAAA, Incorporated dba Quick Way 2; DOCKET NUMBER: 2011-1541-PST-E; IDENTIFIER: RN101536449; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST late fees for TCEQ Financial Account Number 0062387U for fiscal years 2006-2007; PENALTY: \$2,600; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: SPILLANE AND ASSOCIATES, INCORPORATED; DOCKET NUMBER: 2011-1682-EAQ-E; IDENTIFIER: RN106162969; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: parking lot construction site; RULE VIOLATED: 30 TAC §213.4(a)(1) and Edwards Aquifer Protection Plan Number 11-11061701, Standard Conditions Number 5, by failing to obtain approval of a modification to an approved Edwards Aquifer Protection Plan prior to construction of a driveway widening and stub-out project over the Edwards Aquifer Recharge Zone; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(28) COMPANY: TEXAS RENAISSANCE FESTIVALS, INCORPORATED; DOCKET NUMBER: 2011-1590-PST-E; IDENTIFIER: RN102860368; LOCATION: Plantersville, Grimes County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and also by failing to provide proper release detection for the suction piping associated with the USTs; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$12,745; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: THE CONSOLIDATED WATER SUPPLY CORPORATION; DOCKET NUMBER: 2011-1508-MLM-E; IDENTIFIER: RN102683919; LOCATION: Crockett, Houston County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.121(a) and (b), by failing to provide a monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.46(f)(3)(D)(ii), by failing to provide complete annual storage tank inspection reports for the ground and elevated storage tanks; 30 TAC §290.46(d)(2)(A), §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter throughout the distribution system at all times; and 30 TAC §291.93 and TWC, §13.1329(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that clearly explains how a retail public utility that has exceeded 85% of its capacity will provide the expected service demands to the remaining areas within the boundaries of its certificated areas; PENALTY: \$999; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: Walia Ventures Incorporated dba Express Food Mart; DOCKET NUMBER: 2011-1096-PST-E; IDENTIFIER: RN102718533; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201105819

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 27, 2011



Notice of Comment Period and Hearing on Draft Air Curtain Incinerator General Operating Permit

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft revisions to and the renewal of Air Curtain Incinerator General Operating Permit (GOP) Number 518. The proposed GOP revisions include but not limited to: the addition of 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, the addition of 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, revisions to existing language for clarification purposes, and requirements for 40 Code of Federal Regulations Part 60, Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines; and Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, have been included.

The draft GOP is subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP. A hearing will be held in Austin on January 27, 2012 at 10:00 a.m. in Room 131E of TCEQ, Building C, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff

member will be available to discuss the draft GOP 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOP may be obtained from the TCEQ Web site at http://www.tceq.texas.gov/permitting/air/nav/air_genoppermits.html or by contacting the TCEQ Office of Air, Air Permits Division at (512) 239-1250. Written comments may be mailed to Johnny Bowers, Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-7130. All comments should reference the draft Air Curtain Incinerator GOP. Comments must be received by 5:00 p.m. on February 6, 2012. For further information, contact Mr. Bowers at (512) 239-6770.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ at (512) 239-4000. Requests should be made as far in advance as possible.

TRD-201105818

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 27, 2011



Notice of Water Quality Applications

The following notices were issued on December 16, 2011 through December 23, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ACME BRICK COMPANY which operates Texas Quarries, a dimensional limestone mill, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004384000, which authorizes the discharge of pretreated limestone cutting water, wash pad water, and storm water at an intermittent and flow variable basis via Outfall 001. The facility is located at 1800 West White-stone Boulevard, approximately three miles west of the intersection of Farm-to-Market Road 1431 and U.S. Highway 183 in the City of Cedar Park, Williamson County, Texas 78613.

PRAXAIR NITROGEN INC which operates Hawkins Nitrogen Plant, an air separation facility, has applied for a renewal of TPDES Permit No. WQ0004625000, which authorizes the discharge of reverse osmosis reject water, boiler blowdown, wash down water, steam condensate, and storm water at a daily average flow not to exceed 40,000 gallons per day via Outfall 001. The facility is located along the south side of Farm-to-Market Road 1795, approximately 3,000 feet east of the intersection of Farm-to-Market Road 1795 and State Highway 14, north of the City of Hawkins, Wood County, Texas 75765.

TERRA RENEWAL SERVICES INC has applied for a new permit, proposed Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0004961000, to authorize the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 653.32 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is April 20, 2012. This permit will not authorize a discharge of pollutants into

waters in the State. The sewage sludge land application site will be located at 3582 Farm-to-Market Road 811, off of State Highway 7, approximately 6.5 miles east of the City of Centerville, in Leon County, Texas 75833.

THE CITY OF LIBERTY has applied for a renewal of TPDES Permit No. WQ0010108001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 400 Farm-to-Market Road 3361, approximately 0.5 mile west of the intersection of Farm-to-Market Road 2684 and Farm-to-Market Road 3361 south of the City of Liberty, in Liberty County.

RAYBURN COUNTRY MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0010788001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 30,000 gallons per day to a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 2,000 feet north of the intersection of Recreational Road 255 and Farm-to-Market Road 1007 and 3 miles west of the intersection of U.S. Highway 96 and Recreational Road 255 in Jasper County, Texas 75951.

THE CITY OF HUTTO has applied for a new permit, proposed TPDES Permit No. WQ0011324002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility will be located at 10700 Farm-to-Market Road 1660, between Cottonwood Creek and Lower Brushy Creek, south of the intersection of Farm-to-Market Road 1660 and County Road 134, in Hutto in Williamson County, Texas 78634.

HIDALGO COUNTY MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TCEQ Permit No. WQ0012854001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day via surface irrigation of 200 acres of a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 2.2 miles northeast of the intersection of Farm-to-Market Road 1427 and U.S. Highway 83, and approximately 1.5 miles northwest of the intersection of Farm-to-Market Road 492 and U.S. Highway 83 in Hidalgo County, Texas 78572.

CITY OF MISSOURI CITY has applied for a new permit, proposed TPDES Permit No. WQ0013873003, to authorize the discharge of treated membrane filter backwash effluent, decant from the gravity thickener, belt filter press wastewater, neutralized tank waste, and off-channel settling reservoir wastewater from a water treatment plant at a daily average flow not to exceed 1,000,000 gallons per day. The facility will be located at 8850 1/2 #1 Sienna Ranch Road, between Brisco Canal and Flat Bank Creek, 7,500 feet southwest of intersection of Sienna Parkway and Sienna Ranch Road in Fort Bend County, Texas 77489.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 366 has applied for a renewal of TPDES Permit No. WQ0014359001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 7300-A Chippewa Boulevard, Houston, Texas, on the west side of North Houston Rosslyn Road, approximately 2,200 feet north of Breen Road and 1,500 feet west of the end of Chippewa Boulevard in Harris County, Texas 77040.

DRIL-QUIP INC has applied for a renewal of TPDES Permit No. WQ0014655001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located at 6401 North Eldridge Parkway, Houston, in Harris County, Texas 77041.

QUADVEST LP has applied for a renewal of TPDES Permit No. WQ0015003001 (previously transferred as WQ0004855000 and previously issued as WQ0013863001) (EPA I.D. No. TX0115827), which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 12150 Broken Bow, near Pinehurst, on the northeast side of State Highway 249 and on the east side of Cripple Creek Drive, approximately 0.8 mile north of the intersection of State Highway 249 and Stagecoach Road and approximately 2.7 miles southeast of the intersection of Farm-to-Market Roads 149 and 1774 and approximately 4.0 miles northwest of the City of Tomball in Montgomery County, Texas 77362.

MATHESON TRI-GAS INC which operates Waxahachie Plant No. 1, which manufactures nitrogen, oxygen and argon gas, has applied for a renewal of TPDES Permit No. WQ0004112000, which authorizes the discharge of wastewater that consist of cooling tower blowdown and filter backwash water, at a daily average flow not to exceed 40,000 gallons per day via Outfall 001. The facility is located at 3680 North Interstate Highway (IH) 35 East, on the east side of IH 35 East, at the crossing of Mustang Creek with IH 35 East, and approximately one-mile northeast of U.S. Route 287 and IH 35 East, Ellis County, Texas 75165.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201105841

Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: December 28, 2011



Notice of Water Rights Application

Notice issued December 13, 2011.

APPLICATION NO. 12595; The City of Cedar Park, 600 North Bell Boulevard, Cedar Park, Texas, 78613, applicant, seeks a water use permit to maintain two dams and reservoirs (Upper and Lower Reservoir) on Spanish Oak Creek, Brazos River Basin, in Williamson County for water quality purposes. Applicant has provided an alternate source of water. The application and a portion of the fees were received on May 28, 2010. Additional information and fees were received on August 9 and November 22, 2010 and March 16 and June 20, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 7, 2011. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete

notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (TCEQ) Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201105842

Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: December 28, 2011



Texas Facilities Commission

Request for Proposals #303-3-20319

The Texas Facilities Commission (TFC), on behalf of the Texas Health and Human Services Commission, announces the issuance of Request for Proposals (RFP) #303-3-20319. TFC seeks a five or ten year lease of approximately 8,830 square feet of office space in Houston, Harris County, Texas.

The deadline for questions is February 3, 2012 and the deadline for proposals is February 17, 2012, at 3:00 p.m. The award date is March 23, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=98199.

TRD-201105799

Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 22, 2011



Request for Proposals #303-3-20321

The Texas Facilities Commission (TFC), on behalf of the Texas Health and Human Services Commission, announces the issuance of Request for Proposals (RFP) #303-3-20321. TFC seeks a five or ten year lease of approximately 7,560 square feet of office space in Dallas, Dallas County, Texas.

The deadline for questions is January 20, 2012 and the deadline for proposals is January 27, 2012, at 3:00 p.m. The award date is March 21, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=98209.

TRD-201105800
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 22, 2011



Texas Health and Human Services Commission

Public Notice

Notice of Public Hearing on Proposed Payment Rates for Medicaid Biennial Calendar Fee Review - Therapy Services provided by Independent Practitioners, Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities, and Home Health Agencies

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 18, 2012, at 9:00 a.m., to receive comment on proposed payment rates for the Medicaid Biennial Calendar Fee Review - Therapy Services provided by Independent Practitioners and Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF).

The public hearing will be held in Health and Human Services Commission Brown Heatly Building Public Hearing Room at 4900 North Lamar Boulevard, Austin, Texas. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Medicaid Biennial Calendar Fee Review - Therapy Services provided by Independent Practitioners, Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities, and Home Health Agencies are proposed to be effective March 1, 2012.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals.

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011. Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after December 21, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Parking. Parking is available in the parking garage next to the Brown Heatly building. Overflow parking is available across the street at the Winters Building (701 West 51st Street, Austin).

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201105791
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 21, 2011



Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or firms to conduct financial monitoring of its Workforce Solutions contracts. The successful bidder or bidders will be offered an initial contract for one year beginning on or around April 1, 2012 through March 31, 2013. H-GAC may renew the contract for up to two additional years (through March 31, 2015).

Prospective bidders may obtain a copy of the Request for Proposals online at <http://www.h-gac.com> or <http://www.wrksolutions.com>, by contacting Carol Kimmick at (713) 627-3200 or by sending email to carol.kimmick@h-gac.com. Responses are due at H-GAC offices by

12:00 noon on Thursday, February 2, 2012. H-GAC does not accept late proposals and will make no exceptions to the deadline.

TRD-201105820
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: December 27, 2011

◆ ◆ ◆

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 27, 2011, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of U.S. Cable of Coastal-Texas, L.P. to Amend its State-Issued Certificate of Franchise Authority: transfer of ownership, Project Number 40050.

The requested amendment is to expand the service area footprint to include the city limits of Fort Stockton, Iraan, and Seminole; the municipality of Denver City; and the unincorporated area of Brewster County, excluding federal properties within the State of Texas. The Applicant is also seeking to transfer ownership/control.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All inquiries should reference Project Number 40050.

TRD-201105845
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 2011

◆ ◆ ◆

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on December 16, 2011, for designation as an eligible telecommunications carrier in the State of Texas for the limited purpose of offering Lifeline and Link Up Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Q Link Wireless, LLC for Designation as an Eligible Telecommunications Carrier (ETC) in the State of Texas for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households. Docket Number 40011.

The Application: Q Link seeks ETC designation solely to provide Lifeline and Link Up service to qualifying Texas households. It will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. In its application, Q Link provided a list of wire centers for AT&T and Verizon for which the Company requests ETC designation and serves the entire wire center. Q Link also pro-

vided a list of wire centers for Verizon for which the company requests ETC designation and serves only part of the wire center. Q Link is a reseller of commercial mobile radio service (CMRS) throughout the United States. Q Link provides prepaid wireless telecommunications services to consumer by using the Sprint Nextel network.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by January 26, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 40011.

TRD-201105802
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 22, 2011

◆ ◆ ◆

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 22, 2011, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of North American Power and Gas, LLC for Retail Electric Provider Certification, Docket Number 40048.

Applicant's requested service area is for the geographic area of the entire state of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Docket Number 40048.

TRD-201105822
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 27, 2011

◆ ◆ ◆

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 20, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Swisher and Castro Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 230-kV Transmission Line within Swisher and Castro Counties. Docket Number 39982.

The Application: The application of Southwestern Public Service Company for a proposed 230-kV transmission line in Swisher and

Castro Counties, Texas is designated as the Newhart Substation to Swisher County Substation Transmission Line Project.

The proposed project is presented with 11 alternate routes consisting of a combined 69 segments and is estimated to be approximately 21.1 to 23.7 miles in length depending on which route is chosen. All routes begin at the proposed Newhart Substation, located about five miles north-east of Hart, Texas, in Castro County. All routes end at SPS's existing Swisher County Substation, located approximately one mile west of Interstate Highway 27 in Swisher County, Texas. The proposed project will be constructed on single-pole steel structures. The total estimated cost for the project is between approximately \$18.6 million and \$20.9 million.

All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is Friday, February 3, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 39982.

TRD-201105801
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 22, 2011



Request for Proposals to Provide Legal Services

RFP No. 473-12-00003

The Public Utility Commission of Texas (PUCT) is issuing a Request for Proposals (RFP) to acquire outside legal services to represent the PUCT before the Federal Energy Regulatory Commission (FERC) and before a court reviewing proceedings of FERC related to Entergy Texas, Inc. (ETI) joining a regional transmission organization, related to proceedings involving ETI and its affiliates concerning the coordination of the operations of ETI and its affiliates, including amending the Entergy System Agreement, and to provide legal advice regarding the foregoing.

Scope of Legal Services

The legal services to be provided by outside counsel may include, but are not limited to, the following:

- * Advising the commission on how a proceeding before FERC may impact matters within the jurisdiction of the PUCT.
- * Advising the commission on the procedural and substantive issues related to a proceeding at FERC.
- * Advising the commission on a litigation strategy at FERC.
- * Advising the commission on the need for witnesses and, if appropriate, obtaining witnesses and preparing those witness to testify at the FERC proceeding.
- * In consultation with the commission, developing and preparing briefs or other legal pleadings before FERC.
- * Representing the commission at proceedings before FERC.
- * In consultation with the commission, determining whether to appeal any decision by FERC and prosecuting that appeal in the courts.

* Representing the commission in any appeals to a court.

RFP documentation may be obtained by contacting:

Purchaser
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326
(512) 936-7069
purchasing@puc.state.tx.us

RFP documentation is also located on the PUCT website at <http://www.puc.state.tx.us/agency/about/procurement/Default.aspx>.

Deadline for proposal submission is 3:00 p.m. CDT on Thursday, February 2, 2012.

TRD-201105843
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 28, 2011



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The Clover Acquisition Corporation, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

The following is a listing of proposed projects at the Pearland Regional Airport during the course of the next five years through multiple grants.

Airport Sponsor: The Clover Acquisition Corporation: Pearland Regional Airport. TxDOT CSJ No. 12MPCLOVE. **Scope:** Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of the airport.

Future scope work items for engineering/design services within the next five years may include the following:

1. Business Plan
2. Planning Study

The Clover Acquisition Corporation reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

There is no DBE goal. TxDOT Project Manager is Sandra Braden.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instruc-

tions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than January 31, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Sandra Braden, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201105838
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 28, 2011



Public Hearing Notice - Highway Project Selection Process

The Texas Transportation Commission (commission) will hold a public hearing on Thursday, January 26, 2012, at 9:00 a.m. at 200 East Riverside Drive, Room 1A-1, Austin, Texas to receive public comments on the highway project selection process related to the 2013 Unified Transportation Program (UTP).

Transportation Code, §201.602 requires the commission to annually conduct a hearing on its highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. Transportation Code, §201.991 provides that the Texas Department of Transportation (department) shall develop a UTP covering a period of 10 years to guide the development and authorize construction of transportation projects. The commission has adopted rules located in Texas Administrative Code, Title 43, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the project selection process and the development of the UTP.

Any interested person may appear at the hearing and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the commission

as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content. A person may not assign a portion of his or her time to another speaker. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the subject matter of the hearing.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact JoLynne Williams, Administration, at 118 East Riverside Drive, Austin, Texas 78704 or (512) 305-9536 at least five working days prior to the hearing so that appropriate arrangements can be made. Every reasonable effort will be made to accommodate the needs.

Highway project selection information will be available at the department's Finance Division, 150 East Riverside Drive, Austin, Texas 78704, or (512) 486-5043, and on the department's web site at: http://www.txdot.gov/public_involvement/utp.htm.

Interested parties who are unable to attend the hearing may submit written comments to the Texas Department of Transportation, Attention: Brian Ragland, P.O. Box 149217, Austin, Texas 78714-9217. The deadline for receipt of written comments is 5:00 p.m. on February 6, 2012.

TRD-201105839
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 28, 2011



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Texas Administrative Code, Title 43, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201105837
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 28, 2011



Texas Water Development Board

Notice of Hearing

The Texas Water Development Board will hold a hearing on two petitions submitted by Grass Valley Water, L.P. submitted under 31 TAC §356.44. The hearing on the petitions regarding Kinney County will

begin at 10:00 a.m. on Wednesday, January 18, 2012 and conclude at 3:00 p.m. The hearing on the petition regarding Val Verde County will begin at 10:00 a.m. on Thursday, January 19, 2012 and conclude at 3:00 p.m. The hearings will take place at the Sutton County Courthouse, 300 E. Oak Street, Suite 3, Sonora, Texas.

Petitions on the reasonableness of the Desired Future Conditions adopted by Groundwater Management Areas 7 and 10 were submitted by Grass Valley Water, L.P.

Interested persons are encouraged to attend the hearing, which is not a contested case hearing. Petitioners and Respondents will each have two hours in which to present their testimony. There will be no cross examination of those making presentations and no objections to the testimony or exhibits. Testimony and evidence presented should address the claims asserted in the petitions.

Other interested persons will have 10 business days from the close of the hearing in which to submit written evidence. No time will be allotted for public comment during the hearing. Written evidence may be submitted during the 10-day period to the Board's General Counsel, Texas Water Development Board, 1700 N. Congress Ave., P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201105792
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 21, 2011

