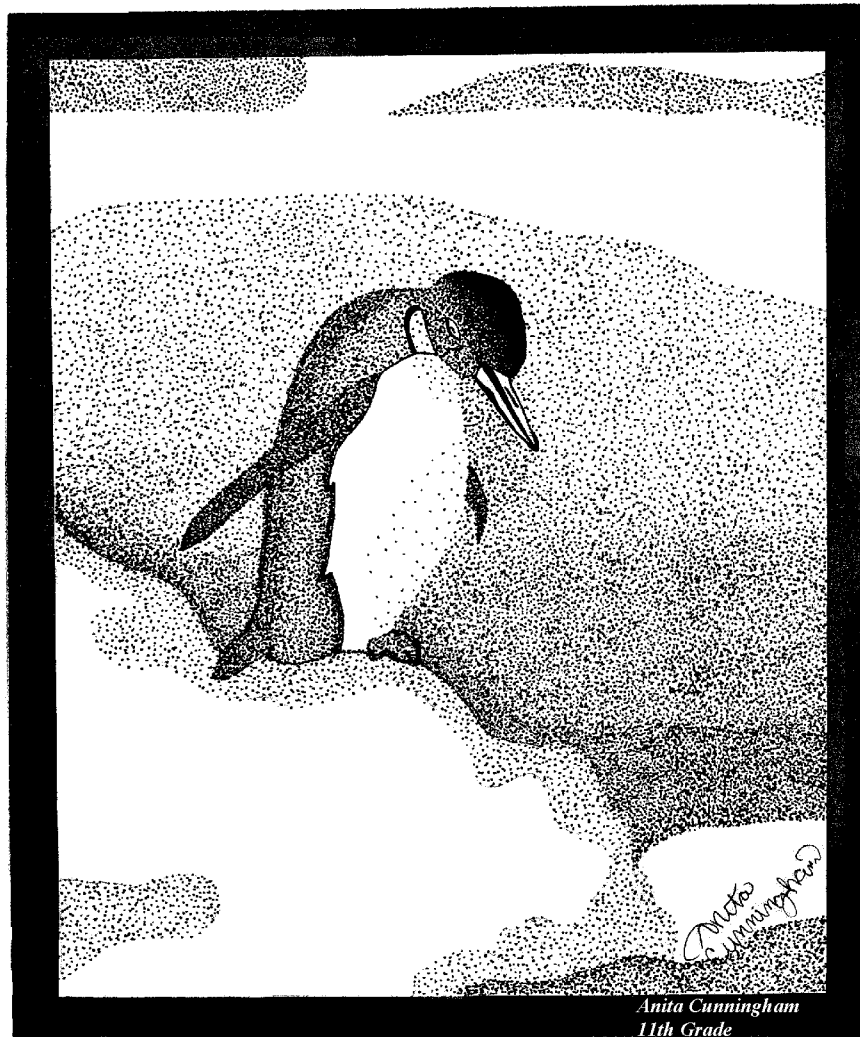

TEXAS REGISTER

Volume 29 Number 8 February 20, 2004

Pages 1475-1736



Anita Cunningham
11th Grade

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.

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Texas Register, (ISSN 0362-4781), is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$200. First Class mail subscriptions are available at a cost of \$300 per year. Single copies of most issues for the current year are available at \$10 per copy in printed format.

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

POSTMASTER: Send address changes to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line. <http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. <http://www.state.tx.us/Government>



Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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 February 6, 2004

Appointed to the Texas Online Authority, pursuant to SB 1152, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Daniel Joseph Schaan of Houston.

Appointed to the Texas Online Authority, pursuant to SB 1152, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Mark A. Haerr of Plano.

Appointments for February 9, 2004

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Mark J. Carrabba of Bryan (replacing Ernest Koy of Bellville whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Jacqueline Baly Chaumette of Sugar Land (replacing Mary Ainslie of Houston whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Wade Compton Gear of Mineral Wells (replacing Robert Arnot of Breckenbridge whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Jere Lawrence of Sweetwater (replacing Shirley Macklin Herring of Brenham whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Billy Wayne Moore of Granbury (replacing Nancy Rabb of Round Rock whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2009, Roberto Bailon of Belton (replacing Beverly Sawyer of Temple whose term expired).

Designating Joe B. Hinton of Crawford as Presiding Officer of the Brazos River Authority Board of Directors for a term at the pleasure of the Governor. Mr. Hinton is being named presiding officer pursuant to SB 1935, 78th Legislature, Regular Session.

Rick Perry, Governor

TRD-200400944



THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0169-GA

Requestor:

Mr. O.C. "Chet" Robbins
Executive Director
Texas Funeral Services Commission
P.O. Box 12217
Austin, Texas 78711

Re: Whether Chapter 716, Health and Safety Code, permits a person authorized to dispose of the remains of a deceased individual to contract directly for cremation services (Request No. 0169-GA)

Briefs requested March 5, 2004

RQ-0170-GA

Requestor:

The Honorable Phil King
Chair, Regulated Industries Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Procedures for implementing the legislation creating the 415th District Court (Request No. 0170-GA)

Briefs requested by March 5, 2004

RQ-0171-GA

Requestor:

The Honorable Frank Madla
Chair, Intergovernmental Relations Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Re: Whether a home-rule municipality may call an election to authorize a tax freeze when no petition has been submitted (Request No. 0171-GA)

Briefs requested by March 6, 2004

RQ-0172-GA

Requestor:

The Honorable Allan Ritter
Chair, Committee on Pensions and Investments
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Whether a municipality's adoption of an IRS section 401(a) plan is permitted by Texas law (Request No. 0172-GA)

Briefs requested by March 6, 2004

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

TRD-200400943
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: February 11, 2004



Opinions

Opinion No. GA-0141

The Honorable Rodney Ellis
Chair, Government Organization Committee
Texas State Senate
P. O. Box 12068
Austin, Texas 78711

Re: Residency requirements for voting in an election in Texas (RQ-0157-GA)

S U M M A R Y

A person who complies with and satisfies the requirements of sections 1.015, 11.001, 11.002, 13.001, and 13.002 of the Texas Election Code is an "eligible voter". See TEX. ELEC. CODE ANN. §§ 1.015, 11.001-.002, 13.001-.002 (Vernon 2003 & Supp. 2004).

The meaning of "residence" for purposes of voting and voter registration is governed by section 1.015 of the Texas Election Code. "Residence" is defined to mean "domicile," *i.e.*, one's home and fixed place of habitation to which one intends to return after any temporary absence. *Id.* § 1.015(a) (Vernon 2003). Residence must be determined in accordance with the common-law rules, as enunciated by the courts of this state, unless the code provides otherwise. *See id.* § 1.015(b). A person does not lose his residence by leaving his home to go to another place for temporary purposes only; nor does a person acquire a residence in a place to which he has come for temporary purposes only and without the intention of making that place his home. *See id.* § 1.015(c). Both bodily presence and current intention on the part of the applicant or voter are necessary to establish residence.

The intention of the voter registration applicant is crucial to a proper determination of residence, and every person is strongly presumed to have "the right and privilege of fixing his residence according to his own desires." *McBeth v. Streib*, 96 S.W.2d 992, 995 (Tex. Civ. App. San Antonio 1936, no writ). For example, one student who is living in a dormitory, and is therefore physically present for purposes of voter registration, yet who intends his residence to remain the same as that of his parents, can permissibly register to vote in the county of his parent's residence. On the other hand, another student living in the same dormitory who intends that the dormitory be his residence for purposes of voter registration, can permissibly register to vote in the county where the dormitory is located. And the mere fact that an applicant claims a post office box as an address or that many applicants claim the same post office box as an address is not dispositive regarding the determination of residence.

Chapter 13 of the Texas Election Code sets forth a detailed administrative procedure to be conducted by the voter registrar governing the submission and approval of voter registration applications. Chapter 16 of the Texas Election Code sets forth a detailed administrative procedure to be conducted by the voter registrar governing the cancellation, whether through the initiative of the registrar or any registered voter, of voter registration applications already approved. Chapter 17 of the Texas Election Code provides for judicial review of any administrative decision made under those chapters. No section of any of these chapters affords an official role to local prosecutors. Therefore, local prosecutors have no authority to prevent any voter registrar from performing the registrar's duties as provided by law. However, local prosecutors are authorized to investigate and prosecute whenever credible evidence is brought to their attention, or a complaint is filed regarding alleged violations of section 13.007 of the Texas Election Code, which makes it a criminal offense to submit false or fraudulent information on a voter registration application.

Opinion No. GA-0142

The Honorable John L. Forrest
Parker County Attorney
118 West Columbia Street
Weatherford, Texas 76086

Re: Obligation of a state agency to pay for the services of an attorney ad litem appointed for a parent under section 107.013 of the Family Code (RQ-0090-GA)

S U M M A R Y

A court does not have authority to order the Department of Family and Protective Services to pay for the services of an attorney ad litem appointed for a parent under Family Code section 107.013. Except for the express provision in section 107.015, which states that an attorney appointed to represent an indigent parent shall be paid from county

funds, the court may not award attorney ad litem fees under chapter 107 against the county, any other political subdivision, a state agency, or the state.

Opinion No. GA-0143

Mr. Michael W. Behrens, P.E.
Executive Director
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

Re: Whether proceeds from the sale of an agency's salvage or surplus personal property, originally purchased with revenues constitutionally dedicated to highway purposes, may be placed in the state's general revenue fund (RQ-0082-GA)

S U M M A R Y

Proceeds from the sale of agency salvage or surplus personal property purchased with funds dedicated to highway purposes by Texas Constitution article VIII, sections 7 a and 7 b are not themselves constitutionally dedicated to highway purposes. Accordingly, proceeds from the sale of agency salvage or surplus property that was purchased with revenues constitutionally dedicated to highway purposes and sold on or after September 1, 2003 may be placed in the general revenue fund

Opinion No. GA-0144

Mr. Don W. Brown
Commissioner of Higher Education
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711

Re: Whether schools of acupuncture are subject to regulation by the Texas Higher Education Coordinating Board under chapter 61, subchapter G of the Education Code, or whether they are exempt from regulation under section 61.303(a) of the code (RQ-0091-GA)

S U M M A R Y

Schools of acupuncture are subject to regulation by the Texas Higher Education Coordinating Board.

Opinion No. GA-0145

The Honorable Edwin E. Powell Jr.
Coryell County Attorney
P.O. Box 796
Gatesville, Texas 76528

Re: Whether a justice of the peace may receive, in addition to a salary, fees for issuing certified copies of birth and death certificates as provided by section 154.005(a) of the Local Government Code (RQ-0092-GA)

S U M M A R Y

Section 154.005(a) of the Local Government Code violates article XVI, section 61 of the Texas Constitution to the extent it permits a justice of the peace to receive fees for issuing certified copies of birth and death certificates in addition to his or her annual salary. A justice of the peace must deposit such fees in the county treasury, and the fees may not be used to supplement the official's salary.

Opinion No. GA-0146

The Honorable Greg Lowery
Wise County Attorney
Wise County Courthouse, Room 300
Decatur, Texas 76234

Re: Whether an officer, as bailiff and head of courthouse security, is entitled to judicial immunity from a suit for injuries occurring while removing an individual from the courthouse (RQ-0094-GA)

S U M M A R Y

Derived judicial immunity applies to officials exercising the functional equivalent of judicial discretion. Generally, a bailiff and chief of courthouse security screening individuals from the courthouse would not be

exercising the functional equivalent of judicial discretion. Derived judicial immunity may also apply to an official acting pursuant to facially valid judicial orders or instructions.

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

TRD-200400956
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: February 11, 2004

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-507. The Texas Ethics Commission has been asked to consider whether an entity that is subject to subchapter D of chapter 253 of the Election Code may provide supplemental salary or bonuses to its officers to encourage them to make political contributions and to be politically active in their communities.

AOR-508. The Texas Ethics Commission has been asked whether a former member of the Texas legislature may use unexpended political contributions to make expenditures in connection with the position of United States Ambassador.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305,

Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200400723
Sarah Woelk
General Counsel
Texas Ethics Commission
Filed: February 4, 2004



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Health and Human Services Commission (HHSC or Commission) proposes to amend Chapter 370, State Children's Health Insurance Program, Subchapter A, Program Administration, §370.4, Definitions, and Subchapter B, Application Screening, Referral and Processing Eligibility Criteria, §370.44, Income.

Background and Justification

Currently §370.44 provides for an assets test for CHIP applicants with a gross monthly income greater than 150% of the federal poverty level (FPL). Section 62.101(b), Health and Safety Code, allows HHSC to establish standards regarding the amount and types of assets such families may have and still be eligible for CHIP. The proposed amendment defines the elements of the assets test to be implemented. The Commission has determined that the proposed assets test is necessary to enable HHSC to provide health care coverage to eligible families that are least able to afford it within the limits of appropriated funds.

Section-by-Section Summary

Chapter 370 provides a framework for the operation of the CHIP program. Section 370.4 defines certain terms contained in the chapter. The proposed amendment to §370.4 adds definitions of "countable liquid assets," "excess vehicle value," and "household," which are used in the assets test described in the proposed amendment to §370.44. The amendment also corrects the order of the defined terms.

Subchapter B sets forth the CHIP eligibility criteria. Section 370.44 describes income eligibility requirements, including the income levels at which an assets test will be imposed. Additional language is being proposed to further define the elements of the assets test. The proposed test permits a family making application to CHIP to own no more than \$5,000 in combined countable liquid assets and excess vehicle value. Real property, such as a home, is not counted as an asset.

As defined in the proposed amendment to §370.4, a "countable liquid asset" means a resource that a CHIP applicant can readily convert to cash to meet an immediate need. Vehicles counted as an asset include operable and licensed cars, trucks, motorcycles, SUVs, vans, and motor homes (including campers and RVs). Vehicles that are not counted as assets include: trailers,

mobile homes, boats, leased vehicles, and vehicles owned by a business.

Vehicles that meet certain conditions, e.g., vehicles that are used more than 50% of the time to produce income for a CHIP household, may be fully exempt from being counted as an asset. A CHIP applicant may claim only one such exemption for vehicles worth more than \$15,000. The exemption will apply to all vehicles that are worth less than \$15,000 and that meet one of the listed conditions. If the household does not have any fully exempt vehicles, the first \$15,000 of the highest value vehicle will not count toward the assets limit. Similarly, the first \$4,650 of all other countable vehicles will not count toward the assets limit. For example, if the household owns an \$18,000 vehicle, only \$3,000 will count toward the household's assets limit. If the household also owns a vehicle worth \$8,000, only \$3,350 will count toward the assets limit.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the proposed amendments are in effect there will be an estimated savings to the state for State Fiscal Year 2004 of \$320,687.00 and for State Fiscal Years 2005 through 2008 an estimated savings to the state each year of \$1,154,387.00. Implementation of the proposed amendments will not result in any fiscal implications for local governments.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the amendments. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

Public Benefit

Jason Cooke, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the amendments are in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be to ensure that health coverage is only available to children whose families are least able to afford health coverage.

Regulatory Analysis

HHSC has determined that the proposed amendments are not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined

to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. The proposed amendments are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Public Comment

Written comments on the proposal may be submitted to Melissa Lewicki, Policy Analyst, Texas Health and Human Services Commission, 1100 W. 49th Street, MC-H310, Austin, Texas 78756-3199, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for Monday, March 15, 2004, 1:30 p.m. to 3:00 p.m. The hearing will be held at the Health and Human Services Commission, Public Hearing Room, Braker Center, Bldg H, 11029 Metric Blvd, Austin, Texas 78758.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §370.4

Statutory Authority

The amendments are proposed under authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed amendments.

§370.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Administrative Contractor" means the entity that performs administrative services for the CHIP under contract with the Commission.

~~[(2) "Entrant" means a person who is not a native born or naturalized citizen of the United States of America.]~~

(2) ~~[(3)]~~ "Applicant" means an individual who lives with the child and applies for health insurance coverage on behalf of the child. An applicant can only be:

(A) a child's custodial parent, whether natural or adoptive;

(B) a child's grandparent, relative or other adult who provides care for the child;

(C) an emancipated minor applying for himself/herself; or

(D) a child's step-parent.

(3) ~~[(4)]~~ "Application" means the standardized, written document issued by TexCare that an applicant must complete to apply for health care benefits or coverage through CHIP.

(4) ~~[(5)]~~ "Application completion date" means the calendar date a completed CHIP application is entered into the TexCare database.

(5) ~~[(6)]~~ "Budget Group" means the group of individuals who live in the home with the child for whom an application for health insurance is submitted and whose information is used to establish family size and calculate income. Individuals receiving Supplemental Security Income payments are not included in the Budget group. Budget group members include only:

(A) the child seeking health insurance benefits;

(B) the child's siblings who live with the child (biological, adopted, or step-siblings);

(C) the child's natural or adoptive parents; or

(D) the child's step-parent.

(6) ~~[(7)]~~ "Children's Health Insurance Program" or "CHIP" means the Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(7) "Children's Health Insurance Program Service Area" or "CSA" means one of the designated areas in the state that is served by one or more of the CHIP Health Plans or the CHIP Exclusive Provider Organization.

(8) "Commission" or "HHSC" means the Health and Human Services Commission.

(9) "Community-based Organization" or "CBO" means an organization that contracts with the Commission to provide outreach services to applicants for CHIP coverage.

(10) ~~[(9)]~~ "Completed application" means an application entered into the TexCare database that includes all information required under §370.23.

(11) ~~[(40)]~~ "Countable income" means any type of payment that is a regular and predictable gain or a benefit to a budget group that is not specifically exempted. Regular and predictable income is income received in one month that is either likely to be received in the next month and/or was received on a regular and predictable basis in past months. It does not include income that is not received on a regular and predictable basis in past months, or is received by the child or sibling member of the budget group who is enrolled in school.

(12) "Countable liquid assets" means resources that an applicant can readily convert to cash to meet immediate needs and whose values are used in calculating a child's eligibility for CHIP, including, but not limited to:

(A) cash on hand;

(B) cash in the bank;

(C) cash in a TANF (Temporary Assistance to Needy Families) Electronic Benefit Transfer account;

(D) the cash value of an Individual Development Account, Individual Retirement Account, Simplified Employee Pension plan, and Keogh retirement plan;

(E) cash value of prepaid burial and funeral plans;

(F) money remaining from the sale of a homestead; and

(G) accessible trust funds.

~~{(11) "Children's Health Insurance Program Service Area" or "CSA" means one of the designated areas in the state that is served by one or more of the CHIP Health Plans or the CHIP Exclusive Provider Organization.}~~

~~{(12) "Community-based Organization" or "CBO" means an organization that contracts with the Commission to provide outreach services to applicants for CHIP coverage.}~~

(13) "Enrollment" means the process by which a child determined to be eligible for CHIP is enrolled in a CHIP health plan serving the CHIP Service Area in which the child resides.

(14) "Entrant" means a person who is not a native born or naturalized citizen of the United States of America.

(15) "Excess vehicle value" means a vehicle's wholesale value minus any allowable exemption.

(16) ~~{(14)}~~ "Exempt income" means income received by the budget group that is not counted in determining income eligibility.

(17) ~~{(15)}~~ "FPL" means Federal Poverty Level Income Guidelines.

(18) "Gross budget group income" means monthly countable income before any payroll deductions.

(19) ~~{(16)}~~ "Health Plan" means a licensed health maintenance organization, indemnity carrier, or authorized exclusive provider organization that contracts with the Commission to provide health benefits coverage to CHIP members.

(20) "Household" means the budget group plus any SSI recipient who is

(A) the child's sibling who lives with the child (biological, adopted, or step-sibling);

(B) the child's natural or adoptive parent; or

(C) the child's step-parent.

(21) ~~{(17)}~~ "Income eligibility standard" means monthly gross budget group income at or below 200% of current (FPL). A child meets the CHIP income eligibility standard if the budget group's monthly gross income exceeds the income eligibility standard applied to the child in the Texas Medicaid Program and is at or below the 200% of FPL CHIP monthly income standard.

(22) ~~{(18)}~~ "Member" means a child enrolled in a CHIP Health Plan.

~~{(19) "Gross budget group income" means monthly countable income before any payroll deductions.}~~

(23) ~~{(20)}~~ "Qualified Entrant" means an alien who applies for CHIP coverage and who, at the time of such application, satisfies the criteria established under 8 U.S.C. §1641(b).

(24) ~~{(21)}~~ "SSI" means Supplemental Security Income.

(25) ~~{(22)}~~ "State fiscal year" means the 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

~~{(23) "TexCare" means the name designated to publicly identify the operational entity that provides administrative services for the CHIP program.}~~

(26) ~~{(24)}~~ "TDHS" means the Texas Department of Human Services.

(27) "TexCare" means the name designated to publicly identify the operational entity that provides administrative services for the CHIP program.

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 February 9, 2004.

TRD-200400809

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 424-6576

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL AND PROCESSING DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §370.44

The amendments are proposed under authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed amendments affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed amendments.

§370.44. *Income and Assets.*

(a) - (d) (No change.)

(e) Gross Income Test.

(1) - (3) (No change.)

(4) Budget groups with a gross monthly income greater than 150% of FPL will be subject to an assets test conducted in accordance with subsection (i) of this section.

(f) - (h) (No change.)

(i) Assets test.

(1) In order to be eligible for CHIP, a budget group with a gross monthly income greater than 150% FPL must own \$5,000.00 or less in countable liquid assets and excess vehicle value combined.

(2) Determination of countable liquid assets. Budget groups will provide a single value that represents the total value of their countable liquid assets.

(3) Determination of excess vehicle value.

(A) Vehicles whose value must be considered include: any operable, licensed automobile, truck, motorcycle, SUV, van, or motor home that is owned by a member of the budget group. Vehicles whose value is not considered in the determination of excess vehicle value include vehicles that are:

- (i) leased;
- (ii) owned by a business; or
- (iii) trailers, mobile homes, boats, ATVs and tractors/farm equipment.

(B) Vehicle values will be taken from the *Hearst Corporation National Auto Research Division Black Book*. The vehicle value taken from the *Black Book* will be the lowest wholesale price in the average quality range listed for the make, model and year of vehicle provided by the budget group. If the *Black Book* has no listing for a particular vehicle, the value self-declared by the budget group will be used.

(C) Excess value is determined only for vehicles that are not fully exempt.

(4) Fully exempt vehicles.

(A) A vehicle is fully exempt from the determination of excess vehicle value if:

(i) the vehicle is used more than 50% of the time to produce income for the budget group. Examples of income producing vehicles are taxis, delivery vans, glazier's trucks, etc. A vehicle used simply to travel back and forth to a place of work is not exempt;

(ii) the vehicle is used by a self-employed person more than 50% of the time to carry equipment or employees to work-sites;

(iii) the vehicle is the family's only home;

(iv) the vehicle is necessary to carry fuel or water; or

(v) the vehicle has been modified to provide transportation for a household member with a disability. Such modifications may include lifts, ramps, hand controls, etc.

(B) A budget group may claim an exemption under subparagraph (A) of this paragraph for only one vehicle worth \$15,000.00 or more.

(C) A budget group may claim an exemption under subparagraph (A) of this paragraph for all vehicles worth less than \$15,000.00.

(5) Other exemptions for vehicles. If a budget group has no fully exempt vehicle:

(A) the first \$15,000.00 of the value of the budget group's highest valued countable vehicle is exempt. Any value over \$15,000.00 is considered excess vehicle value and is counted towards the budget group's \$5,000.00 assets limit; and

(B) the first \$4,650.00 of the value of each additional vehicle owned by the budget group is exempt. The value in excess of \$4,650.00 is considered excess vehicle value and is counted towards the budget group's \$5,000.00 assets limit.

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 February 9, 2004.

TRD-200400810
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 21, 2004
For further information, please call: (512) 424-6576

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of 16 Texas Administrative Code ("TAC"), Chapter 60, Subchapter E, Administration, §60.201; and new rules at 16 Texas Administrative Code, Chapter 60, Subchapter E, Administration, Division 2, Training, §60.210; Division 3, Historically Underutilized Businesses, §60.220; Division 4, Bid Opening and Tabulation, §60.230; and Division 5, Vendor Protests, §60.240 and §60.241, regarding the Texas Commission of Licensing and Regulation administrative rules.

The repeal is necessary to allow for a rule organizational structure that can accommodate several different but related rule matters in the area of agency internal administration, such as compliance with statutory training and purchasing requirements. These proposed rules are necessary to comply with Texas Government Code §§2161.003, 2155.076 and 2156.005, which require, respectively, agency rules pertaining to historically underutilized businesses, vendor protest procedures, and bid opening and tabulation.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposal is in effect there will be no cost to state or local government as a result of enforcing or administering the rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposal is in effect, the public benefit will be a decrease in confusion among the vendor community regarding agency rules and procedures for historically underutilized businesses, vendor protests, and bid opening and tabulation. This should result in a more efficient agency purchasing process.

There will be no effect on large, small, or micro-businesses as a result of the proposed rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER E. ADMINISTRATION

16 TAC §60.201

(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 Licensing and Regulation or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Chapter 51, §51.201, Texas Occupations Code, which authorizes the Commission to adopt rules as necessary for its own procedures.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

§60.201. Employee Training and Education.

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 February 9, 2004.

TRD-200400817

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 463-7348



DIVISION 2. TRAINING

16 TAC §60.210

The new rule is proposed under Chapter 51, §51.201, Texas Occupations Code, which authorizes the Commission to adopt rules as necessary for its own procedures.

The statutory provisions affected by the proposed new rule are those set forth in the Chapter 51, Texas Occupations Code, and Chapter 656, Texas Government Code. No other statutes, articles, or codes are affected by the proposal.

§60.210. Employee Training and Education.

(a) With the approval of the Executive Director, the Texas Department of Licensing and Regulation may make available to its administrators and employees funds for training and education in accordance with the Employee Training Act, Government Code §§656.041 - 656.049.

(b) In order to be eligible for agency supported training and education, the administrator or employee must demonstrate in writing, to the satisfaction of the Executive Director, that the training or education is related to the duties or prospective duties of the administrator or employee.

(c) Eligible training and education expenses that are approved by the Executive Director may include, as appropriate, salary, tuition, and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(d) An employee who completes training and education to obtain a degree or certification for which the Department has provided all or part of the required fees must agree in writing to fully repay the Department any amounts paid for educational assistance if the employee voluntarily terminates employment with the agency within one year of course completion.

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 February 9, 2004.

TRD-200400819

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 463-7348



DIVISION 3. HISTORICALLY UNDERUTILIZED BUSINESSES

16 TAC §60.220

The new rule is proposed under Chapter 51, §51.201, Texas Occupations Code, which authorizes the Commission to adopt rules as necessary for its own procedures.

The statutory provisions affected by the proposed new rule are those set forth in the Chapter 51, Texas Occupations Code and Chapter 2161, Texas Government Code. No other statutes, articles, or codes are affected by the proposal.

§60.220. Historically Underutilized Businesses Program.

Pursuant to Chapter 2161, §2161.003, Texas Government Code, the Commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 Texas Administrative Code (TAC) §§111.11 - 111.28, relating to the Historically Underutilized Business Program.

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 February 9, 2004.

TRD-200400820

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 463-7348



DIVISION 4. BID OPENING AND TABULATION

16 TAC §60.230

The new rule is proposed under Chapter 51, §51.201, Texas Occupations Code, which authorizes the Commission to adopt rules as necessary for its own procedures.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 2156, Texas Government Code. No other statutes, articles, or codes are affected by the proposal.

§60.230. Bid Opening and Tabulation.

(a) The commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 TAC §113.5(b) (Bid Submission, Bid Opening, and Tabulation).

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d).

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 February 9, 2004.

TRD-200400821

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 463-7348



DIVISION 5. VENDOR PROTESTS

16 TAC §60.240, §60.241

The new rules are proposed under Chapter 51, §51.201, Texas Occupations Code, which authorizes the Commission to adopt rules as necessary for its own procedures.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 2156, Texas Government Code. No other statutes, articles, or codes are affected by the proposal.

§60.240. Definitions.

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

(1) Purchasing Officer--A Departmental employee who has received certification as a Texas Public Purchaser and who is responsible for assisting with Departmental purchases, and who has been designated the Purchasing Officer for the purchase in question.

(2) Interested parties--all vendors who have submitted bids or proposals for the contract involved.

(3) General Counsel--the general counsel employed by the Texas Department of Licensing and Regulation.

(4) Vendor--entity that has submitted bids or proposals to provide goods and/or services pursuant to a solicitation for bids or to a request for proposals for a contract with the Department.

(5) Department--Texas Department of Licensing and Regulation.

§60.241. Protest Procedures

(a) Any actual or prospective bidder, offeror, proposer or contractor who wishes to submit a grievance regarding the solicitation, evaluation, or award of a contract may formally protest to the Purchasing Officer. Such protests must be in writing and received by the Purchasing Officer within 10 business days after the protesting party knows, or should have known, of the occurrence of the action which is protested. Filed protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) - (j) of this section. Copies of the protest must be mailed, hand-delivered or sent by facsimile transmission to the Purchasing Officer and interested parties.

(b) In the event of a timely protest under this section, the Department shall not proceed further with the solicitation or with the

award of the contract unless the Executive Director, after consultation with the Purchasing Officer and the General Counsel, makes a written determination that the award of the contract without delay is necessary to protect the best interests of the Department and the State.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) identification of the issue or issues the protesting party argues must be resolved;

(5) argument and authorities the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed, hand-delivered or sent by facsimile transmission to the Department and other identifiable interested parties.

(d) The Purchasing Officer shall have the authority, prior to an appeal to the Executive Director of the Department, to settle and resolve the dispute concerning the solicitation or award of a contract. The Purchasing Officer may solicit written responses to the protest from interested parties.

(e) If the protest is not resolved by mutual agreement, the Purchasing Officer may proceed, after consultation with the General Counsel, with the issuance of a written determination on the protest as follows:

(1) The Purchasing Officer may determine that no violation of rules or statutes has occurred and shall so inform the protesting party, the Executive Director, and any other interested parties by letter that includes the reasons for the determination.

(2) If the Purchasing Officer determines that a violation of the rules or statutes may have occurred in a case where a contract has not been awarded, the Purchasing Officer shall so inform the protesting party, the Executive Director and other interested parties by letter that includes the reasons for the determination and the appropriate remedial action.

(3) If the Purchasing Officer determines that a violation of the rules or statutes may have occurred in a case where a contract has been awarded, the Purchasing Officer shall so inform the protesting party, the Executive Director and other interested parties by letter that includes the reasons for the determination, which may include a declaration that the contract is void.

(f) The protesting party may appeal a determination of a protest by the Purchasing Officer to the Executive Director. An appeal of the Purchasing Officer's determination must be in writing and must be received in the Executive Director's office no later than 10 business days after the date of the Purchasing Officer's determination. The appeal shall be limited to a review of the Purchasing Officer's determination. Copies of the appeal must be mailed or delivered by the protesting party to the Purchasing Officer and other interested parties and must contain a certified statement that such copies have been provided.

(g) The Executive Director may confer with the General Counsel in a review of the matter appealed. The Executive Director has the

discretion to consider documentation timely submitted by Departmental staff and interested parties. The Executive Director also has the discretion to refer the matter to the Commissioners for their consideration at a regularly scheduled open meeting or may go forward with issuing a written decision on the protest.

(h) If a protest is appealed to the Executive Director under subsection (f) of this section and thereafter is referred to the Commissioners by the Executive Director under subsection (g) of this section, specific requirements apply as follows:

(1) The Executive Director shall deliver copies of the appeal and responses of interested parties, if any, to the Commissioners.

(2) The Commissioners may consider documents that Departmental staff or interested parties have submitted and may confer with the General Counsel in their review of the appeal.

(3) The Commissioners' determination of the appeal shall be made on the record and reflected in the minutes of the open meeting, and shall be final.

(i) A protest or appeal that is not filed timely will not be considered unless good cause for the delay is shown or unless the Executive Director determines that a protest or appeal raises issues significant to procurement practices or procedures.

(j) A decision issued either by the Commissioners in open meeting, or in writing by the Executive Director, shall be the final administrative action of 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 February 9, 2004.

TRD-200400822
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 21, 2004
For further information, please call: (512) 463-7348



PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.41

The Texas Racing Commission proposes an amendment to §303.41, relating to the allocation of race dates. The proposed amendment clarifies the requirements for allocation of race dates by requiring associations to conduct racing in accordance with the calendar approved by the Commission.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit will be that the public has more information on when racetracks will conduct racing. There is no economic impact to small or micro businesses required to comply with the amendment as proposed. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. There is no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Nicole Galwardi, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06 which authorizes the Commission to make rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.41. Allocation of Race Dates.

(a) - (c) (No change.)

(d) An association shall conduct pari-mutuel racing on each race date granted under this section, and in accordance with the race date calendar approved by the Commission, unless the association receives the prior approval of the executive secretary.

(e) - (f) (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 February 9, 2004.

TRD-200400795
Nicole Galwardi
General Counsel
Texas Racing Commission
Earliest possible date of adoption: March 21, 2004
For further information, please call: (512) 490-4009



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

16 TAC §309.8

The Texas Racing Commission proposes an amendment to §309.8, relating to racetrack license fees. The proposed amendment increases the simulcast fee for Class 1 and Class 2 racetracks and all greyhound tracks and has a one-time fee for Breeders' Cup costs for the hosting racetrack.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the amendment. Ms. Flowerday has also determined that in each year of the first five-year

period the amendment is in effect, the Commission will receive approximately \$808,500 in revenue from the simulcast fee. The amount of the fee is calculated based on the Commission's direct and indirect costs associated with regulating pari-mutuel wagering at Texas racetracks and on the number of dates each year on which the Commission expects the various racetracks will conduct simulcasting. In addition, if a Texas racetrack conducts the Breeders' Cup races, the Commission will receive a one-time fee of \$10,000 to reimburse the Commission for its regulatory, travel, and drug-testing costs associated with those races.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission will comply with the Texas Racing Act by generating sufficient revenue to fully fund its operations. Although there are fiscal implications for licensed racetracks, the exact cost to a particular racetrack will vary depending on the class of license held by the racetrack and on the racetrack's simulcasting operations. For each day on which a Class 1 or 2 racetrack offers simulcast races for wagering purposes, the fee will be \$310; for each day on which a Class 3 or 4 racetrack offers simulcast races for wagering purposes, the fee will remain \$245. In addition, a racetrack that conducts the Breeders' Cup races will be required to pay an additional one-time fee of \$10,000 to cover the Commission's regulatory, travel, and drug-testing costs associated with those races. There is no economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Nicole Galwardi, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §§5.01 and 6.18 which authorizes the Commission to set fees for racetrack licenses; §6.06 which authorizes the Commission to make rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.8. *Racetrack License Fees.*

(a) - (c) (No change.)

(d) Simulcast Fee. An association shall pay a simulcast fee for each day on which the association offers a simulcast race for wagering. The fee is due to the Commission no later than 5:00 p.m. of the day following the day on which the simulcast is offered. The simulcast fee is:

(1) for a Class 1, Class 2, or greyhound racetrack, \$310 per day; and

(2) for a Class 3 or Class 4 racetrack, \$245 per day.

(e) (No change.)

(f) Breeders' Cup Fee. Due to the additional travel, personnel, and drug testing costs incurred by the Commission in conjunction with regulating the Breeders' Cup races, an association that conducts the Breeders' Cup races shall pay a fee of \$10,000. The fee is due not later than 5:00 p.m. on the 30th day after the date the Breeders' Cup races are conducted.

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 February 9, 2004.

TRD-200400796

Nicole Galwardi
General Counsel

Texas Racing Commission

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 490-4009

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SUBCHAPTER D. GREYHOUND
RACETRACKS
DIVISION 2. OPERATIONS

16 TAC §309.355

The Texas Racing Commission proposes an amendment to §309.355, relating to the grading system for greyhounds. The proposed amendment revises the grading system allowing a greyhound to make it easier to requalify and be returned to the active list during a race meeting. The proposal was presented to the Commission as a petition for rulemaking by Gulf Greyhound Park.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit will be that greyhounds have a longer racing career. There is no economic impact to small or micro businesses required to comply with the amendment as proposed. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has a positive effect on the state's greyhound breeding and training industries by providing more opportunities for greyhounds to continue racing. There is no effect on the state's agricultural, horse breeding, or horse training industries.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Nicole Galwardi, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06 which authorizes the Commission to make rules on all matters relating to the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.355. *Grading System.*

(a) - (f) (No change.)

(g) A greyhound that fails to finish in the top four positions in four consecutive starts in Grade D may requalify and, at the discretion of the racing secretary, be returned to the active list. If a greyhound

fails to finish in the top four positions in four consecutive starts for a second time in the same race meeting, at the discretion of the racing secretary, that greyhound may requalify again; however, when the greyhound returns to the active list, that greyhound has two consecutive starts to finish in the top four positions. If the greyhound fails to do so, then that greyhound shall be dropped from further racing during the current race meeting. [An association shall drop a greyhound from further racing at that race meeting if the greyhound fails to finish in the top four positions in four consecutive starts in Grade D. At the discretion of the racing secretary, a greyhound dropped from racing at Grade D may be requalified after a period of 30 days.]

(h) - (p) (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 February 9, 2004.

TRD-200400797

Nicole Galwardi
General Counsel

Texas Racing Commission

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 490-4009



CHAPTER 311. OTHER LICENSES

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.5

The Texas Racing Commission proposes an amendment to §311.5, relating to occupational license fees. The proposed amendment increases the occupational license fee for all Texas Racing Commission licenses. The increase is to cover the cost of participating in the Texas OnLine internet licensing system, as well as to cover the increased costs to continue to regulate the racing industry at the current level.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the amendment. Ms. Flowerday has also determined that in each year of the first five-year period the amendment is in effect, the Commission will receive approximately \$540,000-\$650,000 in revenue from the occupational licensing fees. Of this amount, the Commission will transfer approximately \$20,000-\$22,000 to the Texas OnLine Authority to cover the costs associated with offering the Commission's occupational licenses through the Texas OnLine portal. The fee increases were calculated based on the relative income levels of the various licensees, the Commission's costs associated with the occupational licensing program, and the anticipated costs associated with participation in the Texas OnLine project. The exact amount of revenue the Commission will receive will depend on the actual number of licenses issued.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission will comply with the Texas Racing Act by generating sufficient revenue to fully fund its operations.

There will be fiscal implications for small or micro-business and to individuals required to comply with the proposal. The exact cost to a particular business or individual seeking a license from the Commission will depend on the type of license sought by the business or licensee and the number of years for which the license is issued. The fee will vary from \$0 to \$225; the increase in the fee for a particular license varies from \$5 to \$25. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Nicole Galwardi, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §5.01 which authorizes the Commission to issue licenses and set conditions for licenses; §7.03 which authorizes the Commission to issue occupational licenses; §7.05 which authorizes the Commission to adopt a fee schedule for occupational licenses; and Article 7 which authorizes the Commission to require, set conditions and qualifications for, issue, and deny occupational licenses.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§311.5. License Fees.

(a) - (b) (No change.)

(c) The fee for an occupational license is as follows:

Figure: 16 TAC §311.5(c)

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 February 9, 2004.

TRD-200400798

Nicole Galwardi

General Counsel

Texas Racing Commission

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 490-4009



CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.17

The Texas Racing Commission proposes a new rule, §319.17, relating to the removal of a race animal. The proposed new rule would allow a Commission veterinarian to remove a race animal from association grounds where the race animal presents a danger of communicable or contagious disease to other animals or has sustained an injury that requires specialized veterinary treatment not offered on association grounds.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period

the new rule is in effect there will be no fiscal implications for state or local government.

Ms. Flowerday has also determined that for each of the first five years the new rule is in effect the public benefit will be that there will be an additional tool to reduce the spread of communicable or contagious diseases at association grounds as well safeguarding the health and well being of all race animals. There is no economic impact to small or micro businesses required to comply with the new rule as proposed. There is no anticipated economic cost to an individual required to comply with the new rule as proposed. There is no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed new rule in the *Texas Register* to Nicole Galwardi, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The new rule is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.061 which authorizes the Commission to regulate unsafe conditions at pari-mutuel racetracks.

The proposed new rule implements Texas Civil Statutes, Article 179e.

§319.17. Removal of a Race Animal.

The Commission veterinarian may order a race animal removed from association grounds if the Commission veterinarian determines:

(1) a race animal on association grounds presents a danger of communicable or contagious disease to the other animals on the grounds; or

(2) a race animal has sustained an injury that requires specialized veterinary treatment beyond the scope of normal veterinary care offered on association grounds.

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 February 9, 2004.

TRD-200400799

Nicole Galwardi

General Counsel

Texas Racing Commission

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 490-4009



SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.111

The Texas Racing Commission proposes an amendment to §319.111, relating to the bleeders and furosemide program. The proposed amendment allows a trainer to admit a horse to the furosemide program by stating at the time of entry that the horse will compete with furosemide, streamlining the process to admit a horse to the program. The proposed amendment clarifies that an EIPH event experience by a horse already admitted to the furosemide program is a second EIPH event

for purposes of the consequences listed in subsection (g) of the rule. Further language is provided clarifying the process of readmission to the furosemide program.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the public benefit will be that the public has greater clarification on the requirements involved with the furosemide program. There is no economic impact to small or micro businesses required to comply with the amendment as proposed. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. There is no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Nicole Galwardi, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §3.16 which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a post-race testing program.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.111. Bleeders and Furosemide Program.

(a) (No change.)

(b) Admission to Furosemide Program.

(1) A trainer may admit a horse to the furosemide program by stating at time of entry that the horse will compete with furosemide. [A horse that has been certified as a bleeder in this state may be admitted to the furosemide program. To be admitted to the furosemide program, the trainer of the horse or a veterinarian currently licensed by the Commission, on the trainer's behalf, must file a request for the horse's admission to the program before the horse starts in its next race.]

(2) A horse that competed with furosemide in its most recent start out-of-state must compete on furosemide in Texas unless withdrawn from the furosemide program at time of entry.

(3) An EIPH event experienced by a horse that is admitted to the furosemide program is deemed to be a second EIPH event for purposes of subsection (g) of this section.

(c) - (e) (No change.)

(f) Readmission to the Furosemide Program. A horse may be readmitted to the furosemide program if: ~~[the horse has another EIPH event or competed with furosemide in its most recent start in another pari-mutuel jurisdiction.]~~

(1) at least 60 days have elapsed since the horse was withdrawn from the program;

(2) the horse is required to compete with furosemide pursuant to subsection (a)(2) of this section; or

(3) the commission veterinarian diagnoses the horse with another EIPH event.

(g) - (h) (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 February 9, 2004.

TRD-200400800

Nicole Galwardi

General Counsel

Texas Racing Commission

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 490-4009



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.22, §4.23

The Texas Higher Education Coordinating Board proposes amendments to §4.22 and §4.23 of Board rules, concerning the Texas Common Course Numbering System (TCCNS). Specifically, the amendments implement a change mandated by Texas Education Code, §61.832. The amendments provide the statutory citation for the Board's authority to approve the TCCNS, and add a formal definition of the TCCNS.

Dr. Marshall A. Hill, Assistant Commissioner for Universities and Health-Related Institutions, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Hill has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering these sections will be the improved organization and clarity for students of information affecting academic course transfer between public institutions of higher education. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Marshall A. Hill, Ph.D., Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Marshall.Hill@the.cb.state.tx.us.

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education

system; §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education; and §61.832, which instructs the Board to cooperate with institutions of higher education in the development of rules for the administration and applicability of the TCCNS.

The amendments affect Texas Education Code, §61.822(b); TEC, §61.830; and TEC, §61.832.

§4.22. Authority.

The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, and evaluation of core curricula, field of study curricula, and a transfer dispute resolution process under Texas Education Code §§61.051 (g), and Texas Education Code §§61.821- 832 [831].

§4.23. Definitions.

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

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

(5) Texas Common Course Numbering System (TCCNS)--a course numbering system for lower-division courses that assigns common course numbers to lower-division academic courses in order to facilitate the transfer of courses among institutions of higher education by promoting consistency in course designation and identification.

(6) [~~5~~] Course consistent with the Texas Common Course Numbering System (TCCNS)--a lower-division course that meets one of three conditions:

(A) it has an assigned a TCCNS number and is listed in the Lower Division Academic Course Guide Manual;

(B) a TCCNS number and inclusion in the Lower Division Academic Course Guide Manual have been requested for the course; or

(C) the institution which offers the course has specified at least one TCCNS course listed in the Lower Division Academic Course Guide Manual that will be accepted in transfer in lieu of the course.

(7) [~~6~~] Institution of Higher Education or institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, other agency of higher education as defined in Texas Education Code, §61.003.

(8) [~~7~~] The Lower Division Academic Course Guide Manual (ACGM)--an official Board publication that lists a basic core of general academic courses which are freely transferable among all public institutions of higher education in Texas in accordance with the Texas Education Code, §61.051(g). TCCNS numbers are assigned to most courses in the manual.

(9) [~~8~~] Faculty member--a person who is employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration. However, the term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate of assistant provost, or dean.

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 February 5, 2004.

TRD-200400745

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



19 TAC §4.35

The Texas Higher Education Coordinating Board proposes new §4.35 to Board rules, concerning the Texas Common Course Numbering System (TCCNS). Specifically, the new section implements a change mandated by Texas Education Code, §61.832. Existing rules are expanded to include new §4.35 that approves the use of the TCCNS by institutions of higher education. A uniform manner of use is prescribed in this section for all institutions of public higher education.

Dr. Marshall A. Hill, Assistant Commissioner for Universities and Health-Related Institutions, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Hill has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering these sections will be the improved organization and clarity for students of information affecting academic course transfer between public institutions of higher education. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new section may be submitted to Marshall A. Hill, Ph.D., Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711-2788, or by e-mail to Marshall.Hill@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The new section is proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; §61.002, which establishes the Coordinating Board as an agency charged to provide leadership and coordination for the Texas higher education system; §61.051, which provides the Coordinating Board with authority to coordinate institutions of public higher education in promoting quality education; and §61.832, which instructs the Board to cooperate with institutions of higher education in the development of rules for the administration and applicability of the TCCNS.

The new section affects Texas Education Code, §61.822(b); TEC, §61.830; and TEC, §61.832.

§4.35. Texas Common Course Numbering System.

(a) Each institution shall include the applicable course numbers from the TCCNS in its printed and electronic catalogs, course listings, and any other appropriate informational resources, and in the application of the provisions of this subchapter. Institutions that do not use the TCCNS taxonomy as their sole means of course numbering shall publish the following information in their printed and electronic catalogs, course listings, and any other appropriate informational resources.

(1) The TCCNS prefix and number must be displayed immediately adjacent to the institutional course prefix and number (e.g. ENG 101 (ENGL 1301)); and

(2) The printed and electronic catalogs shall include a chart, table, or matrix, alphabetized by common course prefix, listing all common courses taught at the institution by both the common and local course number. For printed catalogs, the chart, table, or matrix should be referenced in a table of contents and/or a subject index.

(b) Each institutional catalog shall include an explanation of the TCCNS and the significance of TCCNS courses for transfer purposes.

(c) Each institution shall comply with the requirements of sections (a) and (b) no later than September 1, 2005.

(d) For good cause, the Commissioner may approve an exemption from the requirements of 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 February 5, 2004.

TRD-200400744

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.54

The Texas Higher Education Coordinating Board proposes amendments to §4.54 of Board rules concerning exemption from the requirements of the Texas Success Initiative. Specifically, these amendments exempt high school students who achieve certain standards on the Mathematics and English/Language Arts sections of the exit-level Texas Assessment of Knowledge and Skills from state-mandated testing for college readiness, and renumber the paragraphs.

Michael L. Collins, Assistant Commissioner, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended rule.

Mr. Collins has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be a greater alignment of secondary and post-secondary academic standards. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Michael L. Collins, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or by e-mail at

michael.collins@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §51.3062 and Texas Education Code, §51.307, which provide the Coordinating Board with the authority to propose rules concerning the Success Initiative.

The amendments affect the Texas Education Code, §51.3062.

§4.54. Exemptions/Exceptions.

(a) The following students shall be exempt from the requirements of this title:

(1) - (2) (No change.)

(3) For a period of three (3) years from the date of testing, a student who is tested and performs on the Eleventh grade exit-level Texas Assessment of Knowledge and Skills (TAKS) with a minimum scale score of 2200 on the math section and a minimum scale score of 2200 on the English Language Arts section with a writing subsection score of at least 3, shall be exempt from assessment required under this title for those corresponding sections.

(4) [~~3~~] A student who has graduated with an associate or baccalaureate degree from an institution of higher education.

(5) [~~4~~] A student who transfers to an institution from a private or independent institution of higher education or an accredited out-of-state institution of higher education and who has satisfactorily completed college-level coursework as determined by the receiving institution.

(6) [~~5~~] A student who has previously attended any institution and has been determined to have met readiness standards by that institution.

(7) [~~6~~] A student who is enrolled in a certificate program of one year or less (Level-One certificates, 42 or fewer semester credit hours or the equivalent) at a public junior college, a public technical institute, or a public state college.

(8) [~~7~~] A student who is serving on active duty as a member of the armed forces of the United States, the Texas National Guard, or as a member of a reserve component of the armed forces of the United States and has been serving for at least three years preceding enrollment.

(9) [~~8~~] A student who on or after August 1, 1990, was honorably discharged, retired, or released from active duty as a member of the armed forces of the United States or the Texas National Guard or service as a member of a reserve component of the armed forces of the United States.

(b) (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 February 6, 2004.

TRD-200400780

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114

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CHAPTER 8. CREATION, EXPANSION,
DISSOLUTION, OR CONSERVATORSHIP OF
PUBLIC COMMUNITY COLLEGE DISTRICTS
SUBCHAPTER A. DEFINITIONS

19 TAC §8.1

The Texas Higher Education Coordinating Board proposes amendments to §8.1, concerning creation, expansion, dissolution, or conservatorship of public community/junior college districts. Specifically, the Board proposes amendments to §8.1 updating references to Board rules that have changed with the repeal and adoption of other Board rules amendments, and propose an amendment to §8.1 to include a general definition of community colleges as including junior colleges.

Dr. Glenda O. Barron has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the amended rule.

Dr. Barron has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be to clarify and in some cases simplify Board rules concerning formation, dissolution, expansion, and conservatorship of public community college districts. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(b) and (c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapters B and C, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the creation of public community college districts, the dissolution of a public community college district, the approval of a branch campus maintenance tax, the approval of a branch campus, and the conservatorship of a public community college district.

The amendments affect Texas Education Code §§61.051(b) and (c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapters B and C.

§8.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Branch Campuses of Community[~~Junior~~] College Districts--Operate as out-of-district units of existing community[~~junior~~] college districts and provide programs as defined in Texas Education Code, Chapter 130 and set out in §8.25 of this title (relating to Provisions Applicable to Each Type of District) on an ongoing and permanent basis.

(4) - (6) (No change.)

(7) Extension Center or Extension Facility--Any single or multiple location other than the main campus of a community/~~junior~~ college district and outside the boundaries of the taxing authority of a community/~~junior~~ college district. Extension centers and extension facilities are subject to Chapter 4 [5], Subchapter E [H] of this title (relating to Approval of Distance Education and Off-Campus Instruction [Learning] for Public Colleges and Universities).

(8) (No change.)

(9) Governing Board--The body charged with policy direction of any public community/~~junior~~ college district, the technical college system, public state college [lower division institutions], public senior college or university, or other educational agency, including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(10) (No change.)

(11) Inactive Public Community/~~Junior~~ College--A public community/~~junior~~ college district that has failed to establish and maintain a community/~~junior~~ college within three years from the date of its authorization.

(12) Public Community College--Any public junior college or public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(13) [~~12~~] Scholastic Population of a Proposed Community/~~Junior~~ College District--All students enrolled in K-12 for the area to be included in the district.

(14) [~~13~~] State Conservatorship Board--Appointed by the Governor with the consent of the Senate and has the authority, when appointed as conservator of an agency, to:

(A) terminate the employment of any employee whose conduct the board determines contributed to the condition that caused the conservatorship;

(B) employ personnel for the agency;

(C) change the agency's organization or structure as necessary to alleviate the conditions that caused the conservatorship; and

(D) contract with persons for management or administrative services necessary to effect the conservatorship.

(15) [~~14~~] Technical Courses or Programs--Workforce education courses or programs for which semester/quarter credit hours are awarded.

(16) [~~15~~] Vocational Courses or Programs--Workforce education courses or programs for which continuing education units (CEUs) are awarded.

(17) [~~16~~] Workforce Continuing Education Course--A course offered for continuing education units (CEUs) with an occupationally specific objective and supported by state funding. A workforce continuing education course differs from a community service course offered for recreational or avocational purposes and is not supported by state funding.

(18) [~~17~~] Workforce Education--Technical courses and programs for which semester/quarter credit hours are awarded, and vocational courses and programs for which continuing education units are awarded. Technical and vocational courses and programs prepare students for immediate employment or job upgrade within specific occupational categories.

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 February 5, 2004.

TRD-200400748

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114

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SUBCHAPTER B. CREATION OF A PUBLIC COMMUNITY COLLEGE DISTRICT

19 TAC §§8.21 - 8.26, 8.29, 8.30, 8.33 - 8.36

The Texas Higher Education Coordinating Board proposes amendments to §§8.21 - 8.26, 8.29, 8.30, 8.33 - 8.36, concerning creation, expansion, dissolution, or conservatorship of public community/junior college districts. Specifically, the Board proposes these amendments to update references to Board rules that have changed with the repeal and adoption of other Board rules amendments; to include a general definition of community colleges as including junior colleges; to update the reference to the Board committee; and to clarify procedures for counties with a population of less than 150,000 seeking approval of a branch campus maintenance tax.

Dr. Glenda O. Barron has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the amended rules.

Dr. Barron has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be to clarify and in some cases simplify Board rules concerning formation, dissolution, expansion, and conservatorship of public community college districts. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(b) and (c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapters B and C, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the creation of public community college districts, the dissolution of a public community college district, the approval of a branch campus maintenance tax, the approval of a branch campus, and the conservatorship of a public community college district.

The amendments affect Texas Education Code §§61.051(b) and (c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapters B and C.

§8.21. *Purpose.*

This subchapter outlines the process the Coordinating Board shall use in determining the need for a new public community[~~junior~~] college district, and provides specific procedures communities are to follow in requesting approval from the Board for the creation of a public community[~~junior~~] college district and the holding of an election to establish the district.

§8.22. *Authority.*

Texas Education Code, §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the creation of public community[~~junior~~] college districts. The provisions direct the Board to determine the need for the public community[~~junior~~] college district and the ability of the jurisdiction to provide adequate local financial support. The Board shall determine whether programs in the proposed institution will create unnecessary duplication or seriously harm programs in existing community[~~junior~~] college districts. The Board must consider the needs and welfare of the state as a whole, as well as the welfare of the community involved, when authorizing the creation of a community[~~junior~~] college district.

§8.23. *A Community[~~Junior~~] College District Coextensive with an Independent School District or a Union Community[~~Junior~~] College District.*

(a) A community[~~junior~~] college district may be established by:

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

(b) The proposed community[~~junior~~] college district must have a minimum assessed valuation (as defined in the Texas Tax Code, Chapter 1, §1.004) of not less than \$2.5 billion and a total scholastic population of not less than 15,000 in the school year preceding the date of the Letter of Intent as set out in §8.27 of this title (relating to Application Procedures) for the proposed community[~~junior~~] college district. A petition for an election to create a district of this type must be signed by not less than 10% of the qualified voters in the proposed district.

§8.24. *A Single-County or a Joint-County Community[~~Junior~~] College District.*

(a) A county community[~~junior~~] college district may be established by any county in the state. The proposed community[~~junior~~] college district must have a minimum assessed valuation (as defined in the Texas Tax Code, Chapter 1, §1.004) of not less than \$2.5 billion, and a total scholastic population of not less than 15,000 in the school year preceding the date of the Letter of Intent as set out in §8.27 of this title (relating to Application Procedures) for the proposed community[~~junior~~] college district. A petition for an election to create a district of this type must be signed by not less than 10% of the qualified voters of the county.

(b) A joint-county community[~~junior~~] college district may be established by any combination of contiguous counties in the state. The proposed community[~~junior~~] college district must have a minimum assessed valuation (as defined in the Texas Tax Code, Chapter 1, §1.004) of not less than \$2.5 billion, and a total scholastic population of not less than 15,000 in the school year preceding the date of the Letter of Intent as set out in §8.27 of this title (relating to Application Procedures) for the proposed community[~~junior~~] college district. A petition for an election to create a district of this type must be signed by not less than 10% of the qualified voters of each of the counties in the proposed district.

§8.25. *Provisions Applicable to Each Type of District.*

The following additional provisions are applicable to each type of proposed community[~~junior~~] college district:

(1) The proposed community[~~junior~~] college must be planned as a comprehensive two-year institution primarily serving its local taxing district and service area (as defined in the Texas Education Code, Chapter 130, Subchapter J), offering:

(A) - (I) (No change.)

(2) Substantial evidence must be presented indicating that the proposed community[~~junior~~] college shall reach a minimum enrollment of 1,000 full-time equivalent students within three years of the date of its authorization.

(3) Evidence must be given that the proposed community[~~junior~~] college district shall be eligible to receive a proportionate share of the legislative appropriation for public community[~~junior~~] colleges. Eligibility criteria for legislative appropriations are set out in Texas Education Code, §130.003.

§8.26. *Creation of a Local Steering Committee.*

(a) A local group of citizens interested in establishing a community[~~junior~~] college district shall appoint a Steering Committee of at least seven citizens to provide leadership on behalf of the community[~~junior~~] college effort.

(b) The Steering Committee shall be composed of a cross-section of the population in the area, with representation from major civic groups and business and industry. A chair, co-chair, and secretary shall be appointed, along with any other officers who may be of assistance to the committee. Where the proposed community[~~junior~~] college district is to be coextensive with the independent school district, the local board of trustees may serve as the Steering Committee.

(c) The duties of the Steering Committee shall include the following:

(1) (No change.)

(2) be responsible for conducting a feasibility study and survey of the needs and potential for a community[~~junior~~] college district in the area;

(3) provide information to the community which, at a minimum, describes the role, mission, and purpose of a public community[~~junior~~] college;

(4) (No change.)

(5) prepare and circulate a petition for an election to establish a community[~~junior~~] college district; and

(6) (No change.)

§8.29. *Circulation of the Petition.*

(a) The Steering Committee shall be responsible for the circulation of a petition for authorization of an election to establish a community[~~junior~~] college district. At a minimum, the petition shall include: the amounts of proposed bonds, bond tax rate ceiling to be proposed, and maintenance tax limits (not to exceed the limits provided in the Texas Education Code, §130.122) that shall appear on the ballot in the event an election is authorized.

(b) (No change.)

§8.30. *Legality of the Petition.*

(a) After the petition has been circulated among the electorate and has been signed by not less than 10% of the qualified electors of

the proposed district, the petition shall be verified by the appropriate authorities who have the duty of verifying the legality of the petition.

(1) In the case of community~~[/junior]~~ college district coextensive with an independent school district or city which has assumed control of its school, the petition shall be presented to the school district's board of trustees.

(2) In the case of a union, single-county, or joint county community~~[/junior]~~ college district, the petition shall be presented to the county school board if the proposed district encompasses a single county, or county school boards of the respective counties if the proposed district encompasses more than one county. If there is no county school board or school boards, the petition shall be presented to the commissioners' court(s) of the county or counties involved.

(b) (No change.)

§8.33. *Action and Order of the Board.*

(a) Board action on the request for approval to hold an election to create a public community~~[/junior]~~ college district shall be taken at the next quarterly Board meeting. In making its decision, the Board shall consider the needs of the community, the potential impact on other institutions of higher education, and the welfare of the state as a whole.

(b) (No change.)

§8.34. *Calling the Election; Submission of Questions.*

If the Board authorizes an election to establish a community~~[/junior]~~ college district, it shall then be the duty of the district or city school board or the commissioners' court or courts to enter an order for an election to be held in the proposed district at the next authorized election date as provided in the Texas Election Code, §41.001, to determine whether or not such community~~[/junior]~~ college district be created and formed, and to submit the questions of issuing bonds and levying bond taxes, and levying maintenance taxes in the event the district is created. The order shall contain a description of the independent school district or districts, county or counties whose boundaries shall be coextensive with the community~~[/junior]~~ college district to be formed, and fix the date of the election.

§8.35. *Election.*

A majority of the electors in the proposed district, voting in the election, shall determine the question of creation of the community~~[/junior]~~ college district submitted in the order, the election of the original trustees, and the questions of issuing bonds and levying taxes. A majority of the electors voting in such election shall determine such questions submitted in the order.

§8.36. *Resubmissions of Applications.*

Should an election to create a new community~~[/junior]~~ college district fail, a period of 12 months must elapse before resubmission of the proposition to the Board. The Board shall require a strong showing of need and unusual circumstances before approving resubmission before the 12 months have elapsed.

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 February 5, 2004.

TRD-200400749

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 22, 2004
For further information, please call: (512) 427-6114

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**SUBCHAPTER C. DISSOLUTION OF AN
INACTIVE PUBLIC COMMUNITY COLLEGE
DISTRICT**

19 TAC §§8.51, 8.53 - 8.55

The Texas Higher Education Coordinating Board proposes amendments to §§8.51, 8.53 - 8.55 concerning creation, expansion, dissolution, or conservatorship of public community/junior college districts. Specifically, the Board proposes amendments to §8.1 and §8.75 updating references to Board rules that have changed with the repeal and adoption of other Board rules amendments, propose an amendment to §8.1 to include a general definition of community colleges as including junior colleges, propose amendments to §8.74 and §8.123 updating the reference to the Board committee, and propose amendments to §8.96 and §8.98 clarifying procedures for counties with a population of less than 150,000 seeking approval of a branch campus maintenance tax.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning formation, dissolution, expansion, and conservatorship of public community college districts. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the creation of public community college districts, the dissolution of a public community college district, the approval of a branch campus maintenance tax, the approval of a branch campus, and the conservatorship of a public community college district.

The amendments affect Texas Education Code §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C.

§8.51. *Purpose.*

This subchapter sets out the procedures for dissolution by the Coordinating Board of an inactive community~~[/junior]~~ college district which

has failed to maintain or establish a community[~~junior~~] college within three years from the date of its authorization.

§8.53. Initiation of Consideration of Action.

(a) An action to dissolve an inactive public community[~~junior~~] college district may be initiated:

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

(b) The Commissioner shall provide timely written notice of an action to dissolve an inactive public community[~~junior~~] college district to the chair of the governing board of the district.

§8.54. Action by the Board.

(a) At its next scheduled meeting following initiation of an action to dissolve an inactive district, the Coordinating Board may pass a resolution dissolving the inactive public community[~~junior~~] college district. The resolution must set forth:

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

(b) The resolution dissolving the inactive public community[~~junior~~] college district shall be entered in the minutes of the Board and conveyed in writing by the Commissioner to the governing board or responsible officials of the affected district.

§8.55. Protest; Notice of Protest.

(a) Written protest of an action to dissolve an inactive public community[~~junior~~] college district must be delivered to the Commissioner and may be made by:

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

(b) Notice of protest must be sent to the Commissioner within 30 days after the date of the quarterly Coordinating Board at which the resolution to dissolve the inactive community[~~junior~~] college district was passed. If no timely protest is received, the resolution shall become final without further Board action on the 31st day after the quarterly board meeting at which the resolution was passed.

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 February 5, 2004.

TRD-200400750

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER D. FORMATION OF A BRANCH CAMPUS

19 TAC §§8.72 - 8.76

The Texas Higher Education Coordinating Board proposes amendments to §§8.72 - 8.76 concerning creation, expansion, dissolution, or conservatorship of public community/junior college districts. Specifically, the Board proposes amendments to §8.1 and §8.75 updating references to Board rules that have changed with the repeal and adoption of other Board rules amendments, propose an amendment to §8.1 to include a general definition of community colleges as including junior colleges, propose amendments to §8.74 and §8.123 updating the

reference to the Board committee, and propose amendments to §8.96 and §8.98 clarifying procedures for counties with a population of less than 150,000 seeking approval of a branch campus maintenance tax.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning formation, dissolution, expansion, and conservatorship of public community college districts. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the creation of public community college districts, the dissolution of a public community college district, the approval of a branch campus maintenance tax, the approval of a branch campus, and the conservatorship of a public community college district.

The amendments affect Texas Education Code §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C.

§8.72. Authority.

Texas Education Code, §§61.051(c), 61.053, 61.061, 61.062(c)-(d), 130.001(b)(3)-(4), 130.086, and 130.087, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules to define, establish, and authorize a branch campus and to provide rules and regulations for a public community[~~junior~~] college district to operate such a campus.

§8.73. Provisions for Conversion of an Out-of-District Extension Center or Extension Facility to a Branch Campus.

The governing board of a community[~~junior~~] college district may establish and operate a branch campus through conversion of an extension center or extension facility, provided that each course and program has been approved and is subject to the continuing approval of the Coordinating Board.

§8.74. Application and Approval Procedures.

(a) (No change.)

(b) A self-study must be performed by the district to assess whether the proposed branch campus meets the criteria outlined below. The self-study and the extension center or extension facility shall be reviewed by a Board-appointed team, a majority of which should be community college presidents, for the purposes of documenting that it meets the following standards and criteria for quality instruction and support services, as required by the Commission on Colleges of the Southern Association of Colleges and Schools and Coordinating Board rules and regulations:

(1) Role and Mission; Purpose. In its program aspects, a branch campus shall be equivalent to a public community[~~junior~~] college. Therefore, the branch campus must provide:

(A) - (I) (No change.)

(2) - (3) (No change.)

(4) Funding.

(A) - (B) (No change.)

(C) Appropriate accounts which comply with generally accepted accounting principles for the branch campus must be kept and financial reports submitted as required for community[~~junior~~] college districts.

(D) (No change.)

(5) (No change.)

(c) The Board's Committee on Institutional Effectiveness and Excellence [~~Community and Technical Colleges~~] may conduct one or more public hearings on the proposed branch campus to:

(1) (No change.)

(2) determine whether programs in the proposed branch campus will create unnecessary duplication or seriously harm programs in existing community[~~junior~~] college districts or other institutions of higher education in the area; and

(3) assess the potential impact of the proposed branch campus on existing community[~~junior~~] colleges or other institutions of higher education in the area and on the State of Texas.

(d) (No change.)

§8.75. *Action and Order of the Board.*

(a) (No change.)

(b) A resolution shall be entered in the minutes of the Board and conveyed in writing by the Commissioner to the governing board of the community[~~junior~~] college district.

(c) (No change.)

(d) If the Board approves establishment of a branch campus, the governing board of the community[~~junior~~] college district may accept or acquire by purchase or rent land and facilities in the name of said institution.

(e) Board-approved branch campus sites shall be considered as auxiliary locations for the purposes of the Board's distance learning rules and regulations as outlined under Chapter 4 [5], Subchapter E [H] of this title (relating to Approval of Distance Education and Off-Campus Instruction [Learning] for Public Colleges and Universities).

§8.76. *Reclassification.*

The Board may withdraw approval for a branch campus whenever the Board

(1) approves the establishment of a community[~~junior~~] college district which includes the site of the branch campus (Such local effort shall be reviewed by the Board according to the criteria as set forth in Subchapter B of this title (relating to the Creation of a Public Community[~~Junior~~] College District) as to the feasibility of establishing a separate community[~~junior~~] college district),

(2) (No change.)

(3) determines that the community[~~junior~~] college district has failed to maintain the standards and criteria of Board rules and regulations at the branch campus.

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 February 5, 2004.

TRD-200400751

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER E. BRANCH CAMPUS MAINTENANCE TAX

19 TAC §§8.91, 8.94, 8.96, 8.98

The Texas Higher Education Coordinating Board proposes amendments to §§8.91, 8.94, 8.96, and 8.98 concerning creation, expansion, dissolution, or conservatorship of public community/junior college districts. Specifically, the Board proposes these amendments to update references to Board rules that have changed with the repeal and adoption of other Board rules amendments; to include a general definition of community colleges as including junior colleges; to update references to the Board committee; and to clarify procedures for counties with a population of less than 150,000 seeking approval of a branch campus maintenance tax.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning formation, dissolution, expansion, and conservatorship of public community college districts. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the creation of public community college districts, the dissolution of a public community college district, the approval of a branch campus maintenance tax, the approval of a branch campus, and the conservatorship of a public community college district.

The amendments affect Texas Education Code §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C.

§8.91. Purpose.

This subchapter provides rules and regulations setting out the procedure by which a school district or county may levy a public community college district branch campus maintenance tax. The amount of a branch campus maintenance tax shall not exceed five cents on each \$100 valuation of all taxable property in the jurisdiction.

§8.94. Application Procedures.

The Steering Committee and the community college district that is planning the branch campus shall jointly file a Letter of Intent with the Commissioner as soon as practical. The staff of the Board shall offer advice and technical assistance to the Steering Committee under the direction of the Commissioner on procedures and requirements.

§8.96. Circulation of a Petition.

(a) In counties with a population of more than 150,000 [pursuant to the Texas Education Code, Section 130.087(b)], the Steering Committee shall be responsible for the circulation of a petition for authorization of an election to levy a public community college branch campus maintenance tax. At a minimum, the petition shall include the maintenance tax limits that shall appear on the ballot in the event an election is authorized. For counties with a population of 150,000 or less or an independent school district within a county with a population of 150,000 or less, no petition to propose an election for a branch campus maintenance tax is required to be submitted to the Board.

(b) (No change.)

§8.98. Presentation of a Certified Petition to the Board.

(a) (No change.)

(b) The governing body of a county with a population of 150,000 or less or an independent school district within a county with a population of 150,000 or less, on completion and approval of the feasibility study and survey by the Commissioner, on its own motion and without presentation and approval of a certified petition to the Board may order an election to authorize a branch campus maintenance tax.

(c) - (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 February 5, 2004.

TRD-200400752

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER F. CONSERVATORSHIP OF A PUBLIC COMMUNITY COLLEGE DISTRICT

19 TAC §§8.121 - 8.124

The Texas Higher Education Coordinating Board proposes amendments to §§8.121 - 8.124 concerning creation, expansion, dissolution, or conservatorship of public community/junior college districts. Specifically, the Board proposes amendments to these rules to update references to Board rules that have

changed with the repeal and adoption of other Board rules amendments; to include a general definition of community colleges as including junior colleges; to update the references to the Board committee; and to clarify procedures for counties with a population of less than 150,000 seeking approval of a branch campus maintenance tax.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning formation, dissolution, expansion, and conservatorship of public community college districts. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the creation of public community college districts, the dissolution of a public community college district, the approval of a branch campus maintenance tax, the approval of a branch campus, and the conservatorship of a public community college district.

The amendments affect Texas Education Code §§61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C.

§8.121. Purpose.

This subchapter outlines the procedures the Coordinating Board shall use with regard to the conservatorship of a public community college.

§8.122. Authority.

Texas Education Code, §§61.051(b)(c)(e), 61.053, 61.060, 61.061, 61.062, and 130.001 and the Government Code, §2104.031, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for action concerning the conservatorship of a public community college when requested by the Governor and upon the advice and assistance of the State Auditor.

§8.123. Mismanagement Finding; Conservatorship Order.

(a) On the Governor's request the Coordinating Board, with the advice and assistance of the State Auditor, shall determine if a condition of gross fiscal mismanagement exists at a public community college.

(1) When a condition of gross fiscal mismanagement is suspected, the Board shall appoint a delegation to investigate the fiscal condition of the public community college in question. The delegation shall include members of the Committee on Institutional Effectiveness and Excellence [Community and Technical Colleges] and Board staff. The Board shall request assistance from the State Auditor's Office to include one of its staff members as a member of the delegation.

(2) Based upon its review of the public community/~~junior~~ college in the matter of gross fiscal mismanagement, the delegation as set out in ~~paragraph~~ [subsection] (1) of this sub section shall make a report to the Commissioner to include, if appropriate, a recommendation concerning conservatorship.

(3) The Commissioner shall make a report and recommendation concerning conservatorship to the Board for its consideration at the next quarterly Board meeting.

(b) If the Board finds a condition of gross fiscal mismanagement of a public community/~~junior~~ college, the Governor, by proclamation, may appoint a conservator as defined in the Texas Government Code, §2401.001 to act as conservator of the college.

§8.124. *Compensation of a Conservator.*

(a) A conservator appointed by the Governor to act in this capacity is entitled to receive a salary for performing those duties that is equal to the salary of the chief administrative office of the public community/~~junior~~ college under conservatorship, as well as reimbursement of other reasonable and necessary expenses incurred by the conservator.

(b) The public community/~~junior~~ college under conservatorship shall pay the salary and other reasonable and necessary expenses of the conservator from money appropriated or otherwise available to the institution, except to the extent that money to pay the salary is specifically appropriated or made available through the budget execution process for that purpose.

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 February 5, 2004.

TRD-200400753

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICTS AND TECHNICAL COLLEGES

SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §9.1, concerning program development in public two-year colleges. This section provides definitions for terms used throughout the chapter. The repeal is necessary because this section is being replaced with a new §9.1 that is published contemporaneously in this issue of the *Texas Register*. Repealing the rule allows for a new rule which updates definitions and

changes references of "community/junior college" and "technical or associate degree-granting institutions" to two year colleges."

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering these sections will be to clarify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.1. *Definitions.*

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 February 9, 2004.

TRD-200400842

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER B. GENERAL PROVISIONS

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

19 TAC §§9.21 - 9.31

The Texas Higher Education Coordinating Board proposes the repeal of §§9.21 - 9.31, concerning program development in public two-year colleges. The repeal is necessary because these sections are being replaced with new §§9.21 - 9.31 that are

published contemporaneously in this issue of the *Texas Register*. Repealing these rules allow for new rules concerning the general operation of a public two-year college, such as student performance, religious holy days, training for governing boards, driver education courses, and uniform dates for adding/dropping courses pertaining to refunds.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering this repeal of the sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal of the rules is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal of the rules affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

- §9.21. *Purpose.*
- §9.22. *Authority.*
- §9.23. *Student Performance.*
- §9.24. *Religious Holy Days.*
- §9.25. *Training for Governing Boards.*
- §9.26. *Driver Education Courses.*
- §9.27. *Related-Instruction for Apprenticeship Programs.*
- §9.28. *Appropriations.*
- §9.29. *Certification.*
- §9.30. *Name Change.*
- §9.31. *Uniform Dates for Adding/Dropping Courses Pertaining to Refunds.*

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 February 9, 2004.

TRD-200400844
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 22, 2004
For further information, please call: (512) 427-6114

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SUBCHAPTER C. PURPOSE, ROLE, AND MISSION

19 TAC §§9.51 - 9.55

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

The Texas Higher Education Coordinating Board proposes the repeal of §§9.51 - 9.55, concerning program development in public two-year colleges. These sections relate to the purpose, role, and mission of Public Community/Junior and Technical Colleges. The repeal is necessary because these sections are being replaced with new §§9.51 - 9.55 that are published contemporaneously in this issue of the *Texas Register*. Repealing these rules allow for new rules which update references and clarify and strength Board rules.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering this repeal of the sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal of the rules is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal of the rules affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

- §9.51. *Purpose.*
- §9.52. *Authority.*
- §9.53. *Role, Mission, and Purpose of Public Community/Junior and Technical Colleges.*
- §9.54. *Publication of Purpose, Role, and Mission Statements.*
- §9.55. *Board Review of Purpose, Role, and Mission Statements.*

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 February 9, 2004.

TRD-200400846

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER D. TRANSFERABLE ACADEMIC COURSES

19 TAC §§9.71 - 9.77

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

The Texas Higher Education Coordinating Board proposes the repeal of §§9.71 - 9.77 concerning program development in public two-year colleges. These sections relate primarily to transferable academic courses. The repeal is necessary because these sections are being replaced with new §§9.71 - 9.77 that are published contemporaneously in this issue of the *Texas Register*. Repeal of these sections allow for new sections which change references of "community/junior colleges" to "community colleges" and change references of "community/junior and technical" or "associate degree-granting institutions" to "two-year colleges." New provisions regarding the Lower-Division Academic Court Guide Manual have been added. Criteria and procedures for obtaining unique need approval for certain lower-division courses have been refined.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering this repeal of the sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the section as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.71. *Purpose.*

§9.72. *Authority.*

§9.73. *General Provisions.*

§9.74. *Unique Need Courses.*

§9.75. *Compensatory (Including Developmental and Remedial) Education Courses.*

§9.76. *Utilization of Compensatory (Including Developmental and Remedial) Education Courses to Satisfy Degree Requirements.*

§9.77. *Disapproval of Courses; Noncompliance.*

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 February 9, 2004.

TRD-200400848

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.91 - 9.96

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

The Texas Higher Education Coordinating Board proposes the repeal of §§9.91 - 9.96 concerning program development in public two-year colleges. These sections relate to certificate and associate degree programs. The repeal is necessary because these sections are being replaced with new §§9.91 - 9.96 that is published contemporaneously in this issue of the *Texas Register*. Repealing the rules will clarify and strengthen Board rules relating to Certificate and Degree Programs at Public Two-Year Colleges. Sections 9.91 and 9.93 change references of "community/junior and technical" or "associate degree-granting institutions" to "two-year colleges" and §9.95 changes references of "postsecondary institutions" to "two-year colleges and other institutions providing certificate or associate degree programs."

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal of the sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the repeal of the sections are in effect, the public benefit anticipated as a result of administering the repeal of the sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is

no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.91. *Purpose.*

§9.92. *Authority.*

§9.93. *Application, Approval, and Revision Procedures for Instructional Programs in Workforce Education.*

§9.94. *Action and Order of the Board.*

§9.95. *Reporting to the Board.*

§9.96. *Disapproval of Programs; Noncompliance.*

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 February 9, 2004.

TRD-200400850

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER F. WORKFORCE CONTINUING EDUCATION COURSES

19 TAC §§9.111 - 9.117

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

The Texas Higher Education Coordinating Board proposes the repeal of §§9.111 - 9.117 concerning program development in public two-year colleges. These sections relate to workforce continuing education courses. The repeal is necessary because these sections are being replaced with new §§9.111 - 9.117 that is published contemporaneously in this issue of the *Texas Register*. Repealing the rules will clarify and strengthen Board rules regarding Workforce Continuing Education Courses.

Dr. Glenda O. Barron has determined that for each year of the first five years the repeal of these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal of these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal of the sections is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.111. *Purpose.*

§9.112. *Authority.*

§9.113. *General Provisions.*

§9.114. *Application and Approval Procedures for Workforce Continuing Education Courses.*

§9.115. *Funding.*

§9.116. *Reporting to the Board.*

§9.117. *Disapproval of Courses; Noncompliance.*

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 February 9, 2004.

TRD-200400852

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER G. CONTRACTUAL AGREEMENTS

19 TAC §§9.121 - 9.128

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§9.121 - 9.128 concerning program development in public two-year colleges. These sections relate to contractual agreements. The repeal is necessary because these sections are being replaced with new §§9.121 - 9.128 that are published contemporaneously in this issue of the *Texas Register*. Repealing the rules clarify and strengthen Board rules regarding Contractual Agreements.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering the sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.121. *Purpose.*

§9.122. *Authority.*

§9.123. *General Provisions.*

§9.124. *Contractual Agreements for Instruction with Non-SACS/COC-Accredited Organizations Other than Public Secondary Schools.*

§9.125. *Contractual Agreements for Instruction with Public Secondary Schools.*

§9.126. *Contractual Agreements for Instruction with Other SACS/COC-Accredited Institutions of Higher Education.*

§9.127. *Reporting to the Board.*

§9.128. *Disapproval of Courses; Noncompliance.*

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 February 9, 2004.

TRD-200400854

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114

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SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR ASSOCIATE DEGREE-GRANTING INSTITUTIONS

19 TAC §§9.141 - 9.144, 9.146, 9.147

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

The Texas Higher Education Coordinating Board proposes the repeal of §§9.141 - 9.144, 9.146, and 9.147, concerning program development in public two-year colleges. These sections relate to partnerships between secondary schools and public two-year colleges. The repeal is necessary because these sections are being replaced with new §§9.141 - 9.144, 9.146, and 9.147 that are published contemporaneously in this issue of the *Texas Register*. Repealing the rules will clarify and strengthen Board rules regarding Partnerships between Secondary Schools and Public Two-Year Colleges.

Dr. Glenda O. Barron has determined that for each year of the first five years the repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the repeal.

Dr. Barron has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063, 61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063, 61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

- §9.141. *Purpose.*
- §9.142. *Authority.*
- §9.143. *Types of Partnerships.*
- §9.144. *Partnership Agreements.*
- §9.146. *Remedial and Developmental Instruction for High School Students.*
- §9.147. *Tech-Prep Education.*

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 February 9, 2004.

TRD-200400856
 Jan Greenberg
 General Counsel
 Texas Higher Education Coordinating Board
 Proposed date of adoption: April 22, 2004
 For further information, please call: (512) 427-6127



SUBCHAPTER I. DISTANCE EDUCATION

19 TAC §§9.161 - 9.163

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

The Texas Higher Education Coordinating Board proposes the repeal of §§9.161 - 9.163, concerning program development in public two-year colleges. These sections relate to distance education. The repeal is necessary because these sections are being replaced with new §§9.161 - 9.163 that is published contemporaneously in this issue of the *Texas Register*. Repealing the rules clarify Board rules regarding Distance Education.

Dr. Glenda O. Barron has determined that for each year of the first five years the repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the repeal.

Dr. Barron has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the repeal of the sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063, 61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations,

and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063, 61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

- §9.161. *Purpose.*
- §9.162. *Authority.*
- §9.163. *Courses and Programs Offered through Distance Education.*

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 February 9, 2004.

TRD-200400858
 Jan Greenberg
 General Counsel
 Texas Higher Education Coordinating Board
 Proposed date of adoption: April 22, 2004
 For further information, please call: (512) 427-6114



SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.181 - 9.186

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

The Texas Higher Education Coordinating Board proposes the repeal of §§9.181 - 9.186 concerning program development in public two-year colleges. These sections relate to academic associate degree programs. The repeal is necessary because these sections are being replaced with new sections 9.181 - 9.186 that is published contemporaneously in this issue of the *Texas Register*. Repealing the rules clarify and strengthen Board rules relating to Academic Associate Degree Programs.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the repeal of the sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The repeal affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.181. *Purpose.*

§9.182. *Authority.*

§9.183. *Degree Titles, Program Length, and Program Content.*

§9.184. *Approval.*

§9.185. *Reporting to the Board.*

§9.186. *Disapproval of Programs; Noncompliance.*

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 February 9, 2004.

TRD-200400860

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board proposes new §9.1, concerning program development in public two-year colleges. Specifically, the proposed new section updates definitions and changes references of "community/junior college and technical" or "associate degree-granting institutions" to "two year colleges."

Dr. Glenda O. Barron has determined that for each year of the first five years this section is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rule.

Dr. Barron has also determined that for each year of the first five years this section is in effect, the public benefit anticipated as a result of administering these sections will be to clarify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new section may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board,

1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new section affects Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.1. *Definitions.*

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

(1) Academic courses--Semester credit courses included or allowed under the provisions of the Lower-Division Academic Course Guide Manual designed for college transfer to institutions of higher education in completion of associate and baccalaureate degree programs.

(2) Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, associate of science, associate of applied arts, associate of applied science, and the associate of occupational studies degrees. The term "applied" in an associate degree name indicates a program designed to qualify students for immediate employment.

(3) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(4) Certificate program--Workforce programs designed for entry-level employment or for upgrading skills and knowledge within an occupation. Certificate programs serve as building blocks and exit points for AAS degree programs.

(5) Commissioner of Higher Education or Commissioner--The chief executive officer of the Texas Higher Education Coordinating Board.

(6) Concurrent course credit--See "Dual credit."

(7) Continuing education unit or CEU--Ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education.

(8) Contractual agreements--Agreements or contracts between public two-year colleges and one of the following:

(A) a non-SACS/COC-accredited organization, for postsecondary instructional services that could not be offered otherwise;

(B) a public secondary school, for instructional services that could not be offered otherwise; or

(C) another SACS/COC-accredited institution of higher education, whether public or independent.

(9) Contract instruction--Postsecondary workforce education and training in which specific instruction is provided by a public two-year college or a non-SACS/COC-accredited organization to

a contracting entity. This arrangement is utilized when conventional methodology or instructional systems are difficult or impossible to obtain.

(10) Developmental courses--Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college.

(11) Distance education--Classes in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A class is considered a distance education class if students receive more than one-half of the instruction at a distance. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s):

(A) other than the "main campus of a senior institution (or "on campus"), where the primary office of the chief executive officer of the campus is located;

(B) outside the boundaries of the taxing authority of a community college district; or

(C) via instructional telecommunications to any other distance location, including electronic delivery of all types.

(12) Dual credit--A process by which a high school student enrolls in a college course and receives simultaneous academic credit for the course from both the college and the high school. While dual credit courses are often taught on the secondary school campus to high school students only, §4.84 of this title (relating to Institutional Agreements) and §4.85 of this title (relating to Dual Credit Requirements), also apply when a high school student takes a course on the college campus and receives both high school and college credit. Dual credit is also referred to as concurrent course credit; the terms are equivalent. However, dual (or concurrent) enrollment refers to a circumstance in which a student is enrolled in more than one educational institution (including a high school and a college).

(13) Governing board--The body charged with policy direction of any public community college district, the technical college system, public state college, public senior college or university, career school or college, or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(14) Governing board, tech-prep consortium--Consists at a minimum of representatives of each educational entity that participates in a Tech-Prep consortium which determines the policies and operations of the Tech-Prep consortium in accordance with its written by-laws and fiscal agency and personnel agreements. A representative may represent multiple entities as agreed upon by the participating consortium members.

(15) Guidelines for Instructional Programs in Workforce Education (GIPWE)--A Coordinating Board-approved publication containing policies and procedures related to the design, development, proposal, approval, operation, and evaluation of workforce education courses and programs for Texas public institutions of higher education and career schools and colleges.

(16) Independent institution of higher education--A private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article V, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Southern Association of Colleges and Schools Commission on Colleges.

(17) Lower-Division Academic Course Guide Manual (ACGM)--A Coordinating Board-approved publication listing academic courses that public two-year colleges can teach and report for contact hour reimbursement from state appropriations without special approval from the Board.

(18) Public community college--Any public junior college or public community college as defined in Texas Education Code, §§61.003 and 130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §§130.0011 and 130.003.

(19) Public two-year college--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.

(20) Related-instruction--Relates to §9.27 of this title (relating to Related-Instruction for Apprenticeship Programs), organized off-the-job classroom instruction in theoretical or technical subjects required for the completion of an apprenticeship program.

(21) Remedial and compensatory--All courses designated as developmental or remedial in the Lower-Division Academic Course Guide Manual. These courses are designed to address academic deficiencies and may not be offered for college degree credit.

(22) Remedial courses--Courses for high school students designed to correct academic deficiencies and bring students' skills to an appropriate level for graduation from high school.

(23) SACS/COC--The Southern Association of Colleges and Schools Commission on Colleges.

(24) Technical courses or programs--Workforce education courses or programs for which semester/quarter credit hours are awarded.

(25) Tech-Prep consortium--A collaboration of educational entities and, at local option, employer and labor organizations, and universities defined under the Carl D. Perkins Vocational and Technical Education Act, as amended, and the Texas Education Code, Chapter 61, Subchapter T, Tech-Prep Education (hereinafter referred to as "the Code"), which work together to implement a Tech-Prep program.

(26) Unique need academic course--An academic course created by a college to satisfy a unique need and designed to transfer into a baccalaureate program.

(27) Vocational courses or programs--Workforce education courses or programs for which continuing education units (CEUs) are awarded.

(28) Workforce continuing education course--A course offered for continuing education units (CEUs) with an occupationally specific objective and supported by state funding. A workforce continuing education course differs from a community service course offered for recreational or avocational purposes and is not supported by state funding.

(29) Workforce education--Technical courses and programs for which semester/quarter credit hours are awarded, and vocational courses and programs for which continuing education units are awarded. Workforce education courses and programs prepare students for immediate employment or job upgrade within specific occupational categories.

(30) Workforce Education Course Manual (WECM)--An online database composed of the Coordinating Board's official statewide inventory of workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

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 February 9, 2004.

TRD-200400841

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§9.21 - 9.31

The Texas Higher Education Coordinating Board proposes new §§9.21 - 9.31, concerning program development in public two-year colleges. Specifically, the new sections relate to program development in public two-year colleges and to the general operation of a public two-year college, such as student performance, religious holy days, training for governing boards, driver education courses, and uniform dates for adding/dropping courses pertaining to refunds. The differences in these proposed new sections and the sections being proposed for repeal relate to changes in references of "community/junior and technical" or associate degree-granting institutions" to "two-year colleges." Sections 9.23, 9.24, and 9.31 reflect changes in cross-references to other Board rules.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rules are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new rules affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.21. Purpose.

This subchapter outlines the rules and regulations the Coordinating Board shall use in various areas relating to program development and the general operation of a public two-year college.

§9.22. Authority.

The Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year college.

§9.23. Student Performance.

(a) Each public two-year college shall report student performance as prescribed under subsection (b) of this section to the high school or public two-year college last attended during the first year a student is enrolled after graduation from high school.

(b) A student performance report includes initial assessment student test scores, as prescribed under Chapter 4, Subchapter C of this title (relating to Texas Success Initiative), descriptions of developmental education courses required, and individual student grade point averages.

(c) Appropriate safeguards shall be implemented to ensure student privacy in these reports.

§9.24. Religious Holy Days.

Policies regarding religious holy day observances at public two-year colleges are subject to Chapter 4, Subchapter A, §4.4 of this title (relating to Student Absences on Religious Holy Days). This section provides particular requirements for determining acceptable student attendance policies relating to religious holy days.

§9.25. Training for Governing Boards.

Chapter 1, Subchapter A, §1.9 of this title (relating to Training for Members of Governing Boards and Board Trustees) is herein applicable to public two-year colleges. This section provides for the training of members of governing boards and trustees for public institutions of higher education; however, members of community college governing boards may not be required to attend a training session.

§9.26. Driver Education Courses.

Institutions of higher education shall be permitted to offer driver education courses for the purpose of preparing students to obtain a Texas driver's license if approved by the State Board of Education. Institutions of higher education shall be subject to the rules and regulations regarding driver education of the State Board of Education.

§9.27. Related-Instruction for Apprenticeship Programs.

Related-instruction in apprenticeship programs approved by the Bureau of Apprenticeship and Training are eligible for state appropriations. Funding for all other components of apprenticeship programs is subject to the rules and regulations of the Texas Workforce Commission as prescribed under the Texas Education Code, Chapter 133.

§9.28. Appropriations.

To be eligible to receive its proportionate share of the biennial appropriations for support, maintenance, operation, and improvement, each public community college must:

(1) be certified as a public community college as prescribed by §9.29 of this title (relating to Certification);

(2) offer a minimum of 24 semester credit hours of workforce education courses;

(3) have complied with all existing laws, rules, and regulations governing the establishment and maintenance of public community colleges;

(4) collect, from each full-time and part-time student enrolled, appropriate matriculation and other fees as required by law;

(5) grant, when properly applied for, the scholarships and tuition exemptions provided for in the Texas Education Code; and

(6) levy and collect ad valorem taxes as provided by law for the operation and maintenance of the institution.

§9.29. Certification.

The Commissioner shall file with the State Auditor and the State Comptroller on or before October 1 of each year a list of the public community colleges in the state and certify the names of those colleges that have complied with the standards, rules, and regulations prescribed by the Board.

§9.30. Name Change.

(a) The governing board of any public community or junior college district may by a duly adopted resolution change the name of the district by substituting the word "community" for the word "junior" in the name, or by eliminating the word "community" or "junior" from the name of the district, unless the change would cause the district to have the same name as an existing district.

(b) A copy of the resolution duly certified by the secretary of the governing board must be filed with the Board.

(c) The name change shall become effective upon the filing of the resolution with the Board and thereafter all references to the district shall be by use of the new name.

§9.31. Uniform Dates for Adding/Dropping Courses Pertaining to Refunds.

(a) Courses at public community colleges may be added by students up to and including the official census date. A student may not enroll in a course after that date.

(b) Courses at public community colleges may be dropped and a student entitled to a refund of tuition and fees as outlined under Chapter 21, Subchapter A, §21.5 of this title (relating to Refund of Tuition and Fees at Public Community/Junior and Technical Colleges).

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 February 9, 2004.

TRD-200400843

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER C. PURPOSE, ROLE, AND MISSION

19 TAC §§9.51 - 9.55

The Texas Higher Education Coordinating Board proposes new §§9.51 - 9.55, concerning program development in public two-

year colleges. Specifically, the proposed new sections concern approval, publication, and Board review of the role, mission, and purpose of Public Two-year Colleges. The differences in these proposed new sections and the sections being proposed for repeal relate primarily to references to "community/junior colleges" being changed to "community colleges" and references to "community/junior and technical" or "associate degree-granting institutions" being changed to "two-year colleges."

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new sections affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.51. Purpose.

This subchapter provides rules and regulations for public two-year colleges in establishing and publishing their purpose, role, and mission statements, and for the Board's review of these statements.

§9.52. Authority.

The Texas Education Code, §§61.051, 61.053, 61.0511, 61.060, 61.061, 61.062, 130.001, 130.003(e), 130.0011, and 135.01, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the review of the purpose and role and mission statements of public two-year colleges.

§9.53. Role, Mission, and Purpose of Public Two-Year Colleges.

(a) Each public two-year college must develop a statement regarding the purpose, role, and mission of the institution reflecting the three missions of higher education: teaching, research, and public service. The specialized nature of the role and mission of the technical college system is included in Chapter 11 of this title (relating to the Texas State Technical College System).

(b) Each public community college shall include in its role and mission statement the purpose of the community college as prescribed under Texas Education Code, §130.003(e), that it shall primarily serve its local taxing district and service area, offering vocational, technical, and academic courses for certificates or associate degrees. Continuing

education, remedial and compensatory education consistent with open admission policies, and a program of counseling and guidance shall also be provided.

§9.54. Publication of Purpose, Role, and Mission Statements.

Each public two-year college must publish its purpose, role, and mission statement in its official publication for students, generally the college catalog.

§9.55. Board Review of Purpose, Role, and Mission Statements.

As a part of the institutional effectiveness review process prescribed in Chapter 10 of this title (relating to Institutional Effectiveness in Public Two-Year Colleges), the Board staff shall determine if the purpose, role, and mission statement of each institution addresses the specific functions as prescribed by the Texas Education Code, §§61.0511, 130.003(e), 130.0011, and 135.01, for public two-year colleges.

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 February 9, 2004.

TRD-200400845

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER D. TRANSFERABLE ACADEMIC COURSES

19 TAC §§9.71 - 9.77, 9.80

The Texas Higher Education Coordinating Board proposes new §§9.71 - 9.77 and §9.80, concerning program development in public two-year colleges. Specifically, the proposed new sections concern transferable academic courses. The differences in these proposed new sections and the sections being proposed for repeal relate to changes in references of "community/junior colleges" to "community colleges" in §9.73 and changes in references of "community/junior and technical" or "associate degree-granting institutions" to "two-year colleges" in §9.71 and §9.75. New §9.73 adds a provision relating to the inclusion of field of study courses in the Lower-Division Academic Course Guide Manual. Section 9.74 strengthens the criteria and procedures for obtaining unique need approval for certain lower-division courses and §9.77 requires public two-year colleges to notify students who are academic majors of limitations on the number of lower-division semester credit hours that may be accepted in transfer prior to the student's successful completion of 39 semester credit hours of academic coursework. Section 9.80 provides that no funds appropriated to any public two-year college may be expended for any unique need course which has not been approved by Board staff.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated

as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new sections affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.71. Purpose.

This subchapter provides rules and procedures for the approval and continuation of academic courses for public two-year colleges eligible for state appropriations.

§9.72. Authority.

The Texas Education Code, §§61.051(g), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3)-(4), and 130.003(e)(3), authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of transferable academic courses eligible for state appropriations.

§9.73. General Provisions.

(a) State funding shall be provided for lower-division level general academic courses in public community colleges and other appropriate public institutions offering lower-division general academic courses if such courses:

(1) are listed in the Lower-Division Academic Course Guide Manual; or

(2) have been reviewed by the Board staff and have been approved in accordance with the unique need provision; and

(3) are consistent with the Texas Common Course Numbering System.

(b) A standing advisory committee composed of representatives from public community colleges and other appropriate public institutions offering lower-division general academic courses will meet at least annually to recommend to the Coordinating Board staff appropriate courses to be added to, revised, or deleted from the Lower-Division Academic Course Guide Manual, as well as their proper assignment of Texas Common Course Numbers. The Coordinating Board staff shall provide the committee data regarding course enrollments and transferability for the purpose of considering revisions to the Lower-Division Academic Course Guide Manual.

(c) Criteria used to revise the Lower-Division Academic Course Guide Manual shall include the following:

(1) Courses offered by three or fewer community colleges and other appropriate institutions offering lower-division general academic courses during the previous academic year will be reviewed by the committee for deletion unless other factors indicate a need to retain such courses.

(2) Unique need courses which have been offered at several public community colleges and other appropriate institutions offering lower-division general academic courses in different geographic regions of the state may be recommended for addition to the Lower-Division Academic Course Guide Manual upon request of a sponsoring institution.

(3) Revisions in course content may be considered upon request of a sponsoring institution.

(4) Courses included in the lower-division portion of an academic core curriculum at any public institution of higher education may be considered by the committee for inclusion in the Lower-Division Academic Course Guide Manual.

(5) Courses in a Board-approved field of study curriculum as outlined under §4.32 of Board rules (relating to Field of Study Curricula) shall automatically be added to the Lower-Division Academic Course Guide Manual.

§9.74. Unique Need Courses.

(a) An academic course may be approved for unique need if it meets the following criteria:

(1) The course must have college-level rigor. A course designed to meet a community service, leisure, vocational, or avocational need is inappropriate for unique need approval and state appropriations.

(2) The course must be acceptable for transfer and apply toward a baccalaureate degree. In order to satisfy this requirement, the course must meet at least one of the following requirements:

(A) The course has a documented course equivalent at a minimum of two regional universities; or

(B) The course will be accepted in satisfaction of either general education or major requirements at a minimum of two regional universities.

(3) Exceptions may be granted for courses that transfer to a single regional university if the college documents that a large number of its students transfer to that institution and the course is part of a current, documented articulation agreement between the two-year college and the regional university.

(b) Procedures for unique need approval.

(1) The application for each unique need course submitted must be accompanied by a statement of need for the course and a syllabus which includes a course description, detailed course outline, and objectives. Except as specified in subsection (a)(3) of this section, the application must be accompanied by letters from regional universities that clearly indicate the basis for transferability of the course (as a course equivalent, general education course, or academic major course).

(2) Once approved, a unique need course shall be placed on the college inventory for three years. Colleges must reapply for approval of unique need courses every three years.

(c) Courses listed in the Lower-Division Academic Course Guide Manual but offered for a greater number of contact hours or semester credit hours than specified must be submitted for unique need approval.

(d) Courses approved as continuing unique need courses prior to September 1, 2004 shall expire five years from the date of approval.

§9.75. Compensatory (Including Developmental and Remedial) Education Courses.

Developmental/remedial courses approved for two-year college instruction and eligible for state funding are listed in the Lower-Division Academic Course Guide Manual and the Workforce Education Course Manual. Such courses should be used to support both academic and workforce education programs as appropriate.

§9.76. Utilization of Compensatory (Including Developmental and Remedial) Education Courses to Satisfy Degree Requirements.

Courses designated as compensatory in the Lower-Division Academic Course Guide Manual may not be used to satisfy degree requirements. Such courses may be used as corequisites or prerequisites for degree courses as determined by local institutions.

§9.77. Notification to Students of Possible Lower-Division Transfer Limitations.

(a) Two-year public colleges shall notify students who intend to transfer to baccalaureate degree programs of possible limitations on lower-division course work that may be applied toward a baccalaureate degree program at a general academic teaching institution.

(b) Notification to students must occur no later than the semester or term during which the student is expected to accumulate the 39th semester credit hour of academic course work.

(c) The notification shall include §4.25(f) of this title (relating to Requirements and Limitations) and may include additional transfer information that will help students make informed decisions about coursework.

(d) Colleges may notify students either through the mail or through electronic means targeted directly at affected students such as electronic mail, pop-up notices on an electronic registration or advising page, or information included in the student's grade report.

(e) Listing the information on lower-division transfer limits in the institution's catalog, while strongly recommended, is not sufficient to satisfy the requirements of this section.

(f) Each college shall develop a plan to implement this section no later than January 1, 2005 and shall begin notifying affected students no later than September 1, 2005.

§9.80. Disapproval of Courses; Noncompliance.

No funds appropriated to any public two-year college may be expended for any unique need course which has not been approved by the Board staff.

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 February 9, 2004.

TRD-200400847

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.91 - 9.96

The Texas Higher Education Coordinating Board proposes new §§9.91 - 9.96, concerning program development in public two-year colleges. Specifically, the proposed new sections clarify and strengthen Board rules relating to Certificate and Degree Programs at Public Two-Year Colleges. Sections 9.91 and 9.93 change references of "community/junior and technical" or "associate degree-granting institutions" to "two-year colleges" and §9.95 changes references of "postsecondary institutions" to "two-year colleges and other institutions providing certificate or associate degree programs."

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The amendments affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.91. Purpose.

This subchapter provides rules and procedures for the approval and continuation of certificate and associate degree programs in public two-year colleges eligible for state appropriations.

§9.92. Authority.

The Texas Education Code, §61.003, 61.051(e)(f), 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c)-(d), 61.075, 130.001(b)(3)-(4), 130.003(e)(1)(2)(3) and (7) and 135.04, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary technical and vocational certificate and associate degree programs eligible for state appropriations.

§9.93. Application, Approval, and Revision Procedures for Instructional Programs in Workforce Education.

(a) In accordance with the Guidelines for Instructional Programs in Workforce Education as approved by the Board, each institution wishing to offer a new certificate or applied associate degree program must have completed the following procedures:

(1) Completion of the Application for the Approval of a New Technical or Continuing Education Program. Completed application forms and a statement of assurances must be approved by the governing board and the chief executive officer of the institution, and forwarded to the Board's Community and Technical Colleges Division. The statement of assurances must certify that the following criteria have been met:

(A) The institution has documented local and/or regional workforce demand for the program.

(B) Basic and workforce skills have been integrated into the curriculum.

(C) The institution has an enrollment management plan for the program.

(D) The institution has or will initiate a process to establish articulation agreements for the program with secondary and/or senior level institutions.

(E) The program is designed to be consistent with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools, and with the standards of other applicable accrediting agencies, and is in compliance with appropriate licensing authority requirements.

(F) The program would not unnecessarily duplicate existing programs at other institutions.

(G) Representatives from private sector business and industry have been involved in the creation of the program through participation in an advisory committee.

(H) Adequate funding is available to cover all new costs to the institution over the first five years after the implementation of the program.

(I) The institution has an improvement plan in place for all workforce programs that do not currently meet Board standards for both graduation and placement.

(J) The appropriate Higher Education Regional Council has been notified in writing of the proposal for a new program.

(K) Skill standards recognized by the Texas Skill Standards Board, if they exist for this discipline, have been reviewed and considered for inclusion in the curriculum for the program.

(2) Completion of Staff Review Process. The Board staff shall review the application for satisfactory fulfillment of the new program requirements and procedures as outlined in the Board-approved Guidelines for Instructional Programs in Workforce Education. The staff shall confer with the institution when additional information or clarification is needed.

(3) Completion of Formal Program Review. Once the program requirements have been met, the Board staff may schedule the program for formal program review. This review process shall include representatives from the institution, the Board staff, and other appropriate agencies and institutions of higher education.

(4) The Assistant Commissioner for the Community and Technical Colleges Division shall recommend certificate and applied associate degree programs to the Commissioner for approval or disapproval or referral to the Board.

(5) New Program Approval. The Board delegates to the Commissioner final approval authority for all certificate programs, and for applied associate degree programs that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education.

(6) Each quarter, the Commissioner shall send a list of his approvals and disapprovals under this section to Board members. A list of the approvals and disapprovals shall also be attached to the minutes of the next appropriate quarterly meeting.

(7) The Commissioner must forward a program to the Board for consideration at an appropriate quarterly meeting if either of the following conditions is met:

(A) The proposed program is the subject of an unresolved grievance or dispute between institutions.

(B) The Commissioner has disapproved of the proposed program and the institution has requested a Board review.

(b) Each institution wishing to revise an existing certificate or applied associate degree program must complete the procedures as outlined in the Board-approved Guidelines for Instructional Programs in Workforce Education.

(c) Administrative Officers. All programs must be under the direction of an administrator having appropriate authority to ensure that quality is maintained and that programs are conducted in compliance with all applicable laws and rules. Administrative officers must possess credentials, work experience, and/or demonstrated competence appropriate to their areas of responsibility as specified by the Southern Association of Colleges and Schools Commission on Colleges.

(d) Faculty and Staff. Faculty and staff must be approved by the postsecondary institution. Each individual must meet the minimum qualifications established by the Board.

(e) Each public two-year college may classify workforce continuing education and other courses as earning semester credit hours or continuing education units (CEUs). Contact hours reported for workforce education courses which result in either credit hours or CEUs shall be eligible for state appropriations. A course or program that meets or exceeds 360 hours in length must be approved as a technical certificate program except by special justification and approval by Board staff. A course or program that meets or exceeds 780 hours in length must result in the award of appropriate semester credit hours and be applicable to a certificate and an applied associate degree program.

§9.94. Action and Order of the Board.

(a) Board action on the request for approval of a new applied associate degree program in a postsecondary institution that requires Board consideration shall be taken at the next quarterly Board meeting.

(b) A resolution shall be entered in the minutes of the Board and conveyed in writing by the Commissioner to the governing board or the chief executive officer of the postsecondary institution.

§9.95. Reporting to the Board.

(a) Contact hours for courses in approved workforce education certificate and applied associate degree programs from public two-year colleges and other public institutions providing certificate or associate degree programs must be determined and reported in compliance with Board rules and policy as outlined in the Workforce Education Course Manual and state law.

(b) Contact hours for courses in approved academic certificate and associate degree programs at public two-year colleges and other public institutions providing certificate or associate degree programs must be determined and reported in compliance with Board policy as outlined in the Lower-Division Academic Course Guide Manual and state law.

§9.96. Disapproval of Programs; Noncompliance.

No funds appropriated to any public two-year college or other institution providing certificate or associate degree programs shall be expended for any program which has not been approved by the Commissioner or, when applicable, by the Board.

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 February 9, 2004.

TRD-200400849

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER F. WORKFORCE CONTINUING EDUCATION COURSES

19 TAC §§9.111 - 9.117

The Texas Higher Education Coordinating Board proposes new §§9.111 - 9.117 concerning program development in public two-year colleges. Specifically, the proposed new sections clarify and strength Board rules regarding Workforce Continuing Education Courses. New §§9.111, 9.112, 9.114, and 9.116 change references of "community/junior and technical" or "associate degree-granting institutions" to "two-year colleges." New §9.113 adds an exception to the continuing education program limits in §9.113 and new §9.115 clarifies the kinds of continuing education courses that are eligible for state appropriations.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new sections affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063,

61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.111. Purpose.

This subchapter provides rules and procedures for the review and approval of workforce continuing education courses as taught by public two-year colleges.

§9.112. Authority.

The Texas Education Code, §§54.051(n), 54.545, 61.051(j), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3)-(4), 130.003(e)(4), and 130.006, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public two-year colleges for the coordination of workforce continuing education courses eligible for state appropriations.

§9.113. General Provisions.

(a) Tuition and fees for state-funded workforce continuing education courses shall be assessed according to policies established by the Board. The governing board of the institution shall establish tuition and fees for workforce continuing education courses not eligible for state appropriations.

(b) Any workforce continuing education program meeting or exceeding 360 contact hours shall be subject to all of the requirements for workforce education programs for state appropriations as outlined in Chapter 9, Subchapter E of this title (relating to Certificate and Associate Degree Programs).

(c) Any workforce continuing education program meeting or exceeding 780 contact hours in length must result in the award of semester or quarter credit hours and be applicable to a certificate and an applied associate degree program. An exception shall be made for Emergency Medical/Paramedic continuing education programs, which may reach 800 contact hours.

§9.114. Application and Approval Procedures for Workforce Continuing Education Courses.

(a) Any workforce continuing education course listed in the Workforce Education Course Manual (WECM) may be offered by any public two-year college without prior approval by the Board. Courses in the current WECM are valid until revised or deleted by subsequent updates of the WECM.

(b) All workforce continuing education courses shall meet the guidelines outlined in the Guidelines for Instructional Programs in Workforce Education as approved by the Board and the Workforce Education Course Manual.

§9.115. Funding.

(a) Contact hours reported for workforce education courses, which result in continuing education units (CEUs) shall be eligible for state appropriations.

(b) Workforce continuing education courses with fewer than seven (7) contact hours of instruction will not receive state funding unless the specific type and length of instruction are required by local, state, or national licensing, certifying, regulatory, or accrediting agencies.

(c) Community interest courses shall not be eligible for state appropriations.

(d) Workforce Education Course Manual continuing education special topics courses that are not designed to prepare adult students for employment shall not be eligible for state appropriations.

§9.116. Reporting to the Board.

Contact hours for workforce continuing education courses from public two-year colleges must be determined and reported in compliance with Board policy as outlined in the Guidelines for Instructional Programs in Workforce Education as approved by the Board, the Workforce Education Course Manual, and state law.

§9.117. Disapproval of Courses; Noncompliance.

No funds appropriated to any public two-year college may be expended for any workforce continuing education course which has not been approved by the Board staff.

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 February 9, 2004.

TRD-200400851

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER G. CONTRACTUAL AGREEMENTS

19 TAC §§9.121 - 9.128

The Texas Higher Education Coordinating Board proposes new §§9.121 - 9.128, concerning program development in public two-year colleges. As a result of the review of §§9.1 - 9.186 the Board proposes new sections in light of new legislation, amendments to other Board rules, and the desire to clarify and strengthen some sections of Board rules. Specifically, the proposed new sections clarify and strengthen Board rules regarding Contractual Agreements. These rules set out the procedures for approval and reporting of contractual agreements with other institutions. Section 9.128 provides that no appropriated funds may be expended for any course which has not been approved by the Commissioner of Higher Education, even if such course is taught under a contractual agreement. Section 9.126 reflects new cross-references to other Board rules. Sections 9.121 - 9.126 change references of "community/junior colleges" to "community colleges."

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new sections affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.121. Purpose.

This subchapter shall provide rules and regulations to enable public two-year colleges to enter into contractual agreements with other institutions of higher education or non-SACS/COC-accredited organizations (which include but are not limited to public secondary schools and business and industry) to improve the articulation, quality, and efficiency of educational programs and services.

§9.122. Authority.

The Texas Education Code, Subchapter N of Chapter 51, and §§51.923, 61.051(o), 61.053, 61.054, 61.055, 61.060, 61.061, 61.062, 61.064, 61.067, 130.001(b)(3)-(4), 130.006, 130.008, and 130.090, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the public two-year colleges to enter into agreements with other entities to provide for appropriate educational services.

§9.123. General Provisions.

(a) General enrollment or contract training courses that are non-credit and do not result in the award of CEUs are not eligible for any state apportionment funding, but a two-year college is free to market such non-credit or non-CEU training to business, industry, and government at whatever rate can be negotiated with the contracting organization. Exceptions regarding programs serving incarcerated students must be submitted to the Coordinating Board staff for review and approval.

(b) Courses earning CEUs shall be subject to the guidelines published by the Southern Association of Colleges and Schools Commission on Colleges as a condition of eligibility for state appropriations.

(c) All student enrollments for semester hour credit are subject to the provisions of the Texas Success Initiative as applicable.

(d) Public two-year colleges providing courses to organizations for which semester hour credits or CEUs are earned must charge out-of-state tuition to non-resident students who are brought from out of state for such contract courses.

§9.124. Contractual Agreements for Instruction with Non-SACS/COC-Accredited Organizations Other than Public Secondary Schools.

(a) General Policy Guidelines.

(1) Contractual agreements for instruction by public two-year colleges with non-SACS/COC accredited organizations must comply with all current guidelines of the Southern Association of Colleges and Schools Commission on Colleges.

(2) Courses and programs offered under contractual agreements must be consistent with the educational purpose, mission, and goals of the institution.

(3) Courses and programs offered and eligible for state appropriations must remain under the sole and direct control of the sponsoring public two-year college.

(b) Regulations.

(1) Board Approval.

(A) All programs and courses must be approved through the established procedures of the Board.

(B) Requirements. Courses offered must remain under the sole and direct control of the sponsoring public two-year college which exercises ultimate and continuing responsibility for the performance of the functions reflected in the contract. Instructors of courses must meet qualifications as stipulated by the public two-year college. The public two-year college must employ at least one full-time faculty member per degree program and specify in the contract the institutional procedures by which the contracted courses or programs meet the standards of regular programs as disclosed fully in the publications of the institution, specifically including the following:

(i) recruitment and counseling of students;

(ii) admission of students to courses and/or to the sponsoring institution where certificate and associate degree programs are pursued;

(iii) development and evaluation of the curriculum;

(iv) evaluation of student progress;

(v) record keeping;

(vi) tuition and/or fee charges, receipts and disbursement of funds, and refund policy;

(vii) appointment, supervision, and evaluation of faculty; and

(viii) instruction and learning resources.

(2) The Contractual Agreement.

(A) The contractual agreement must be executed by designated officers of the public two-year college and their counterparts in the contracting organization.

(B) The contractual agreement shall establish a definite understanding between the public two-year college and the contracting agency to include each of the items required by this subsection.

(C) The agreement shall specify the work to be performed, the period of the agreement, and the conditions under which any renewal or renegotiation must occur.

§9.125. Contractual Agreements for Instruction with Public Secondary Schools.

(a) General Policy Guidelines.

(1) Public two-year colleges may contract to provide instruction for public secondary schools.

(2) Provision of instruction for public secondary schools by public two-year colleges must be in accordance with rules and guidelines established by the State Board of Education.

(3) Instruction provided under a contractual agreement under this section may include only coursework necessary for students to complete high school. It does not apply to early admission programs for high school students entering college.

(b) Regulations.

(1) Instructors in contract programs with public secondary schools must meet qualifications required by the public two-year college as well as the minimum guidelines approved by the State Board of Education.

(2) An agreement between the public two-year college and the public secondary school must be approved by both governing boards.

(3) Funding for this type of instruction must flow to the public secondary school as the contracting agency. An agreed cost for instruction must be negotiated between the public two-year college and the public secondary school.

§9.126. Contractual Agreements for Instruction with Other SACS/COC-Accredited Institutions of Higher Education.

(a) Public two-year colleges may enter into cooperative undertakings or contractual agreements with other Texas' public two-year colleges as permitted by state law.

(b) Public two-year colleges may enter into cooperative undertakings or contractual agreements with other Texas public institutions of higher education as part of a multi-institution teaching center as outlined under Chapter 5, Subchapter D, §5.78 of this title (relating to Supply/Demand Pathway or other partnership agreements on a shared-cost basis as permitted by state law.

(c) Public two-year colleges may enter into cooperative undertakings or contractual agreements with SACS/COC-accredited independent institutions of higher education as part of a multi-institution teaching center as outlined under Chapter 5, Subchapter D, §5.78 of this title (relating to Supply/Demand Pathway or other partnership agreements on a shared-cost basis as permitted by state law.

§9.127. Reporting to the Board.

Contact hours for contract instruction eligible for state appropriations must be determined and reported in compliance with state law and Board rules and policy.

§9.128. Disapproval of Courses; Noncompliance.

No funds appropriated to any public two-year college may be expended for any course which has not been approved by the Commissioner, even if such course is taught under a contractual agreement.

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 February 9, 2004.

TRD-200400853

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

19 TAC §§9.141 - 9.144, 9.146, 9.147

The Texas Higher Education Coordinating Board proposes new §§9.141 - 9.144, 9.146, and 9.147, concerning program development in public two-year colleges. Specifically, the proposed new sections clarify and strengthen Board rules regarding Partnerships between Secondary Schools and Public Two-Year Colleges. Section 9.143 updates cross-references to

other Board rules and §§9.141 - 9.144 change references of "community/junior colleges" to "community colleges." Section 9.143 and §9.146 align college-readiness assessment requirements with the Texas Assessment of Academic Skills and Board rules on the Texas Success Initiative in §9.143 and §9.146.

Dr. Glenda O. Barron has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering the sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063, 61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new sections affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063, 61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.141. Purpose.

(a) The Coordinating Board encourages and supports partnerships between secondary schools and public two-year colleges including such initiatives as Tech-Prep and dual credit which allow secondary students to receive both high school and college-level credit for college-level courses.

(b) The purpose of this subchapter shall be to provide rules and regulations for partnership initiatives with secondary schools that are unique to public two-year colleges. Rules for partnerships that concern dual credit may be found in Chapter 4, Subchapter D of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges).

§9.142. Authority.

Texas Education Code, §§29.182, 29.184, 61.076(a), 61.851 - 61.855, 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d), authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public two-year colleges to enter into agreements with secondary schools to offer courses which grant credit toward the student's high school academic requirements and/or college-level credit. In addition, the Carl D. Perkins Vocational and Applied Technology Education Act (hereinafter known as "the Act"), as amended, authorizes the State Board of Education in its capacity as the State Board for Career and Technology Education to designate the Coordinating Board as the administering agency of the Tech-Prep Education Act, or that section, part, or title of the Act referring to Tech-Prep Education.

§9.143. Types of Partnerships.

(a) Partnerships for Award of High School Credit Only. Contractual agreements between public school districts and public two-year colleges in which the latter provide instruction in courses to high school students for award of high school credit only. Rules for these agreements are located in Subchapter G, §9.125 of this title (relating to Contractual Agreements for Instruction with Public Secondary Schools).

(b) Partnerships for Award of Dual Credit. Partnerships between secondary schools and public two-year colleges in which the latter provide instruction to high school students for immediate award of both high school credit and college certificate and associate degree credit. Rules covering these partnerships may be found in Chapter 4, Subchapter D of this title (relating to Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges).

(c) Partnerships for Tech-Prep Programs. Partnerships between public school districts and public two-year colleges to allow for the articulation of high school technical courses taught by the high school to high school students for immediate high school credit and later college credit, to be awarded upon enrollment of the students in a two-year college in an associate degree or certificate program.

(d) Partnerships for Remedial or Developmental Instruction for High School Graduates. Partnerships between public school districts and public two-year colleges to provide instruction by the latter to high school students for either remedial course work to prepare students to pass the exit-level Texas Assessment of Knowledge and Skills (TAKS) test or developmental course work to prepare the students to pass an assessment instrument approved by the Board under §4.56 of this title (relating to Assessment Instruments).

§9.144. Partnership Agreements.

(a) Need For Partnership Agreement. For any instructional partnership between a secondary school and a public two-year college, an agreement must be approved by the governing boards or designated authorities of both the public school district or private secondary school and the public two-year college.

(b) Elements of Partnership Agreements. Any partnership agreement as described in §9.143 of this title (relating to Types of Partnerships) must address the following elements:

- (1) student eligibility requirements;
- (2) faculty qualifications;
- (3) location and student composition of classes;
- (4) provision of student learning and support services;
- (5) eligible courses;
- (6) grading criteria;
- (7) transcribing of credit; and
- (8) funding provisions.

§9.146. Remedial and Developmental Instruction for High School Students.

(a) As outlined under Chapter 9, Subchapter G, §9.125 of this title (relating to Contractual Agreements for Instruction with Public Secondary Schools) two-year colleges may contract with public secondary school districts to provide remedial courses for students enrolled in public secondary schools in preparation for graduation from high school. Such courses are not eligible for state appropriations.

(b) High school students who have passed all sections of the exit-level TAKS test with the high school graduation standard may be permitted to enroll in state-funded developmental courses offered by a college at the college's discretion if a need for such course work is indicated by student performance on an assessment instrument approved

by the Board under §4.56 of this title (relating to Assessment Instruments).

(c) Remedial and developmental courses may not be offered for dual credit.

(d) Only a public community college may waive tuition and fees for a Texas public high school student enrolled in a remedial course or a developmental course. Public technical colleges and state colleges may not waive tuition and fees.

§9.147. Tech-Prep Education.

(a) General Provisions.

(1) The State Board of Education, in its capacity as the Board for Career and Technology Education, is the eligible agency responsible for implementation and evaluation of all programs funded in Texas under the Act, as amended, until such time as the Act amends the provision defining the eligible agency.

(2) The State Board of Education, in its capacity as the eligible agency, has designated the Texas Higher Education Coordinating Board as the administering agency responsible for the operation and supervision of that section, part, or title of the Act referring to Tech-Prep Education.

(b) State Administration of Tech-Prep.

(1) The Board shall annually award Tech-Prep funds to eligible consortia in accordance with the Act, as amended, and the Code.

(2) Notwithstanding provisions of the Act and the Code, annual awards to eligible consortia shall be based upon a formula which shall be adopted by the Board after a public hearing.

(3) To be eligible for an award, a consortium shall submit an application and all supporting documentation on an annual basis and in a manner and time frame determined by Board staff that documents and ensures the progress of local consortium activities addressing the requirements of the Act and the Code and enables the state to meet state goals, objectives, and performance criteria, and to meet federal evaluation criteria as designated in the Consolidated State Plan.

(4) Board staff shall assist local consortia with the evaluation of local activities and provide technical assistance to consortia that do not meet evaluation criteria standards or upon request by the consortia.

(5) Board staff shall provide oversight of all Tech-Prep activities to ensure that funds provided by the Act for Tech-Prep education are expended according to provisions of the Act, and the Code.

(c) Consortium Responsibilities.

(1) Each consortium shall create, evaluate, and maintain a long-term strategic plan that addresses goals, objectives, activities, and evaluation criteria supporting local, state, and federal goals and evaluation criteria.

(2) Each consortium shall develop and implement local activities and coordinate the expenditure of funds in accordance with guidelines determined by the Act and the Code, as well as state and local goals and objectives.

(3) Each consortium shall maintain the records on local activities and budgetary expenditures to support evaluation criteria and participate in a scheduled, systematic, evaluation program.

(4) Each consortium shall provide reports on activities, activity outcomes, and budgetary expenditures in a manner and time as established by Board staff.

(5) Each consortium shall ensure that every local school district and public college and university in the consortium service area will have the opportunity to develop Tech-Prep programs of study as defined by the Act and the 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 February 9, 2004.

TRD-200400855

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER I. DISTANCE EDUCATION

19 TAC §§9.161 - 9.163

The Texas Higher Education Coordinating Board proposes new §§9.161 - 9.163, concerning program development in public two-year colleges. As a result of the review of §§9.1 - 9.186 the Board proposes these new sections in light of new legislation, amendments to other Board rules, and the desire to clarify and strengthen some sections of Board rules. Specifically, the proposed new sections clarify Board rules regarding Distance Education. New §9.163 relates to the approval of courses and programs offered through distance education and is identical to the section proposed for repeal except for an updated reference to other Board rules.

Dr. Glenda O. Barron has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063, 61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new sections affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060 - 61.063,

61.084, 130.001(b)(3) - (4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.161. Purpose.

This subchapter provides rules and regulations for public community colleges for the delivery of courses and programs via instructional telecommunications or to locations out of district, out of state, and out of country.

§9.162. Authority.

The Texas Education Code, §§61.051(j), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3) - (4), and 130.086(d), authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for public community colleges for the delivery of courses and programs out of district, out of state, and out of country.

§9.163. Courses and Programs Offered through Distance Education.

(a) Chapter 4, Subchapter E of this title (relating to Approval of Distance Education and Off-Campus Instruction for Public Colleges and Universities) are hereby applicable to public community colleges. These sections provide particular requirements and procedures for the offering of courses and programs by public community colleges at out-of-district, out-of-state, and out-of-country locations.

(b) Courses and programs not eligible for state appropriations and offered in out-of-district, out-of-state, and out-of-country locations shall meet the same rules, regulations, and guidelines established by the Board for courses and programs eligible for state appropriations.

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 February 9, 2004.

TRD-200400857

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE PROGRAMS

19 TAC §§9.181 - 9.186

The Texas Higher Education Coordinating Board proposes new §§9.181 - 9.186, concerning program development in public two-year colleges. As a result of the review of §§9.1 - 9.186 the Board proposes these new sections in light of new legislation, amendments to other Board rules, and the desire to clarify and strengthen some sections of Board rules. Specifically, the proposed new sections clarify and strengthen Board rules relating to Academic Associate Degree Programs. Section 9.183 proscribes the degree titles, program length, and program content of Academic Associate Degree Programs. Sections 9.183 and 9.184 require approval of the Board and reporting to the Board of those programs. Section 9.186 provides that no appropriated funds to any public two-year college or other public institution providing certificate or associate degree may be expended for an academic associate degree program that is not in compliance with these rules by August 1, 2004.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning program development in public two-year colleges. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for various functions relating to program development and the general operation of a public two-year colleges.

The new sections affect Texas Education Code §§51.308, 51.403(e), 51.911, 61.051, 61.053, 61.059, 61.060-61.063, 61.084, 130.001(b)(3)-(4), 130.003, 130.005, 130.0051, 130.008, and 130.009.

§9.181. Purpose.

This subchapter provides rules for the structure of academic associate degree programs in public community colleges and Lamar State College-Port Arthur and Lamar State College-Orange that are eligible for state appropriations.

§9.182. Authority.

The Texas Education Code, §§61.003, 61.051(e) - (f), 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1)(2)(3) and (7) and 135.04, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary certificate and associate degree programs eligible for state appropriations.

§9.183. Degree Titles, Program Length, and Program Content.

(a) An academic associate degree may be called either an associate of arts (AA) or an associate of science (AS) degree.

(1) The associate of arts (AA) is the default title for an academic associate degree program if the college offers only one type of academic degree program.

(2) If a college offers both associate of arts (AA) and associate of science (AS) degrees, the degree programs may be differentiated in one of two ways, including:

(A) The AA program may have additional requirements in the liberal arts and/or the AS program may have additional requirements in disciplines such as science, mathematics, or computer science; or

(B) The AA program may serve as a foundation for the BA degree and the AS program for the BS degree.

(b) Academic associate degree programs must consist of a minimum of 60 SCH and a maximum of 66 SCH.

(c) Except as provided in paragraph (1) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 Semester Credit Hours).

(1) A college may offer a specialized academic associate degree that incorporates a Board-approved field of study curriculum as prescribed by §4.32 of this title (relating to Field of Study Curricula) and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH.

(2) A college that has a signed articulation agreement with a General Academic Teaching Institution to transfer a specified curriculum may offer a specialized associate degree program that incorporates that curriculum.

§9.184. Approval.

Public community colleges and the two public state colleges authorized to offer transfer programs may offer academic associate degree programs that conform to these guidelines without requesting approval from the Board.

§9.185. Reporting to the Board.

Contact hours for courses in approved academic certificate and associate degree programs at public two-year colleges and other public institutions providing certificate or associate degree programs must be determined and reported in compliance with Board policy as outlined in the Lower-Division Academic Course Guide Manual and state law.

§9.186. Disapproval of Programs; Noncompliance.

No funds appropriated to any public two-year colleges and other public institutions providing certificate or associate degree programs shall be expended for any academic associate degree program that is not in compliance with these rules. Existing academic degree programs must be brought into compliance by August 1, 2004.

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 February 9, 2004.

TRD-200400859

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114

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CHAPTER 10. INSTITUTIONAL
EFFECTIVENESS IN PUBLIC TWO-YEAR
COLLEGES

SUBCHAPTER A. PURPOSE, AUTHORITY,
AND DEFINITIONS

19 TAC §§10.1 - 10.3

The Texas Higher Education Coordinating Board proposes amendments to §§10.1 - 10.3 concerning institutional effectiveness in public community/junior and technical colleges. Specifically, the Board proposes these amendments to replace references to "community/junior and technical colleges" with

references to "two-year colleges"; and adding "public" to appropriate references to other institutions.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering the section will be to clarify and in some cases simplify Board rules concerning institutional effectiveness in public two-year colleges and other institutions offering certificate and associate degree programs. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(e)(f)(g)(k)(n)(o), 61.054, 61.055, 61.061, 61.062(c)(d)(e), 61.063, 61.0651, 61.066, 130.001(b)(3)-(5), 130.003, and 135.01, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to provide for the review of the institutional effectiveness of programs, services, and standards of operation for Texas public two-year colleges and other institutions providing certificate and associate degree programs.

The amendments affect Texas Education Code §§61.051(e)(f)(g)(k)(n)(o), 61.054, 61.055, 61.061, 61.062(c)(d)(e), 61.063, 61.0651, 61.066, 130.001(b)(3)-(5), 130.003, and 135.01.

§10.1. Purpose.

(a) The purpose of this chapter is to provide guidelines for the state-level evaluation of public two-year [community and technical] colleges and other institutions providing certificate or associate degree programs through an institutional effectiveness process which:

(1) according to Board approved criteria, assesses and evaluates public two-year [community and technical] colleges and other public institutions providing certificate or associate degree programs in achieving their statutory missions; and

(2) (No change.)

(b) State-level evaluation:

(1) encourages the continuous improvement of Texas public two-year [community and technical] colleges in response to federal and state legislation for higher education, including workforce education and training;

(2) (No change.)

(3) enables Texas public two-year [community and technical] colleges and other public institutions providing certificate or associate degree programs to demonstrate that their programs are developing a well-educated citizenry and highly trained workforce.

§10.2. Authority.

Texas Education Code, §§61.051(e)(f)(g)(k)(n)(o), 61.054, 61.055, 61.061, 61.062(c)(d)(e), 61.063, 61.0651, 61.066, 130.001(b)(3)-(5), 130.003, and 135.01, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules to provide for the

review of the institutional effectiveness of programs, services, and standards of operation for Texas public two-year [community and technical] colleges and other public institutions providing certificate and associate degree programs.

§10.3. 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) Governing board--The body charged with policy direction of any public community[~~junior~~] college district, the technical college system, public state college, public senior college or university, or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(6) Institutional effectiveness--A comprehensive statewide evaluation process for Texas public two-year [community and technical] colleges and other public institutions providing certificate or associate degree programs that takes into account the resources, processes, and results of an educational institution and its programs and services.

(7) Public community college--Any public junior college or public community college as defined in Texas Education Code, §§61.003 and 130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §§130.0011 and 130.003.

(8) Public two-year college--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.

(9) [(7)] Standards of operation--The institutional policies and procedures in place which assist the institution in delivering quality educational programs. These standards are applicable to Texas public two-year [community and technical] colleges and other public institutions providing certificate or associate degree programs.

(10) [(8)] Institutional services--The services of an associate degree or certificate-granting institution to promote student access and achievement, retention, community service efforts, maintenance of facilities and equipment, quality academic areas, and success in transfer.

(11) [(9)] Programs--All certificate and associate degree programs. See "Associate degree program" and "Certificate program."

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 February 5, 2004.

TRD-200400746

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §10.23

The Texas Higher Education Coordinating Board proposes amendments to §10.23, concerning institutional effectiveness

in public community/junior and technical colleges. Specifically, the Board proposes amendments to the section to replace references to "community/junior and technical colleges" with references to "two-year colleges;" and adding "public" to appropriate references to other institutions.

Dr. Glenda O. Barron has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the amended rule.

Dr. Barron has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be to clarify and in some cases simplify Board rules concerning institutional effectiveness in public two-year colleges and other institutions offering certificate and associate degree programs. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.051(e), (f), (g), (k), (n), and (o), 61.054, 61.055, 61.061, 61.062(c), (d), and (e), 61.063, 61.0651, 61.066, 130.001(b)(3) - (5), 130.003, and 135.01, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to provide for the review of the institutional effectiveness of programs, services, and standards of operation for Texas public two-year colleges and other institutions providing certificate and associate degree programs.

The amendments affect Texas Education Code §§61.051(e), (f), (g), (k), (n), and (o), 61.054, 61.055, 61.061, 61.062(c), (d), and (e), 61.063, 61.0651, 61.066, 130.001(b)(3) - (5), 130.003, and 135.01.

§10.23. Compliance and Certification.

The Commissioner shall certify to the proper officials the names of those community[~~junior~~] colleges that have complied with the provisions of this subchapter, as well as other rules and regulations of the Board. Only those institutions which are so certified shall be eligible for and may receive any appropriation made by the legislature to community[~~junior~~] colleges as prescribed in the Texas Education Code, §130.003.

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 February 5, 2004.

TRD-200400747

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114

CHAPTER 12. CAREER SCHOOLS AND COLLEGES

SUBCHAPTER A. PURPOSE, AUTHORITY, AND DEFINITIONS

19 TAC §§12.1 - 12.3

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

Texas Higher Education Coordinating Board proposes the repeal of §§12.1 - 12.3 concerning career schools and colleges. These sections relate to the purpose, authority, and definitions of career schools and colleges. Repealing the rules update references to other Board rules as the result of the repeal and adoption of Board rules in previous Board meetings; and update definitions.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering these sections will be to update references to other Board rules found in these sections and update some definitions concerning career schools and colleges offering associate degree programs. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal of the rules is proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by career schools and colleges.

The repeal affects Texas Education Code Chapter 132, §132.063, and Chapter 61, Subchapter G.

§12.1. Purpose.

§12.2. Authority.

§12.3. Definitions.

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 February 9, 2004.

TRD-200400862
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 22, 2004
For further information, please call: (512) 427-6114

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19 TAC §§12.1 - 12.3

Texas Higher Education Coordinating Board proposes new §§12.1 - 12.3 concerning career schools and colleges. Specifically, the proposed new sections update references to other Board rules as the result of the repeal and adoption of Board rules in previous Board meetings; and update definitions in §12.3.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to update references to other Board rules found in these sections and update some definitions concerning career schools and colleges offering associate degree programs. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@the.cb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by career schools and colleges.

The new sections affect Texas Education Code Chapter 132, §132.063, and Chapter 61, Subchapter G.

§12.1. Purpose.

The purpose of this chapter is to assure the quality and integrity of associate degree programs offered by career schools and colleges by establishing minimum standards and operating requirements, encouraging continuous improvement of degree programs, and promoting institutional accountability.

§12.2. Authority.

The Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, authorize the Board to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by career schools and colleges.

§12.3. Definitions.

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

(1) Agent--A career school or college owner, partner, stockholder, officer, recruiter, administrator, faculty member, financial aid counselor, academic counselor or other person who represents the institution in an official capacity. Persons employed in clerical, custodial, or similar positions, or shareholders with no direct relationship to the institution, are not considered agents of an institution.

(2) Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, the associate of science, the associate of applied arts, the associate of applied science, and the associate of occupational studies degrees.

(3) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(4) Career school or college--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by this chapter, and:

(A) That offers or maintains a course or courses of instruction or study; or

(B) At which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement.

(5) Certificate of Authority--The document provided to a career school or college to certify that it has met the standards set forth in the rules of the Board and that, pursuant to Texas Education Code, Chapter 132 and Chapter 61, Subchapter G, it is authorized to conduct courses and grant associate's degrees as specified in §12.21 of this title (relating to Degree Titles Authorized).

(6) Change of ownership or control--Any change in ownership or control of a career school or college or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college is considered to have changed:

(i) In the case of ownership by an individual, when more than 50 percent of the institution has been sold or transferred;

(ii) In the case of ownership by a partnership or a corporation, when more than 50 percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(7) Cited--Any reference to an institution in a negative finding or action by an accreditor.

(8) Classification of Instructional Programs (CIP) Code-- The 4- or 6-digit code assigned to an approved associate degree program in accordance with the CIP manual published by the U. S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(9) Commissioner or Commissioner of Higher Education-- The chief executive officer of the Texas Higher Education Coordinating Board.

(10) Concurrent instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(11) Contract instruction--Specifically targeted instruction designed by a career school or college and a contracting entity.

(12) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate's, bachelor's, master's, doctor's and their equivalents, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study that is generally regarded and accepted as an academic/occupational degree-level program among Texas postsecondary institutions.

(13) Exempt institution--A degree-granting institution exempt from the Texas Education Code, Chapter 132.

(14) Guidelines for Instructional Programs in Workforce Education (GIPWE)--A Coordinating Board-approved publication containing policies and procedures related to the design, development, proposal, approval, operation, and evaluation of workforce education courses and programs for Texas public institutions of higher education and career schools and colleges

(15) Institution--A career school or college.

(16) List of Approved Programs--The document an institution receives that lists the name of each of the institution's approved degree programs; this list is updated each time an institution receives approval for a new degree program, closes a degree program, or changes the CIP code or title of a degree program.

(17) Owner--The owner of a career school or college means:

(A) in the case of an institution owned by an individual, that individual;

(B) in the case of an institution owned by a partnership, all full, silent, and limited partners;

(C) in the case of an institution owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares;

(D) in the case of an institution in which the ownership interest is held in trust, the beneficiary of that trust; or

(E) in the case of an institution owned by another legal entity, a person who owns at least 10 percent ownership interest in that entity.

(18) Private postsecondary institution--An institution of higher education that:

(A) Is not a public community college, public technical college, public state college, public senior college, or university, medical or dental unit or other agency as defined in the Texas Education Code, §61.003;

(B) Is incorporated under the laws of this state, or maintains a place of business in this state, or has a representative present in this state, or solicits business in this state; and

(C) Furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some or all, leading to a degree, or provides or offers to provide credits alleged to be applicable to a degree.

(19) Program approval--The process whereby a career school or college requests approval from the Board to implement a technical or vocational program of study leading to an applied associate degree.

(20) Program or program of study--Any course or grouping of courses that entitles a student to an applied associate degree or to credits that are applicable to an applied associate degree.

(21) Prospective student--An individual who expresses interest in a program of study and who is provided with written information about the institution or any of the institution's programs.

(22) Texas Success Initiative--A program for each career school or college to:

(A) Assess the academic skills of each entering student to determine the student's readiness to enroll in freshman-level academic coursework using test instruments approved by the Coordinating Board;

(B) Advise students regarding coursework and other means by which to develop academic skills required for successful completion of college-level work; and

(C) Provide a written plan to work with the student to become ready to perform freshman-level coursework.

(23) Target market area--The local, regional, statewide, and/or national area from which the career school's or college's students are drawn and in which employment opportunities have been identified for graduates of that institution's associate degree programs.

(24) Teach-out agreement--A formal arrangement between a closed career school or college and another institution authorized by the Board to grant the associate degree, which provides for student transfer, completion of degree requirements, and awarding degrees to students transferred from the closed career school or college.

(25) Teach-out institution--An institution that is authorized by the Board to grant the associate degree and that has formally accepted the transfer of students from a closed career school or college.

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 February 9, 2004.

TRD-200400861

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114

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SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§12.21 - 12.39

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

The Texas Higher Education Coordinating Board proposes the repeal of §§12.21 - 12.39 concerning career schools and colleges. These sections provide the general provisions relating to career schools and colleges. The repeal is necessary because these sections are being replaced with new §§12.21 - 12.39 that is published contemporaneously in this issue of the *Texas Register*. Repealing the rules reorganize several sections within the subchapter to be more coherent and corrects grammar and syntax; update references to other Board rules in §§12.21, 12.23, 12.29, 12.34, 12.37, 12.38 as the result of the repeal and adoption of Board rules in previous Board meetings; clarify what constitutes travel expenses of Board staff in §12.22; expand degree program approval to include approval of courses leading to an associate degree in §12.25 and §12.26; clarify the distinction between the authority to grant degrees and individual degree program approval in §12.25; provide a codified mechanism by which schools already offering degrees in Texas can open new campuses in §12.25; clarify the Commissioner's actions on a Certificate of Authority (COA) in §12.26; clarify the complaint process in §12.35; clarify the procedure for acting upon adverse findings resulting from a site visit in §12.37; provide for a one-year period in which a school may not submit new degree program applications when the Commissioner has withdrawn or suspended or a school has voluntarily surrendered or suspended the school's COA for non-compliance in §12.37; provide direction for schools that close unexpectedly in §12.38; and clarify the teach-out provision in §12.38.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning career schools and colleges offering associate degree programs, as well as correct grammar and syntax. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by career schools and colleges.

The repeal affects Texas Education Code Chapter 132, §132.063, and Chapter 61, Subchapter G.

- §12.21. *Degree Titles Authorized.*
- §12.22. *Fees and Expenses.*
- §12.23. *Application for a Certificate of Authority.*
- §12.24. *Standards for Associate Degree-Granting Career Schools and Colleges.*
- §12.25. *Commissioner Action on an Application for a Certificate of Authority.*
- §12.26. *Change of Ownership or Control.*
- §12.27. *Closure of a Career School or College.*
- §12.28. *Institutional Evaluation.*
- §12.29. *Accreditation.*
- §12.30. *Texas Success Initiative.*
- §12.31. *Transfer of Credit.*
- §12.32. *Graduation and Job Placement Rates.*
- §12.33. *The Associate of Occupational Studies (AOS) Degree.*
- §12.34. *Concurrent Instruction.*
- §12.35. *Credit for Prior Learning.*
- §12.36. *Complaints.*
- §12.37. *Legal Proceedings.*
- §12.38. *Exemption from the Texas Education Code, Chapter 132.*
- §12.39. *Withdrawal of a Certificate of Authority.*

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 February 9, 2004.

TRD-200400864

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114

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19 TAC §§12.21 - 12.39

The Texas Higher Education Coordinating Board proposes new §§12.21 - 12.39 concerning career schools and colleges. Specifically, the proposed new sections reorganize several sections within the subchapter to be more coherent and corrects grammar and syntax; update references to other Board rules in §§12.21, 12.23, 12.29, 12.34, 12.37, 12.38 as the result of the repeal and adoption of Board rules in previous Board meetings; clarify what constitutes travel expenses of Board staff in §12.22; expand degree program approval to include approval of courses leading to an associate degree in §12.25 and §12.26; clarify the distinction between the authority to grant degrees and individual degree program approval in §12.25; provide a codified mechanism by which schools already offering degrees in Texas can open new campuses in §12.25; clarify the Commissioner's actions on a Certificate of Authority (COA) in §12.26; clarify the complaint process in §12.35; clarify the procedure for acting upon adverse findings resulting from a site visit in §12.37; provide for a one-year period in which a school may not submit new degree program applications when the Commissioner has withdrawn or suspended or a school has voluntarily surrendered or suspended the school's COA for non-compliance in §12.37;

provide direction for schools that close unexpectedly in §12.38; and clarify the teach-out provision in §12.38.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering these sections will be to clarify and in some cases simplify Board rules concerning career schools and colleges offering associate degree programs, as well as correct grammar and syntax. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by career schools and colleges.

The new sections affect Texas Education Code Chapter 132, §132.063, and Chapter 61, Subchapter G.

§12.21. Degree Titles Authorized.

(a) Associate of Applied Science (AAS), Associate of Applied Arts (AAA), and Associate of Occupational Studies (AOS) degrees shall be the only associate degrees authorized under this chapter.

(b) A private postsecondary institution seeking authority to offer a baccalaureate or higher degree shall seek approval from the Board and is subject to the provisions outlined under Chapter 7 of this title (relating to Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas).

§12.22. Fees.

The Board is authorized to establish and collect fees from institutions to offset the costs of associate degree program coordination and administration for career schools and colleges. The Board authorizes the Commissioner to set these fees in an amount not to exceed the actual cost incurred for the service or services the staff provides. The current fee schedule and the nature of the fees are outlined in the Guidelines for Instructional Programs in Workforce Education.

§12.23. Exemption.

(a) A career school or college that applies for and is declared exempt by the Texas Workforce Commission from the Texas Education Code, Chapter 132, shall not operate under the provisions of this chapter. Upon becoming exempt, a degree-granting career school or college shall immediately:

(1) apply for a Certificate of Authority to operate as a private postsecondary educational institution according to the provisions of Chapter 7 of this title (relating to Private and Out of State Public Postsecondary Educational Institutions Operating in Texas); or

(2) cease granting degrees and relinquish the Certificate of Authority to the Board.

(b) If an exempt institution relinquishes its exempt status and obtains approval from the Texas Workforce Commission to operate as a career school or college, the institution shall apply for a Certificate of Authority as outlined under §12.25 of this title (relating to Application for a Certificate of Authority).

§12.24. Standards for Associate Degree-Granting Career Schools and Colleges.

The decision to grant a Certificate of Authority to a career school or college shall be based upon its compliance with the following 15 standards.

(1) Qualifications of Institutional Officers. The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that students will receive education consistent with the objectives of the course or program of study. All administrators of an institution shall meet the qualifications outlined in the Guidelines for Instructional Programs in Workforce Education.

(2) Instructional Assessment. Provisions shall be made for the continual assessment of the program of study, including the evaluation and improvement of instruction.

(3) Curriculum. The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Substantially all of the courses in the program of study shall be offered in organized classes by the institution. All curricula shall meet the standards and criteria outlined in the Guidelines for Instructional Programs in Workforce Education.

(4) Facilities and Equipment. The institution shall have adequate space, equipment, and instructional materials to provide good quality education and training. All facilities and equipment shall meet the standards outlined in the Guidelines for Instructional Programs in Workforce Education.

(5) Financial Resources and Stability. The institution shall have the adequate financial resources and financial stability to satisfy the financial regulations of the Texas Workforce Commission, the U. S. Department of Education if the institution participates in Title IV financial aid programs, and the institution's accrediting agency.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports shall be in accordance with generally accepted accounting practices.

(7) Administrative Resources. The director of a career school or college having a Certificate of Authority shall have daily access to electronic communication, including e-mail and a connection to the Internet/World Wide Web. All institutions shall be able to receive time-sensitive information about Board rules and policies via electronic media.

(8) Faculty. All faculty shall meet the qualifications outlined in the Guidelines for Instructional Programs in Workforce Education.

(9) Catalog. Career schools and colleges shall provide the information described by subparagraphs (A) through (Q) of this paragraph to prospective students prior to enrollment. The institution shall provide students and other interested persons with a catalog or brochure. If any of the information is provided to students in the form of a supplement or addendum to a printed catalog, the institution

shall retain documentation on file to verify that every enrolled student received a copy of the addendum or supplement along with the catalog. The institution shall, on an annual basis, furnish the Board with a copy of its most current catalog and a current roster of all faculty members including names, teaching assignments, qualifying degree, and highest degree earned. The institution shall provide students and other interested persons with a catalog or brochure containing, at minimum, the following information:

- (A) the institution's mission;
- (B) a statement of admissions policies;
- (C) information describing the purpose, length, and objectives of the program(s) the institution offers;
- (D) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;
- (E) cancellation and refund policies;
- (F) a definition of the unit of credit as it applies at the institution;
- (G) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;
- (H) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;
- (I) a listing of full-time faculty members showing highest earned degree and identifying the institution that awarded the degree;
- (J) areas of faculty specialization;
- (K) names and titles of administrators;
- (L) a statement of legal control with the names of the trustees, directors, and officers of the corporation;
- (M) a complete listing of all scholarships offered, if any;
- (N) a statement describing the nature and extent of available student services;
- (O) a statement of transfer credit policy;
- (P) a statement of Texas Success Initiative requirements; and
- (Q) any disclosures specified by the Board or defined in Board rules.

(10) Academic Records. A system of record keeping shall be established and maintained in a manner consistent with accepted and professional practice in higher education. Records shall be securely maintained at all times. Contents of records shall, at minimum, include attendance and progress or grades. Two copies of the information necessary to generate student transcripts shall be maintained at separate locations. At least one copy shall be secured in a manner that is resistant to destruction by fire and natural disaster. In addition,

- (A) transcripts shall be issued upon request of students or former students; and
- (B) an institution may withhold a student transcript as allowed in the Texas Education Code, §132.062.

(11) Refund Policy. The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(12) Student Rights and Responsibilities. A handbook, catalog, or other publication listing the student's rights and responsibilities shall be published and supplied to the student upon enrollment in the institution. The institution shall establish a clear and fair policy regarding due process in disciplinary matters and shall inform each student of these policies in writing.

(13) Housing. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(14) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable rules and regulations of the Coordinating Board, the Texas Workforce Commission, and other relevant agencies.

(15) Library/Learning Resource Center. The institution shall have a library or learning resource center available to all students. The library facilities, equipment, and personnel shall meet the requirements and qualifications outlined in the Guidelines for Instructional Programs in Workforce Education.

§12.25. Application for a Certificate of Authority.

(a) A career school or college must have approval from the Coordinating Board in order to grant associate degrees or to enroll students for courses that may be applicable toward an associate degree. A career school or college that does not have approval to grant associate degrees must request approval from the Board in conjunction with an application for a new degree program as specified in § 12.41 of this title (relating to New Program Application). If approved, the Board shall issue a Certificate of Authority.

(b) A career school or college may submit an Application for a Certificate of Authority to the Board if it:

(1) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a non degree-granting institution for a minimum of two years;

(2) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a degree-granting institution and wishes to open a new campus or branch; or

(3) has been legally operating as a degree-granting institution in another state for a minimum of four years and can verify compliance with all applicable laws and rules in that state.

(c) Application for a Certificate of Authority.

(1) Letter of Intent. A career school or college seeking degree granting authority shall submit a letter of intent for a new program application as outlined in §12.41 of this title (relating to New Program Application).

(2) Initial visit. A member of the Coordinating Board staff shall visit the proposed school to verify compliance with Coordinating Board standards and policies.

(3) Submission of the Application for Approval of a Certificate of Authority, which shall include the following documentation:

- (A) a description of the purpose of the institution;
- (B) names of sponsors or owners of the institution;
- (C) regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution;
- (D) the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing boards;

(E) a full description of the admission requirements;

(F) a description of the facilities, learning resources, and equipment utilized by the institution;

(G) evidence of approval from the Texas Workforce Commission. The Board will not approve an application for a Certificate of Authority unless the Texas Workforce Commission has approved the institution to offer a course of instruction.

(H) the Application for Approval of a New Workforce Program (for Career Schools and Colleges), as specified in §12.41 of this chapter (relating to New Program Application)

(4) Follow-up visit. A member of the Coordinating Board staff may make a follow-up visit to the proposed site for the applicant school prior to implementation of the workforce education program(s).

(5) Fee. The applicant school shall submit the fee for an Application for Approval of a Certificate of Authority as outlined in the Guidelines for Instructional Programs for Workforce Education.

(d) If, in the process of obtaining approval from the Texas Workforce Commission, the applicant school has provided the information required in this section to the Texas Workforce Commission, evidence of approval from the Texas Workforce Commission shall satisfy the requirement in subsection (c) of this section.

§12.26. Commissioner Action on an Application for a Certificate of Authority.

(a) The Commissioner or his/her designee shall approve or disapprove the Application for a Certificate of Authority. Approval of the Application grants the career school or college the authority to award associate's degrees or to enroll students for courses that may be applicable toward an associate degree. Separate program approval shall be required for each associate degree program in accordance with this chapter.

(b) Approval for each specified associate's degree program listed on the List of Approved Programs continues in effect unless the Commissioner withdraws or suspends the Certificate of Authority and/or approval for a specific program because of the institution's failure to comply with Board rules, regulations, and/or policies or because the Texas Workforce Commission revokes the institution's approval to operate. The Certificate of Authority remains the property of the Board; an institution shall return its Certificate of Authority in the event the Commissioner withdraws the Certificate of Authority, the institution voluntarily terminates all associate degree programs, or the institution closes.

§12.27. Institutional Evaluation.

(a) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(b) The evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, success of its students, and the effectiveness of its implementation of the Texas Success Initiative.

§12.28. Accreditation.

(a) Career schools and colleges holding a Certificate of Authority to grant an associate degree shall make available, upon request by the Board, all accrediting agency reports and any findings and institutional responses to such reports and findings.

(b) If cited by an accreditor, a career school or college authorized to grant the associate degree shall, within 30 days of receipt of the accrediting agency's final report, provide the Board with a copy of the citation, the accreditor's final report, and a complete report of all subsequent actions by both the accreditor and the institution.

(c) A career school or college shall operate all associate degree programs in compliance with the standards of its institutional and/or program-level accreditation or with membership in a trade or professional association.

§12.29. Texas Success Initiative.

Each degree-granting career school or college authorized by the Board to grant associate of applied science or associate of applied arts degrees shall assess, by an instrument approved in §4.56 of this title (relating to Assessment Instruments), the academic skills of each entering student and otherwise comply with §§4.51 through 4.59 of this title (relating to the Texas Success Initiative). Career schools and colleges authorized to award an associate of occupational studies degree are exempt from this requirement.

§12.30. Concurrent Instruction.

(a) Concurrent instruction of students enrolled in an associate degree program or in any component of a degree program is prohibited.

(b) The following activities do not constitute concurrent instruction:

(1) voluntary participation in laboratory and/or skill-building activities outside of required lecture and laboratory class sessions;

(2) voluntary participation in study and/or review sessions outside of required lecture and laboratory class sessions;

(3) sitting for proctored examinations;

(4) field trips; or

(5) extracurricular activities.

§12.31. Credit for Prior Learning.

(a) If a career school or college awards credit for prior learning obtained outside a formal collegiate setting, the institution shall establish and adhere to a systematic method for evaluating that prior learning, equating it with course content appropriate to the institution's authorized degree program(s).

(b) The method of evaluating prior learning shall be subject to ongoing review and evaluation by the institution's teaching faculty. In no instance shall course credit be awarded solely on the basis of life experience or years of service in a position or job. Recognized evaluative examinations such as the advanced placement program or the college level examination program may be used to evaluate prior learning.

§12.32. Transfer of Credit.

A career school or college holding a Certificate of Authority to grant an associate's degree shall publish, in a prominent place in the institution's catalog, complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities.

§12.33. Graduation and Job Placement Rates.

A career school or college authorized to grant the associate degree shall provide to each prospective student, newly-enrolled student, and returning student, complete, clearly presented information indicating the institution's current graduation rate by program and job placement rate by program.

§12.34. Change of Ownership or Control.

(a) In the event of a change in ownership or control of a career school or college, the Certificate of Authority is automatically withdrawn unless the institution meets the requirements of this section.

(b) The Commissioner may authorize the institution to retain the Certificate of Authority during and after a change of ownership or control, provided that the institution notifies Board staff of the impending transfer in time for staff to receive, review, and approve the documents listed below and provided that the following conditions are met:

(1) The institution must submit acceptable evidence that the new owner is complying with all Texas Workforce Commission requirements regarding the purchase or transfer of ownership of a career school or college;

(2) The institution must submit an acceptable written statement of assurance that the new owner understands and undertakes to fully comply with all applicable Board rules, regulations, and/or policies; and

(3) The institution must submit satisfactory evidence of financial ability to adequately support and conduct all approved programs. Documentation shall include but may not be limited to independently audited financial statements and auditor's reports.

(c) If the institution does not meet the conditions outlined under this section prior to completion of transfer of ownership or control and the institution loses its Certificate of Authority, the new owner(s) shall submit a new Application for a Certificate of Authority as outlined under §12.25 of this title (relating to Application for a Certificate of Authority) and a new Application for Approval of a New Workforce Program for Career Schools and Colleges for each degree program it wishes to offer, as outlined under §12.41 of this title (relating to New Program Application).

(d) Any modification of an approved associate degree program that results from a change of ownership or control constitutes a program revision. Requests for approval of program revisions shall conform to the procedures and requirements contained in §12.43 of this title (relating to Program Revision) and the Guidelines for Instructional Programs in Workforce Education.

(e) If the ownership or control of a career school or college is transferred within, among, or between different subsidiaries, branches, divisions, or other components of a corporation and if said transfer in no way diminishes the career school's or college's administrative capability or educational program quality, the Commissioner may permit the school to retain its Certificate of Authority during the transfer period. In such cases, the career school or college shall fully comply with all provisions outlined in this section.

§12.35. Complaints.

(a) The Board may investigate a written complaint about a career school or college.

(b) Upon receipt of a written complaint, Board staff shall determine whether the allegations in the complaint, if found to be true, would constitute a violation of Board rules, standards, and/or guidelines.

(1) If the allegations in the complaint do not appear to violate Board rules, standards, and/or guidelines, Board staff shall, within 10 days of receipt of the complaint:

(A) notify the institution and the complainant in writing that the Board received the complaint and that the allegations do not appear to violate Board rules, standards, and/or guidelines and that the matter is concluded with the Board; and

(B) refer the complainant to any other appropriate agency or organization that may assist in resolving the complaint. Board staff shall provide to that agency or organization any relevant information in their possession and notify the institution of the referral and that the matter is concluded with the Board.

(2) If the allegations in the complaint appear to constitute a violation of Board rules, standards, and/or guidelines, Board staff shall, within 10 days of receipt of the complaint:

(A) notify the institution and the complainant in writing that the Board received the complaint and that the allegations in the complaint appear to constitute a violation of Board rules, standards, and/or guidelines if found to be true;

(B) advise the institution and the complainant of the particular rules, standards, and/or guidelines that appear to have been violated;

(C) provide the appropriate department at the Texas Workforce Commission with a copy of the complaint and copies of all relevant correspondence;

(D) initiate an investigation to determine whether the allegations are true and, if true, whether the allegations constitute a violation of Board rules, standards, and/or guidelines; and/or

(E) refer the complainant to any other appropriate agency or organization.

(c) Upon receipt of written notification from Board staff of possible violation under this section, a career school or college shall, within 15 days, provide the Board with a written response and any necessary supporting documentation. The response shall bear the original signature of the institution's chief executive officer or his/her designee.

(d) Board staff shall examine and evaluate the response to a notice under this section and determine whether further investigation is warranted. If further investigation is warranted, Board staff may conduct interviews of students, faculty, and/or any other persons who may possess relevant information; examine institutional documents, files, and/or other records; examine course materials; observe institutional activities; inspect facilities; and/or review any other institutional activity that is relevant to the allegations in the complaint.

(e) If the allegations warrant more immediate action than is described in subsections (b) and (c) of this section, Board staff may notify a career school or college by telephone or electronic mail and proceed immediately with an investigation as described in subsection (d) of this section.

(f) If, at the conclusion of any investigation, Board staff determines that Board rules, standards, and/or guidelines have been violated, Board staff shall notify the complainant and the institution in writing of the specific violations and any corrective action, if warranted, required by the Assistant Commissioner for the Community and Technical Colleges Division.

(g) If, at the conclusion of any investigation, the Board determines that Board rules, standards, and/or guidelines have not been violated, Board staff shall notify the institution and the complainant in writing of its findings and that the matter is concluded with the Board.

§12.36. Legal Proceedings.

(a) A career school or college with a Certificate of Authority shall notify the Board if it becomes a defendant in any administrative, civil, or criminal legal proceeding.

(b) Notification shall be in writing and shall be delivered to the Board not less than seven (7) days after an agent of the institution is served with process.

(c) The institution shall furnish the Board with copies of the original petition and response as soon as they become available.

(d) At the conclusion of proceedings, the institution shall, within 60 days, report the outcome to the Board in writing. The institution may be required to furnish copies of all pleadings in the case.

§12.37. *Withdrawal or Suspension of a Certificate of Authority.*

(a) The Commissioner may withdraw or suspend a Certificate of Authority if an agent of a career school or college with an approved associate degree program:

(1) knowingly violates one or more of the Board rules, regulations, and/or policies, and fails to take satisfactory corrective action;

(2) after being notified of the violation, knowingly violates one or more of the Board rules, regulations, and/or policies, and fails to take satisfactory corrective action;

(3) fails to conduct all academic, technical, and administrative matters pertaining to an approved associate degree program in a manner consistent with Board rules, regulations, and/or policies;

(4) is found to have engaged in any deceptive practice, misrepresentation of fact, and/or fraud relating to the operation of the career school or college or in dealing with students or the public;

(5) is found to have engaged in any activity, conduct, and/or behavior relating to the operation of the career school or college or in dealing with students that is found by a court of law to be illegal and/or improper;

(6) intentionally inhibits, obstructs, or interferes with, either directly or indirectly, the official duties and/or activities of a member of the Board staff and/or a person who has been appointed to represent the Board for the purpose of conducting an on-site inspection of a career school or college and/or inquiring into a complaint against that institution;

(7) intentionally harasses, causes to be harassed, or permits harassment of a member of the Board staff and/or a person who has been appointed to represent the Board while such individual(s) is/are on any property under the control of the career school or college and is/are engaged in official duties; or

(8) upon the conclusion of an on-site visit as described in §12.45 of this title (relating to Evaluation of Program Effectiveness) is determined to have failed to implement and/or operate a degree program(s) according to Board rules, regulations, and/or policies and the failure is of a magnitude or degree that the deficiencies cannot reasonably be corrected.

(b) Upon receipt of satisfactory evidence, the Commissioner may withdraw or suspend a Certificate of Authority for a cause other than those outlined under this section.

(c) A Certificate of Authority is automatically withdrawn if, after receiving 60 days advance notification of the annual fee amount and the date upon which the fee is due, a career school or college fails to remit the annual fee by the due date.

(d) The Commissioner shall provide notice to the institution of any adverse decision under this subchapter. The Commissioner's decision shall be final unless the affected institution requests reconsideration of the decision within 45 days of receipt of notice from the Commissioner. The decision of the Commissioner upon reconsideration shall be the final decision of the Board.

(e) An institution affected by any final decision under this Subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(f) If the Commissioner withdraws an institution's Certificate of Authority or an institution voluntarily returns its Certificate of Authority as the result of adverse findings according to this section, the institution may not reapply for a Certificate of Authority for a minimum of one year from the date of closure or withdrawal.

(g) If the Commissioner suspends an institution's Certificate of Authority or an institution voluntarily suspends its Certificate of Authority as the result of adverse findings according to this section, the institution may not apply for approval of new programs during the period of suspension.

§12.38. *Closure of a Career School or College.*

(a) The governing board, owner, or chief executive officer of a career school or college that plans to cease operation shall provide the Board with written notification of intent to close at least 90 days prior to the planned closing date.

(b) If a career school or college closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(c) If a career school or college closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another career school or college authorized by the Board to hold a Certificate of Authority according to §12.25 of this title (relating to Application for a Certificate of Authority) or with a public two-year college. The agreement shall be in writing and shall contain provisions for student transfer and specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(d) The Certificate of Authority for a career school or college is automatically withdrawn when the institution closes. At his/her discretion, the Commissioner may grant to a career school or college that has a Certificate of Authority temporary approval to award a degree(s) in a program the institution does not have approval for in order to facilitate a formal agreement as outlined under this section.

(1) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(2) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Coordinating Board.

§12.39. *The Associate of Occupational Studies (AOS) Degree.* Granting of the AOS degree shall only occur according to the following terms:

(1) The policy regarding all AOS degrees as adopted by the Board on April 29, 1993, and policies outlined under this section shall guide all proceedings of the Board, staff, and affected institutions.

(2) The State of Texas has four career schools or colleges awarding the AOS degree: MTI College of Business and Technology (known as Microcomputer Technology Institute when the policy was adopted), Universal Technical Institute, Southwest Institute of Technology (known as Southwest School of Electronics when the policy was adopted), and Western Technical Institute. The AOS degree shall be awarded in only the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of the four Institutions may continue to award the AOS degree for those fields listed above and shall be restricted to those fields.

(3) The Board shall not consider new AOS degree programs in other fields from these four career schools or colleges.

(4) The Board shall not consider new AOS degree programs from any other career schools or colleges.

(5) A career school or college authorized to grant the AOS degree shall not represent such degree by using the terms "associate" or "associate's" without including the words "occupational studies." An institution authorized to grant the AOS degree shall not represent such degree as being the equivalent of the AAS or AAA degrees.

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 February 9, 2004.

TRD-200400863

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER C. ASSOCIATE DEGREE PROGRAMS

19 TAC §§12.41 - 12.46

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

The Texas Higher Education Coordinating Board proposes the repeal of §§12.41 - 12.46, concerning career schools and colleges. These sections relate to associate degree programs. The repeal is necessary because these sections are being replaced with new §§12.41 - 12.46 that is published contemporaneously in this issue of the *Texas Register*. Repealing the sections reorganize several sections within the subchapter to be more coherent and corrects grammar and syntax; update references to other Board rules in §12.45 and §12.46 as the result of the repeal and adoption of Board rules in previous Board meetings; and include a provision concerning deficiencies in institutional practices or degree programs in §12.46.

Dr. Glenda O. Barron has determined that for each year of the first five years this repeal is in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result of administering the section will be to clarify and in some cases simplify Board rules concerning career schools and colleges offering associate degree programs, as well as correct grammar and syntax. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal of the rules is proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by career schools and colleges.

The repeal of the rules affects Texas Education Code Chapter 132, §132.063, and Chapter 61, Subchapter G.

§12.41. *New Program Application.*

§12.42. *New Program Approval.*

§12.43. *Program Revision and Closure.*

§12.44. *Contract Instruction.*

§12.45. *Evaluation of Program Effectiveness.*

§12.46. *Appeals Procedure.*

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 February 9, 2004.

TRD-200400866

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



19 TAC §§12.41 - 12.46

The Texas Higher Education Coordinating Board proposes new §§12.41 - 12.46, concerning career schools and colleges. Specifically, the proposed new sections reorganize several sections within the subchapter to be more coherent and corrects grammar and syntax; update references to other Board rules in §12.45 and §12.46 as the result of the repeal and adoption of Board rules in previous Board meetings; and include a provision concerning deficiencies in institutional practices or degree programs in §12.46.

Dr. Glenda O. Barron has determined that for each year of the first five years these sections are in effect, there will not be any fiscal implication to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering the section will be to clarify and in some cases simplify Board rules concerning career schools and colleges offering associate degree programs, as well as correct grammar and syntax. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted to Glenda O. Barron, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752; Glenda.Barron@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new sections are proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by career schools and colleges.

The new sections affect Texas Education Code Chapter 132, §132.063, and Chapter 61, Subchapter G.

§12.41. New Program Application.

In accordance with the Guidelines for Instructional Programs in Workforce Education, each career school or college wishing to offer a new associate degree program shall complete the following items and submit them to the Board's Community and Technical Colleges Division:

(1) Letter of Intent. The applicant school shall submit a letter of intent no less than 30 and not more than 180 days prior to the submission of the Application for Approval of a New Workforce Program.

(2) Application for Approval of a New Workforce Program (for Career Schools and Colleges). The chief executive officer and, if applicable, the governing board of the career school or college shall approve the Application for Approval of a New Workforce Program. The applicant school shall ensure that Board staff receive the Application for Approval of a New Workforce Program no less than three (3) calendar months prior to the intended implementation date or approval deadline for external accreditation, whichever occurs first.

(3) Statement of Assurances (for Career Schools and Colleges). The chief executive officer and, if applicable, the governing board of the career school or college shall approve the Statement of Assurances. The applicant school shall submit the Statement of Assurances with the Application for Approval of a New Workforce Program. The following criteria are included in the Statement of Assurances:

(A) The institution has documented need for the proposed program based on national, regional, and/or local economic forecasts applicable to its target market area.

(B) The institution has identified sufficient employment opportunities within its target market area for the projected number of graduates, taking into consideration the numbers of graduates of similar programs within its target market area.

(C) Instruction in basic workforce skills has been integrated into the curriculum for the proposed program.

(D) Each program award offers at least one of the following: a capstone, an external learning experience, or eligibility to sit for a certification or licensure examination.

(E) All course and program prerequisites are identified on the proposed curriculum outline and included in the credit/contact hour totals for the program.

(F) An enrollment management plan for the program is in place.

(G) The program is consistent with all requirements from other registering, certifying, licensing, and/or accrediting authorities.

(H) An advisory committee composed of representatives from business and industry has been directly involved in the creation of the proposed program.

(I) Adequate funding is available to cover all program costs for the first three years.

(J) The institution is in good standing with its accreditor and the Texas Workforce Commission.

(K) The institution is not currently a defendant in a legal proceeding or has notified the Board according to provisions in this chapter.

(L) Written notice that the proposed program has been sent to the appropriate Higher Education Regional Council(s).

(4) Fee. The applicant school shall submit the fee for an Application for Approval of a New Workforce Education Program as outlined in the Guidelines for Instructional Programs for Workforce Education simultaneously with the Application for Approval of a New Workforce Education Program.

§12.42. New Program Approval.

(a) The Board staff shall review the Application and accompanying documentation for satisfactory fulfillment of the new program requirements and procedures for a new Certificate of Authority and/or new workforce education program as outlined in the Guidelines for Instructional Programs in Workforce Education. The staff shall confer with the career school or college when additional information or clarification is needed.

(b) The Assistant Commissioner for the Community and Technical Colleges Division shall recommend schools and/or associate degree programs to the Commissioner for approval or disapproval or referral to the Board.

(c) The Board delegates to the Commissioner final approval authority for all schools and/or associate degree programs that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education.

(d) The Commissioner shall forward a school and/or program application to the Board for consideration at an appropriate quarterly meeting if:

(1) the proposed program is the subject of an unresolved grievance or dispute between the institution and other colleges or universities; and/or

(2) the Commissioner has disapproved the proposed school and/or program and the institution has requested a Board review at the next quarterly Board meeting.

(e) A career school or college offering an associate degree program at multiple sites shall seek separate approval of each program of study for each site.

(f) The Commissioner shall automatically withdraw approval for any associate degree program not implemented in accordance with Board rules, regulations, and/or policies, and/or not implemented within 18 months of the date of approval.

§12.43. Program Revision.

(a) Each career school or college requesting a program revision shall submit a completed Application for Program Revision and comply with the Guidelines for Instructional Programs in Workforce Education.

(b) A career school or college may close a program voluntarily in accordance with evaluation procedures provided in the Guidelines for Instructional Programs in Workforce Education.

§12.44. Contract Instruction.

Career schools and colleges may contract for specific instruction. All contract instruction shall have education as its primary purpose. In addition,

(1) courses offered under contractual agreements shall be consistent with the educational purpose, mission, and goals of the program and institution; and

(2) courses offered under a contractual agreement shall remain the responsibility of the contracting career school or college and shall be of the same quality as other approved courses.

§12.45. Evaluation of Program Effectiveness.

(a) Every program in which an associate degree is offered shall be evaluated periodically according to procedures the Board has established.

(b) The following evaluation elements shall be assessed in terms of both quantitative and qualitative factors: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, facilities and equipment, instructional practices, student services, public and private linkages, and qualifications of faculty and administrative personnel.

(c) Board staff shall use the results of the program evaluation to identify associate degree programs to be continued or recommended for closure.

(1) If a degree program(s) and/or institutional practice(s) demonstrates deficiencies that can be corrected, institutional agents shall develop a plan to correct the deficiencies identified in the on-site review team report.

(A) The Assistant Commissioner for the Community and Technical Colleges Division shall determine time limits for correcting deficiencies.

(B) Board staff shall reevaluate the program at the end of the established time period. If Board staff determine that the institution has not adequately and/or appropriately corrected the identified deficiencies, the Commissioner may take action to withdraw or suspend the institution's Certificate of Authority as outlined under § 12.37 of this title (relating to Withdrawal or Suspension of a Certificate of Authority).

(2) If a degree program(s) and/or institutional practice(s) demonstrate deficiencies of a nature or magnitude that indicate that the degree program(s) should be closed immediately, the Commissioner shall notify the institution according to the procedures in §12.37 of this title (relating to Withdrawal or Suspension of a Certificate of Authority).

§12.46. Appeals Procedure.

(a) Board staff shall review contested decisions regarding program approval or revision.

(b) In instances where agreement is not achieved, the institution may request a review by the Assistant Commissioner of the Community and Technical Colleges Division. The Assistant Commissioner shall notify the institution of his or her decision within 30 working days of receipt of the request for the review.

(c) Within 30 days of receipt of the Assistant Commissioner's decision, the institution may appeal that decision to the Commissioner. The Commissioner's decision shall be the final decision of the Board.

(d) An institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B, of this title (relating to Dispute Resolution).

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 February 9, 2004.

TRD-200400865

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board proposes amendments to §13.1 of Board rules, concerning Financial Planning. Specifically, §13.1 is amended to add new definitions for clarity.

Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no estimated cost to state.

Dr. Greene has also determined that for each year of the first five years that §13.1 is in effect, the public benefit anticipated as a result of administering the section will be to provide clarity to the rules regarding Financial Planning. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX, 78711; deborah.greene@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.059, 51.307, 51.3062, and 61.027 which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules concerning Financial Planning.

The amendments affect Texas Education Code, §§61.059, 51.307, and 51.3062.

§13.1. Definitions.

The following words and terms, when used in this chapter [subchapter], shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Available University Fund (AUF)--A fund established in Article 7, §18, of the Texas Constitution to receive all interest and earnings of the Permanent University Fund and used to pay the debt service on PUF-backed bonds.

(3) Base Year--the semesters comprising the year of contact hours used for applying the formula funding distribution to the colleges and universities (usually the summer and fall of even years and the spring of odd years).

(4) [~~3~~] Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(5) Contact Hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(6) [~~4~~] Current Operating Funds--Unrestricted (appropriated) funds, designated funds, restricted funds, and auxiliary enterprise funds.

(7) Developmental Coursework--Non-degree-credit courses designed to address a student's deficiencies.

(8) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(9) [~~5~~] Functional categories--Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, and hospital as defined by NACUBO.

(10) General Academic Teaching Institution--Any college, university, or institution so classified in Chapter 61, Texas Education Code, or created and so classified by law.

(11) [~~6~~] General Revenue (GR)--State tax revenue

(12) [~~7~~] Governmental Accounting Standards Board (GASB)--An entity created by the Financial Accounting Foundation to set accounting standards for governmental entities including public institutions of higher education.

(13) [~~8~~] Higher Education Assistance Fund (HEAF)--A fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(14) Institution of Higher Education or Institution--any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in this section.

(15) Institutional Expenditures--All costs of activities separately organized and operated in connection with instructional departments primarily for the purpose of giving professional training to students as a necessary part of the educational work of the related departments.

(16) [~~9~~] Institutional Funds--Fees, gifts, grants, contracts, and patient revenue, not appropriated by the legislature.

(17) [~~10~~] Local Funds--Tuition, certain fees, and other educational general revenue appropriated by the legislature.

(18) [~~11~~] National Association of College and University Business Officers (NACUBO)--Provides guidance in business operations of higher education institutions.

(19) Non-Degree-Credit Developmental Courses--Courses intended for remedial or compensatory education that bear only institutional credit and are not counted toward the total for a degree or certificate program.

(20) [~~12~~] Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

(21) Public Junior College, Public Technical Institute, or Public State College--Any college or institute so classified in the Texas Education Code, §61.003, or created and so classified by law.

(22) Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

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 February 4, 2004.

TRD-200400713

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER B. FORMULA FUNDING

19 TAC §§13.20 - 13.24

The Texas Higher Education Coordinating Board proposes amendments to §§13.20 - 13.24, concerning Financial Planning. Specifically, §13.20 is amended to include a reference to a proposed new exception to formula funding. Section 13.21 is amended to provide authority for implementation of the Texas Success Initiative. Sections 13.22, 13.23 and 13.24 are amended to add the Legislature to the recipient list for the formula recommendations, to change the due date to June 1 of each even-numbered year, and to require the formula advisory committees to identify funding incentives that would encourage implementation of the state's five-year master plan by institutions of higher education.

Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no estimated cost to state.

Dr. Greene has also determined that for each year of the first five years that these sections are in effect, the public benefit anticipated as a result of administering these sections will be improved implementation of the state's plan for higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX, 78711; deborah.greene@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.059, 51.307, 51.3062, and 61.027 which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules concerning Financial Planning.

The amendments affect Texas Education Code, §§61.059, 51.307, and 51.3062.

§13.20. *Purpose.*

The purpose of this subchapter is to establish procedures for making formula funding recommendations to the Governor and the Legislature and to except from such funding certain semester credit hours or contact hours ~~[inform the public and institutions of those procedures].~~

§13.21. *Authority.*

Texas Education Code, §61.059 ~~[(b)]~~ directs the Texas Higher Education Coordinating Board to review and revise formulas for use of the Governor and the Legislative Budget Board in making appropriations recommendations. Texas Education Code, §51.307, authorizes the Board to implement the provisions of the Texas Success Initiative.

§13.22. *Community and Technical College Formulas.*

(a) Formula Advisory Committee.

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

(5) The committee shall identify funding incentives that would encourage implementation by community and technical colleges of the state's plan for higher education as specified in the Texas Education Code, §61.051 (a-3).

(6) [(5)] The committee shall provide an opportunity for institutions, the general public and other interested persons to provide testimony.

(7) [(6)] The committee shall make its recommendations to the Commissioner no later than the February 1 of the year following its appointment.

(b) (No change.)

(c) Community and Technical College Formula Recommendation.

(1) - (3) (No change.)

(4) After adoption, the Commissioner shall transmit the Board's recommendations to the Governor, the Legislature, and the Legislative Budget Board no later than June 1 [May 30] of each even-numbered year.

§13.23. *General Academic Institution Formulas.*

(a) Formula Advisory Committee.

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

(5) The committee shall identify funding incentives that would encourage implementation by general academic institutions of the state's plan for higher education as specified in the Texas Education Code, §61.051 (a-3).

(6) [(5)] The committee shall provide an opportunity for institutions, the general public and other interested persons to provide testimony.

(7) [(6)] The formula advisory committee may appoint two study committees, one for the instructional and operations formula and another for the infrastructure formula. The study committees may include members from the formula advisory committees and other institutional representatives as appropriate. The infrastructure study committee will include at least one representative from the Texas State

Technical College System or the two-year colleges in the Texas State University System.

(8) [(7)] The formula study committees shall make their recommendations to the formula advisory committee no later than the January 15 of the year following its appointment.

(9) [(8)] The formula advisory committee shall make its recommendations to the Commissioner no later than the February 1 of the year following its appointment.

(b) General Academic Institution Formula Recommendation.

(1) - (3) (No change.)

(4) After adoption, the Commissioner shall transmit the Board's recommendations to the Governor, the Legislature, and the Legislative Budget Board no later than June 1 [May 30] of each even-numbered year.

§13.24. *Health-Related Institution Formulas.*

(a) Formula Advisory Committee.

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

(5) The committee shall identify funding incentives that would encourage implementation by health-related institutions of the state's plan for higher education as specified in the Texas Education Code, §61.051 (a-3).

(6) [(5)] The committee shall provide an opportunity for institutions, the general public and other interested persons to provide testimony.

(7) [(6)] The formula advisory committee may appoint two study committees, one for the instructional and operations formula and another for the infrastructure formula. The study committees may include members from the formula advisory committees and other institutional representatives as appropriate.

(8) [(7)] The formula study committees shall make their recommendations to the formula advisory committee no later than the January 15 of the year following its appointment.

(9) [(8)] The formula advisory committee shall make its recommendations to the Commissioner no later than the February 1 of the year following its appointment.

(b) Health-Related Institution Formula Recommendation.

(1) - (3) (No change.)

(4) After adoption, the Commissioner shall transmit the Board's recommendations to the Governor, the Legislature, and the Legislative Budget Board no later than June 1 [May 30] of each even-numbered 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 February 4, 2004.

TRD-200400714

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



19 TAC §13.25

The Texas Higher Education Coordinating Board proposes new §13.25, concerning Financial Planning. Specifically, new §13.25 is proposed, concerning prohibiting public institutions of higher education from submitting for formula funding either semester credit hours or contact hours attempted by students who have enrolled in courses containing the same content for a third or more times at their institutions since Fall 2002.

Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no estimated cost to state.

Dr. Greene has also determined that for each year of the first five years that §13.25 is in effect, the public benefit anticipated as a result of administering the section will be a reduction in general revenue required to support higher education formula funding. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX, 78711; deborah.greene@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, §§61.059, 51.307, 51.3062, and 61.027 which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for Financial Planning.

The new section affects Texas Education Code, §§61.059, 51.307, and 51.3062.

§13.25. Formula Funding Exceptions.

(a) During each base year and non-base year, an institution shall not submit for formula funding any semester credit hours or contact hours attempted by a student who has enrolled in any course, other than a non-degree-credit developmental course, containing the same content for a third or more times at their institutions since Fall Semester 2002. This provision is effective for the Spring 2004 semester for credit students and for Third Quarter 2004 for continuing education students.

(b) During each base year and non-base year, an institution shall not submit for formula funding any semester credit hours attempted by a student who has enrolled in development coursework, if the semester credit hours for that student in development coursework exceeds 18 semester credit hours, for a general academic teaching institution, or 27 semester credit hours for a public junior college, public technical institute, or public state college.

(c) English as a Second Language (ESL) hours may be used for developmental education purposes when a student is placed in such courses as a result of failing the reading or writing portion of a test required by the Texas Success Initiative. However, when used for such purposes, ESL hours shall be counted toward the 18/27 hour cap.

(d) Semester credit hours or contact hours attempted by students for the following types of coursework are exempt from the provisions of this section:

- (1) thesis and dissertation courses.

(2) courses that may be repeated for credit because they involve different or more advanced content each time they are taken, including but not limited to, individual music lessons, Workforce Education Course Manual Special Topics courses (when the topic changes), theater practicum, music performance, ensembles, certain physical education and kinesiology courses, and studio art.

(3) independent study courses, except when the independent study course has the same content as a course the student has already taken two or more times.

(4) special topics courses that may be repeated for credit with different content, except when a special topics course has the same content as a course the student has already taken two or more times.

(5) Continuing education courses that must be repeated to retain professional certification.

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 February 4, 2004.

TRD-200400715

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER C. BUDGETS

19 TAC §§13.43, 13.45 - 13.47

The Texas Higher Education Coordinating Board proposes amendments to §§13.43, 13.45, 13.46, and 13.47, concerning Financial Planning. Specifically, §13.43 is amended to clarify the distribution list of the annual budgets and to change the due date to December 1 of each fiscal year. Section 13.45 is amended, to add the requirement that budgets be prepared within the limits of revenue available and §13.46 and §13.47 are amended, to provide more easily understood titles for the sections.

Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no estimated cost to state.

Dr. Greene has also determined that for each year of the first five years that these sections are in effect, the public benefit anticipated as a result of administering these sections will be increased efficiency and effectiveness of data collection. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX, 78711; deborah.greene@thehb.state.tx.us. Comments will be accepted

for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§61.059, 51.307, 51.3062, and 61.027 which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules concerning Financial Planning.

The amendments affect Texas Education Code, §§61.059, 51.307, and 51.3062.

§13.43. Distribution of Budgets.

Copies of the current operating funds, PUF/AUF, and HEAF budget shall be furnished to the Board (two copies), [~~for distribution to~~] the Governor's Budget and Planning Office, Legislative Budget Board, and Legislative Reference Library by December 1 of each fiscal year. Copies shall be maintained in the institution's library.

§13.45. Format of Current Operating Funds Budgets.

The operating budgets shall:

- (1) - (3) (No change.)
- (4) include a summary of the instructional budget by college or school for the current and preceding year; [~~and~~]
- (5) include a summary by amount and method of finance for each listed informational item in the general appropriation act, and [~~]~~
- (6) be prepared within the limits of revenue available.

§13.46. Format for Permanent University Fund/Available University Fund (PUF/AUF) [~~PUF/AUF~~] Budget.

The PUF/AUF budget shall:

- (1) - (2) (No change.)

§13.47. Format for Higher Education Assistance Fund (HEAF) [~~HEAF~~] Budget.

The HEAF budget shall:

- (1) - (3) (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 February 4, 2004.

TRD-200400716

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER D. FINANCIAL REPORTING

19 TAC §13.63, §13.64

The Texas Higher Education Coordinating Board proposes new §13.63 and §13.64 of Board rules, concerning Financial Planning. Specifically, new §13.63 is proposed, concerning additional financial information reporting, and new §13.64 is proposed, concerning Available University Fund Reporting.

Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each

year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no estimated cost to state.

Dr. Greene has also determined that for each year of the first five years that §13.63 and §13.64 are in effect, the public benefit anticipated as a result of administering these sections will be increased efficiency and effectiveness of data collection. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711; deborah.greene@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, §§61.059, 51.307, 51.3062, and 61.027 which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for Financial Planning.

The new sections affect Texas Education Code, §§61.059, 51.307, and 51.3062.

§13.63. Additional Financial Information Reporting.

(a) Each university system, general academic institution, community, technical or state college, and health-related institution shall continue to provide to the Board financial data related to the operation of each system office and institution as it was reported in the 2001 annual financial report.

(b) Each system office and institution of higher education shall provide the report no later than January 1 of each year using the specific content and format prescribed by the Board.

§13.64. Available University Fund (AUF) Reporting.

(a) The University of Texas System Board of Regents and the Texas A&M University System Board of Regents shall report the uses of the Available University Fund (AUF) for each system component and for system office operations for the two previous years, the current year, and two future years (projected), including:

- (1) Debt service allocations, by component,
- (2) Bond proceeds allocations, by component,
- (3) Excellence allocations, or system office, and their purposes,
- (4) Available University Fund income, interest, beginning- and end-of-year balances; and
- (5) The rationale used by the respective boards to distribute AUF funds.

(b) In addition, by December 1 of each year, authorized managers of permanent funds and endowments whose earnings are appropriated in the General Appropriation Act shall submit an annual financial report that shall include, at a minimum, an income statement and balance sheet and a summary of the investment return of the fund during the preceding fiscal year. The annual financial report shall also contain:

- (1) A summary of all gains, losses, and income from investments and an itemized list of all securities held for the fund on August 31;

(2) Any other information necessary to indicate clearly the nature and extent of investments made of the fund and all income realized from the components of the fund.

(c) The annual financial report shall be distributed to the Governor, the Legislature, the Legislative Budget Board, and the Board by December 1 of each year.

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 February 4, 2004.

TRD-200400717

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 5, 2004

For further information, please call: (512) 427-6114



SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

19 TAC §§13.190, 13.193 - 13.195

The Texas Higher Education Coordinating Board proposes amendments to §§13.190, 13.193, 13.194, and 13.195, concerning the Technology Workforce Development Grant Program. Specifically, §13.190 is amended to correct statutory citation. Sections 13.193 and 13.194 are amended to allow for the establishment and dissemination of project funding recommendations prior to review panel meetings and §13.195 is amended to allow longer term grants.

Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules. There is no estimated cost to state.

Dr. Greene has also determined that for each year of the first five years that these sections are in effect, the public benefit anticipated as a result of administering the section will be the increased efficiency in the administration of this grant program. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Deborah Greene, Assistant Commissioner for Finance, Campus Planning, and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX, 78711; deborah.greene@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §§51.851 - 51.860.

The amendments affect Texas Education Code, §§51.851 - 51.860.

§13.190. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter V, Technology Workforce Development. These rules establish rules for administering the grant program as prescribed in the Texas Education Code, §§51.851 [61.942] - 51.860 [61.945].

(b) Scope. Unless otherwise noted, this subchapter applies to ~~the Texas Higher Education Coordinating Board and~~ any Texas institution of higher education seeking funding under this program.

(c) (No change.)

§13.193. Proposal Solicitation.

(a) - (b) (No change.)

(c) The request for proposals shall contain all information necessary to prepare a grant proposal for the program including the financial and other resources available for distribution, ~~and~~ the evaluation criteria that will be used by the review panels, and the award selection criteria that shall be used in funding projects.

(d) - (e) (No change.)

§13.194. Proposal Evaluation and Project Selection.

(a) The Commissioner shall organize a competitive, peer-review system for evaluating proposals.

(b) Prior to the review panel meetings, the advisory committee shall establish the criteria for allocating available funds to projects ranked by peer review. The criteria shall be published on the Coordinating Board's web site.

(c) ~~[(b)]~~ In evaluating proposals, reviewers shall consider the quality of the academic program, placement record for recent graduates, the feasibility of the institution's plans for increasing enrollments and graduates, and the cost-effectiveness of those plans. The review panels shall deliver a ranked list of competitively selected proposals to the Commissioner.

(d) ~~[(e)]~~ The advisory committee shall review the selections [recommendations] of the reviewers and the recommendations of the staff and make recommendations to the Board. A committee member shall publicly disclose any personal, professional, or private interest in a proposal pending before the committee and shall not vote or otherwise participate in the decision regarding proposal recommendations. A committee member shall not be personally involved in handling any proposal, award, or other matter in which the member, a member's immediate family, a member's general business partner, or a member's institution has or may have a financial interest.

(e) ~~[(d)]~~ Any information related to the evaluation and selection of proposals for the grant awards shall be confidential unless released by the Board pursuant to Subsections ~~(f) [(e)]~~ and ~~(g) [(f)]~~ of this section.

(f) ~~[(e)]~~ Reviews will not be disclosed to persons outside the Board at any time, except that each project leader (grant applicant) will receive a copy of the reviewers of his or her proposal with the names, affiliations, and any other identifying characteristics of the reviewers redacted; and

(g) ~~[(f)]~~ The names and affiliations of reviewers will be released as a group, without an identifying link to any grant application, until after the review process is complete.

(h) ~~[(g)]~~ ~~[For Fiscal Year 2002, the Commissioner shall make the grant awards. Thereafter, the Board shall make grant awards.]~~ Decisions of the Commissioner/Board are final.

§13.195. *Grants.*

- (a) (No change.)
- (b) Grants shall be for a period of no longer than five [~~three~~] years.
- (c) - (f) (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 February 4, 2004.

TRD-200400718
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 22, 2004
For further information, please call: (512) 427-6114



CHAPTER 25. OPTIONAL RETIREMENT PROGRAM
SUBCHAPTER A. OPTIONAL RETIREMENT PROGRAM

19 TAC §§25.1 - 25.3

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

The Texas Higher Education Coordinating Board proposes the repeal of §§25.1 - 25.3, concerning Optional Retirement Program, in its entirety. Specifically, this repeal will delete the current Subchapter A and all sections within it regarding Optional Retirement Program. The repeal is the result of the Texas Higher Education Coordinating Board's review of Chapter 25, which was posted in the *Texas Register* on September 19, 2003. New sections are being proposed to Chapter 25 concerning ORP eligibility, uniformity policies, recent legislative changes, and improvement of clarity and consistency. These new sections will require the addition of several sections and a re-organization of the existing rules. For that reason, the Board proposes the repeal of Chapter 25, in its entirety, and separately posts proposed new chapters and sections.

Toni Alexander, ORP Coordinator for the Texas Higher Education Coordinating Board, has determined that there will not be any fiscal implications to state or local government as a result of the rules repeal.

Ms. Alexander has also determined that for each year of the first five years that the repeal is in effect, there will be no public benefit anticipated. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal. There is no impact on local employment.

Comments on the proposed repeal may be submitted to Toni Alexander, ORP Coordinator, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; toni.alexander@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Government Code, §§830.001 - 830.205 which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the Optional Retirement Program.

The repeal affects Texas Government Code, §§830.001 - 830.205.

- §25.1. *Purpose.*
- §25.2. *ORP Eligibility Standards.*
- §25.3. *ORP Standards.*

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 February 5, 2004.

TRD-200400737
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 22, 2004
For further information, please call: (512) 427-6114



19 TAC §§25.1 - 25.6

The Texas Higher Education Coordinating Board proposes new §§25.1 - 25.6 of Board rules, concerning the Optional Retirement Program (ORP). The proposed new sections re-organize existing Subchapter A, concerning the Optional Retirement Program. In conducting the review of Chapter 25 in light of bills passed by the 78th Legislature, advice from the Board's General Counsel, and recent ORP policy interpretations by Board staff, it was determined that amendments to Chapter 25 were needed regarding ORP eligibility, uniformity policies, recent legislative changes, and improvement of clarity and consistency. These new sections will require the addition of several sections and a re-organization of the existing rules. For that reason, the Board has posted separately the repeal of Chapter 25, in its entirety, and herein proposes a new Subchapter A and sections. Proposed new §25.3 is a new definitions section. Proposed new §25.4 is a re-organization of the existing §25.2 on ORP eligibility standards to: (1) incorporate the 90-day waiting period for active membership in the Teacher Retirement System (TRS) which will delay an ORP-eligible employee's opportunity to elect ORP in lieu of TRS; (2) update the existing ORP eligibility rules for improved clarity and consistency; and (3) incorporate ORP interpretations provided by Board staff regarding dual employment in positions at different institutions, eligibility for counselors, institutional reviews of ORP-eligible positions, and procedures for handling administrative errors involving eligibility determination. Proposed new §25.5 is a re-organization of the existing §25.3 on ORP vesting and participation standards for improved clarity and consistency and to incorporate ORP vesting and participation provisions regarding employment in a non-benefits-eligible position and dual employment in positions at different institutions. Proposed new §25.6 is a new section on uniformity of institutional administration of ORP. This section addresses: (1) distribution restrictions,

including a prohibition on loans and procedures that an institution may use if a company provides an unauthorized distribution; (2) a requirement that contributions shall be made on a tax-deferred basis; (3) a requirement that ORP contracts shall include a provision that the ORP company is responsible for qualifying domestic relations orders and paying benefits in accordance with Texas Government Code, Chapter 804; (4) procedures for reimbursing to the originating fund any employer contributions that an ORP participant forfeited by terminating prior to vesting; (5) a minimum number of ORP companies that institutions shall authorize; (6) a minimum number of opportunities that institutions shall provide for participants to change ORP companies; (7) a requirement that all institutions shall establish certain policies regarding solicitation of ORP-eligible employees by representatives of authorized ORP companies; (8) a requirement that companies shall provide certain information to ORP participants concerning their account balances and transactions on at least an annual basis; (9) a requirement that companies shall submit confirmation of receipt of funds directly to each participant on at least a quarterly basis; (10) a requirement that companies shall submit confirmation of transfers directly to the participant immediately upon execution; (11) a requirement that institutions shall send all ORP contributions to the companies by electronic funds transfer and within three days of legal availability; (12) a requirement that institutions shall submit annual reports to the Board regarding ORP participation and any other information required by the Board to fulfill its duties under the ORP statute; (13) a requirement that institutions shall provide newly ORP-eligible employees with basic information on TRS and ORP (provided by the Board) on or before their first eligibility date; and (14) a requirement that institutions shall provide written notification to all newly ORP-eligible employees of a participant's ORP responsibilities and that the institution has no fiduciary responsibility for the market value of a participant's investments or for the financial stability of the vendors chosen by a participant. Proposed new §25.6 incorporates: (1) procedures for handling IRS limits on contributions; (2) a prohibition on co-mingling of ORP funds with any other funds except for TRS employee contributions that were withdrawn in conjunction with a participant's ORP election; (3) a prohibition on contributions to two retirement programs within the same calendar month; (4) the definition of eligible compensation; (5) procedures for providing supplemental ORP employer contributions authorized by Texas Government Code, Chapter 830, §830.2015; (6) a requirement that ORP employer contributions shall be funded proportionately to salary source; (7) a requirement that an institution's list of authorized ORP companies and products shall provide a reasonable variety of choices among types of accounts and funds, including at least one company that offers 403(b)(1) annuity accounts and at least one company that offers 403(b)(7) custodial accounts; (8) a requirement that an institution shall not authorize a company to receive contributions from unvested participants unless the company has certified that the entire amount of actual unvested employer contributions will be returned to the institution if the participant terminates prior to vesting; (9) a requirement that institutions shall start sending a participant's contributions to the participant's newly selected company no later than 35 days after the date the participant signs and submits the appropriate forms to the institution; (10) a provision that all of an active participant's ORP contributions, even those sent to previously selected companies and those made during prior periods of employment are covered by the distribution restrictions; (11) a provision that institutions may allow participants to continue contributing to a company even after it is no longer on the institution's authorized list ("grandfathered"

company) and may allow participants who directly transfer from another institution to continue contributing to the same company that they were contributing to at the other institution, provided the institution verifies that the contract includes the distribution restrictions; (12) provisions regarding authorization of company representatives; (13) provisions regarding investment advisory fees; (14) a notification requirement for institutions to inform terminating participants of the institution's procedures for handling certification of a participant's eligibility for retiree group health insurance; and (15) a requirement that institutions shall establish procedures that will document when participants have received the notices required by this section.

Toni Alexander, ORP Coordinator for the Texas Higher Education Coordinating Board, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, there is no public benefit because the rules affect a retirement program for higher education employees. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted to Toni Alexander, ORP Coordinator, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; toni.alexander@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Government Code, §§830.001 - 830.205 which provides the Coordinating Board with the authority to adopt policies, enact regulations, and establish rules for the Optional Retirement Program.

The new sections affect Texas Government Code, §§830.001 - 830.205.

§25.1. Purpose.

The purpose of these rules is to administer the Optional Retirement Program, to establish eligibility for the Optional Retirement Program and to provide for greater uniformity of procedures for administration of the Optional Retirement Program by Texas public institutions of higher education.

§25.2. Authority.

The authority for these provisions is provided by Texas Government Code, Chapter 830.

§25.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Active Participation--Period of employment during which an ORP participant makes regular ORP contributions through payroll deduction based on the statutory percentage of the employee's salary earned during that period, which along with the matching employer contributions, are sent by the ORP employer to an authorized ORP company. A faculty member who is not employed by a Texas public institution of higher education during the three summer months but who was participating in ORP at the end of the spring semester immediately preceding the summer and who resumes ORP participation with the same or another Texas public institution of

higher education in the fall semester immediately following that summer shall be considered an active participant during the three summer months.

(2) Applicable Retirement System--The Teacher Retirement System of Texas for employees of Texas public institutions of higher education and the Employees Retirement System of Texas for employees of the Board.

(3) Board--The Texas Higher Education Coordinating Board.

(4) Break in Service--A period following a participant's termination of all employment with all Texas public institutions of higher education or the Board that is at least one full calendar month in which no ORP contribution is made, excluding the three summer months for faculty members who were participating in ORP at the end of the spring semester immediately preceding the summer and who resume ORP participation with the same or another Texas public institution of higher education in the fall semester immediately following that summer, and excluding periods of leave-without-pay. A transfer between Texas public institutions of higher education with less than a full calendar month in which no ORP contribution is made shall not be considered a break in service.

(5) ERS--The Employees Retirement System of Texas.

(6) Full-time--For purposes of determining initial ORP eligibility, the term "full-time" shall mean employment for the standard full-time workload established by the institution ("100 percent effort") at a rate comparable to the rate of compensation for other persons in similar positions for a definite period of four and one-half months or a full semester of more than four calendar months.

(7) Initial ORP Eligibility Date--The first day of an ORP-eligible employee's 90-day ORP election period. An employee's initial ORP eligibility date shall be determined as follows:

(A) Non-Members. For a new employee of a Texas public institution of higher education who has never been a member of TRS (or a new employee of the Board who has never been a member of ERS), or who is a former member of the applicable retirement system who canceled membership by withdrawing employee contributions from the retirement system after termination from a prior period of employment, the initial ORP eligibility date shall be the 91st calendar day of employment in a TRS-eligible position (or, for employees of the Board, an ERS-eligible position) that is also an ORP-eligible position.

(B) Current Members. For an employee who is a current member of TRS (or, for employees of the Board, a current member of ERS) at the time that he or she becomes employed in an ORP-eligible position, the initial ORP eligibility date shall be the first day of employment in an ORP-eligible position.

(8) Initial ORP Eligibility Period--The period of time beginning with the first date of employment in an ORP-eligible position, without regard to a person's 90-day waiting period for membership in TRS or ERS, if applicable, that is expected to be 100 percent effort for a period of at least one full semester or four and one-half months.

(9) Major Department Requirement--One of the factors used to determine whether a position is ORP-eligible in the "Other Key Administrator" category as defined in §25.4(k) of this title (relating to Eligible Positions). A department or budget entity at a public institution of higher education shall meet this requirement if:

(A) the department or budget entity is considered a "major" department by the institution based on the specific organizational size and structure of that institution; and

(B) the department or budget entity has its own budget, policies and programs.

(10) ORP--The Optional Retirement Program.

(11) ORP Election Period--The period of time during which ORP-eligible employees have a once-per-lifetime opportunity to elect to participate in ORP in lieu of the applicable retirement system. The ORP election period shall begin on an employee's initial ORP eligibility date, as defined in paragraph (3) of this section, and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing and submitting the appropriate forms to the ORP employer; or

(B) the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first working day after the 90th calendar day.

(12) ORP Employer--All public institutions of higher education in Texas and the Board.

(13) ORP Retiree--An individual who participated in ORP while employed with a Texas public institution of higher education or the Board and who established retiree status by meeting the applicable requirements and enrolling in retiree group insurance provided by ERS, The University of Texas System, or The Texas A&M University System, regardless of whether currently enrolled.

(14) Principal Activity Requirement--One of the factors used to determine whether a position is ORP-eligible based on the percent of effort required by the position to be devoted to ORP-eligible duties. The principal activity requirement shall be met if at least 51 percent of the position's duties are devoted to ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title, with two exceptions:

(A) During Initial ORP Eligibility Period. During an employee's initial ORP eligibility period (when the position is required to be 100 percent effort to qualify as ORP-eligible), if the ORP-eligible duties associated with an ORP-eligible category are less than 51 percent of the activities for a particular position, the position shall be considered to meet the principal activity requirement if all of the position's other duties are ORP-eligible duties under one of the other ORP-eligible categories defined in §25.4(k) of this title, for a total of 100 percent effort devoted to ORP-eligible duties, as would be the case, for example, for a position with required duties that are 50 percent instruction and/or research (faculty position) and 50 percent department chair (faculty administrator position).

(B) After Initial ORP Eligibility Period. For a participant who has completed the initial ORP eligibility period but who has not vested in ORP and who fills a position that is less than 100 percent effort but at least 50 percent effort, then the principal activity requirement shall be considered met if at least 50 percent effort is devoted to applicable ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title.

(15) TRS--The Teacher Retirement System of Texas.

(16) TRS/ERS Waiting Period--A period of 90 calendar days beginning with the first day of employment in a position that is otherwise eligible for membership in TRS or ERS. In accordance with state law, active membership in the applicable retirement system does not become effective until the 91st calendar day.

(A) The TRS/ERS waiting period does not apply to:

(i) new employees who are already members of the applicable retirement system based on contributions made during prior employment that have not been withdrawn; or

(ii) new employees who elected ORP in lieu of the applicable retirement system in a prior period of employment and who are eligible to resume ORP participation.

(B) As provided in §25.4(h) of this title (relating to Active Membership in Retirement System Requirement), a new employee who becomes employed in an ORP-eligible position and who is subject to the TRS/ERS waiting period is not permitted to elect ORP in lieu of the applicable retirement system until satisfying the TRS/ERS waiting period because the election of ORP is in lieu of active membership in the applicable retirement system.

(17) Vesting Requirement--The minimum amount of ORP participation required to attain vested status. An ORP participant shall be considered vested on the first day of the second year of active participation in lieu of the applicable retirement system, as provided in §25.5(a) of this title (relating to Vesting Requirement). A vested participant shall have ownership rights to the employer contributions in his or her ORP accounts, meaning that, upon termination of employment with all ORP employers or reaching age 70-1/2, he or she may access both the employee and employer contributions (and any net earnings) in his or her accounts. A vested participant shall remain in ORP even if subsequently employed in a position that is not ORP-eligible, as provided in §25.5(f) of this title (relating to Employment in a non-ORP-Eligible Position).

§25.4. Eligibility to Elect ORP.

(a) Eligibility Criteria. An employee shall be eligible to make a once-per-lifetime irrevocable election of ORP in lieu of the applicable retirement system if all of the following criteria are met:

(1) ORP-eligible Position: Employment in an ORP-eligible position as defined in subsection (k) of this section;

(2) 100 Percent Effort: Employment in an ORP-eligible position on a full-time basis (i.e., 100 percent effort) for a period of at least one full semester or four and one-half months, including the 90-day waiting period for active membership in the applicable retirement system, if applicable.

(A) Initial Eligibility Period. This eligibility requirement is an employee's initial ORP eligibility period, as defined in §25.3 of this title (relating to Definitions).

(B) Combining of Percent Effort at Different Institutions Not Permitted. The 100 percent effort requirement shall be satisfied by employment with only one institution, unless an individual is simultaneously employed in ORP-eligible positions with more than one component institution under the same governing board that operates its ORP either as a single plan for all components or includes the applicable components in the same plan, in which case, the employee's percent effort at each component may be combined to meet the minimum 100 percent effort requirement;

(3) First Election Opportunity: No previous opportunity to elect ORP in lieu of the applicable retirement system during the current or a prior period of employment at the same or another Texas public institution of higher education or the Board; and

(4) Active Membership in Retirement System: Current membership or eligibility for active membership in the applicable retirement system as provided in subsection (h) of this section.

(b) ORP Participation after Election. Once an employee makes an election of ORP, the employee's eligibility to continue

participating in ORP shall be determined in accordance with §25.5 of this title (relating to ORP Vesting and Participation).

(c) Non-Texas ORP Plans. Prior enrollment, participation or vested status in any plan other than the ORP plan authorized under Texas Government Code, Chapter 830, shall have no bearing on an employee's eligibility to elect ORP, except that the employee must be eligible for active membership in the applicable retirement system as provided in subsection (h) of this section.

(d) Separate Elections. An election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board.

(1) An employee's prior election of ORP in lieu of ERS at the Board on or after September 1, 1994, shall have no bearing on that person's eligibility to elect ORP in lieu of TRS at a Texas public institution of higher education.

(2) An election of ORP by a Board employee prior to September 1, 1994, was made in lieu of TRS; therefore, an institution shall treat an employee's election of ORP in lieu of TRS at the Board prior to September 1, 1994, in the same manner as if the election had been made at an institution.

(3) An employee's prior election of ORP in lieu of TRS at an institution, or an employee's election of ORP in lieu of TRS at the Board prior to September 1, 1994, shall have no bearing on that person's eligibility to elect ORP in lieu of ERS at the Board.

(e) Opportunity to Elect. The governing board of each Texas public institution of higher education shall provide an opportunity to all eligible employees in the component institutions governed by the board to elect ORP in lieu of TRS in accordance with these rules. The Board shall provide an opportunity to all eligible employees to elect ORP in lieu of ERS in accordance with these rules.

(f) 90-Day ORP Election Period. An employee who meets the eligibility criteria in subsection (a) of this section shall be provided an ORP election period, as defined in §25.3 of this title, during which an election to participate in ORP may be made by signing and submitting the appropriate forms to the ORP employer.

(1) After 90-Day TRS/ERS Waiting Period. The 90-day ORP election period shall follow the 90-day TRS/ERS membership waiting period for new employees, if applicable.

(2) Beginning and Ending Dates. The 90-day ORP election period shall begin on the employee's initial ORP eligibility date, as defined in §25.3 of this title, and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing and submitting the appropriate forms to the ORP employer; or

(B) the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first working day after the 90th calendar day.

(3) Once-per-Lifetime Irrevocable Election. An employee who is eligible to elect ORP shall have only one opportunity during his or her lifetime, including any future periods of employment in Texas public higher education, to elect ORP in lieu of the applicable retirement system, and the election may never be revoked.

(A) Default Election. Failure to elect ORP during the 90-day ORP election period shall be a default election to continue membership in the applicable retirement system.

(i) ORP in Lieu of TRS. An employee of a Texas public institution of higher education who does not elect ORP in lieu of TRS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of TRS, even if subsequently employed in an ORP-eligible position at the same or another Texas public institution of higher education.

(ii) ORP in Lieu of ERS. An employee of the Board who does not elect ORP in lieu of ERS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of ERS, even if subsequently employed in an ORP-eligible position at the Board.

(B) Irrevocable. An election of ORP shall be irrevocable. An employee who elects ORP shall remain in ORP, except as provided by subsections (f) and (g) of §25.5 of this title. A default election of the applicable retirement system, as described in subparagraph (A) of this paragraph shall be irrevocable. An employee who fails to elect ORP during the ORP election period shall remain in the applicable retirement system in accordance with the laws and rules governing eligibility for the retirement system.

(C) Separate Elections. As provided in subsection (d) of this section, an election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board; therefore, an election of ORP in lieu of one retirement system shall not preclude an eligible employee's election of ORP in lieu of the other retirement system if subsequently employed in a position that is eligible to elect ORP in lieu of the other retirement system.

(4) Company Selection Required at Election. An employee who elects to participate in ORP shall select an ORP company from the ORP employer's list of authorized companies in conjunction with the election of ORP. An ORP employer shall establish a policy that failure to select an authorized company may result in disciplinary action up to and including termination of employment because retirement contributions are required by law as a condition of employment.

(5) Waiver of Retirement System Benefits. An election of ORP shall be a waiver of the employee's rights to any benefits that may have accrued from prior membership in the applicable retirement system, other than benefits resulting from transfers of service credit between the applicable retirement systems and reinstatement of withdrawn service credit under the ERS/TRS service transfer law, even if the participant has met the applicable system's vesting requirement. Except as provided by subsections (f) and (g) of §25.5 of this title and the ERS/TRS service transfer law, an ORP participant shall not be eligible to become an active member of the applicable retirement system or receive any benefits from the system other than a return of employee contributions that may have been deposited with the system (and accrued interest, if any).

(g) Participation Start Date. The first day that ORP contributions are made shall be determined as follows.

(1) Election on Initial ORP Eligibility Date. The participation start date for ORP-eligible employees who elect ORP on their initial ORP eligibility date, as defined in §25.3 of this title, by signing and submitting the appropriate forms on or before their initial ORP eligibility date shall be based on whether they were subject to the 90-day TRS/ERS waiting period.

(A) If 90-Day TRS/ERS Waiting Period is not Applicable.

(i) New Employees. For new employees who are not subject to the 90-Day TRS/ERS waiting period because they are already members of the applicable retirement system, and who sign and submit the appropriate ORP election forms on or before their initial

ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment).

(ii) Transfers within Same ORP Employer. For employees who are not subject to the 90-day TRS/ERS waiting period because they are already members of the applicable retirement system, who transfer to an ORP-eligible position within the same ORP employer, and who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both the applicable retirement system and ORP during the same month, as provided in §25.6(a)(4) of this title (relating to No Dual Contributions), the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

(B) After 90-Day TRS/ERS Waiting Period. To avoid partial month contributions for employees who are subject to the 90-day TRS/ERS waiting period, the amount of the ORP contribution for the month in which their initial ORP eligibility date falls shall be based on salary earned during that entire month, so the participation start date shall be the first day of the month in which the initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

(2) Election After Initial ORP Eligibility Date. The participation start date for ORP-eligible employees who sign and submit the appropriate ORP election forms after their initial ORP eligibility date, shall be the first day of the month following the date that the forms are signed and submitted, with the following exceptions.

(A) During Month of Initial ORP Eligibility Date. ORP employers may establish a policy that employees who elect ORP by signing and submitting the appropriate forms after their initial ORP eligibility date but before the payroll has been processed for the month in which the initial ORP eligibility date falls may be treated in the same manner as the employees described in paragraph (1) of this subsection.

(B) After Month of Initial ORP Eligibility Date: ORP employers may establish a policy that employees who elect ORP by signing and submitting the appropriate forms after the month in which their initial ORP eligibility date falls, but before the payroll has been processed for the month in which the forms are signed and submitted, may start participating in the month in which the forms are signed and submitted rather than the first of the following month. To avoid partial month payments, contributions for these participants shall be based on salary earned during the entire month in which the forms are signed and submitted, or during the entire pay period in which the forms are signed and submitted, if payroll is not processed on a monthly basis.

(3) Retirement System Membership Before Election. As provided in subsection (i) of this section, ORP-eligible employees who elect ORP after their initial ORP eligibility date, except as provided in paragraph (2)(A) of this subsection, shall be reported as members of the applicable retirement system for any months prior to their election of ORP. As provided in §25.6(b) of this title (relating to Withdrawal of Retirement System Funds), employee contributions made to the applicable retirement system prior to an election of ORP may be withdrawn from the retirement system after an election of ORP is made, and may be rolled over to the participant's ORP account.

(h) Active Membership in Retirement System Requirement. Participation in ORP shall be an alternative to active membership in the applicable retirement system; therefore, a person who becomes employed in an ORP-eligible position shall not be eligible to elect ORP

unless he or she is either a current member of the applicable retirement system (i.e., has employee contributions on account with the applicable retirement system) or has satisfied the 90-day waiting period for active membership in the applicable retirement system.

(1) 90-Day TRS/ERS Waiting Period. Employees who are not current members of TRS when they become employed in an ORP-eligible position at a Texas public institution of higher education shall not be eligible to elect ORP in lieu of TRS until the 90-day TRS waiting period has been satisfied. Employees who are not current members of ERS when they become employed in an ORP-eligible position at the Board shall not be eligible to elect ORP in lieu of ERS until the 90-day ERS waiting period has been satisfied.

(2) Retirees Not Eligible. Employees who have retired from TRS or ERS are no longer active members of the applicable retirement system; therefore, a TRS retiree shall not be eligible to elect ORP in lieu of TRS at a Texas public institution of higher education and an ERS retiree shall not be eligible to elect ORP in lieu of ERS at the Board.

(i) Automatic Retirement System Enrollment. A new employee at a Texas public institution of higher education who is eligible to elect ORP in lieu of TRS shall be automatically enrolled in TRS, following the 90-day TRS waiting period, if applicable, until an election to participate in ORP is made by signing and submitting the appropriate forms to the institution as provided in subsection (g) of this section. A new Board employee who is eligible to elect ORP in lieu of ERS shall be automatically enrolled in ERS, following the 90-day ERS waiting period, if applicable, until an election to participate in ORP is made by signing and submitting the appropriate forms to the Board as provided in subsection (g) of this section.

(j) Dual Employment in TRS/ORP Positions at Different Employers.

(1) Simultaneous Retirement Plan Membership Not Permitted.

(A) Dual Employment with ORP Employer and non-ORP Employer. A member of TRS who is employed in the Texas public school system (including all Texas Independent School Districts and regional educational service centers) or with any other Texas public educational institution or state agency that is covered by TRS but does not offer ORP in lieu of TRS, and who concurrently becomes employed in an ORP-eligible position with a Texas public institution of higher education and elects to participate in ORP, may not remain an active member of TRS as an employee of the non-ORP employer once ORP participation has started. TRS contributions may not be made for the participant's employment with the non-ORP employer while he or she is actively participating in ORP.

(B) Dual Employment with Different ORP Employers. A member of TRS who is employed with a Texas public institution of higher education in a position that is eligible for TRS but is not ORP-eligible and who becomes concurrently employed with another Texas public institution of higher education in a position that is ORP-eligible and who elects to participate in ORP, may not remain an active member of TRS once ORP participation has started. TRS contributions may not be made for the participant's employment in the TRS-only position at the other Texas public institution of higher education while he or she is actively participating in ORP. Once the participant vests in ORP, ORP contributions shall be made based on the concurrent employment in the TRS-only position.

(2) Returning to TRS.

(A) If the individual described in paragraph (1)(A) of this subsection terminates ORP participation while concurrently employed in a TRS-eligible position with a non-ORP employer, then he or she shall return to active TRS membership with the non-ORP employer and shall be ineligible for any future ORP participation in lieu of TRS.

(B) If the individual described in paragraph (1)(B) of this subsection terminates ORP participation prior to vesting in ORP while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall return to active TRS membership and shall be ineligible for any future ORP participation in lieu of TRS.

(C) If the individual described in paragraph (1)(B) of this subsection terminates ORP participation after satisfying the ORP vesting requirement, but while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall not return to TRS membership and shall continue to make ORP contributions based on the employment in the TRS-only position.

(k) Eligible Positions. The following positions shall be considered ORP-eligible. Only those employees who fill ORP-eligible positions and who meet the eligibility requirements established in this chapter shall be eligible to elect ORP or to continue participating in ORP prior to vesting.

(1) Faculty Member--A member of the faculty whose duties include teaching and/or research as a principal activity, as defined in §25.3 of this title, and who holds the title of professor, associate professor, assistant professor, instructor, lecturer, or equivalent faculty title, including "visiting professor" if the position is at least one full semester in duration.

(2) Faculty Administrator--An administrator responsible for teaching and research faculty whose principal activity, as defined in §25.3 of this title, is planning, organizing, and directing the activities of faculty and who holds the title of dean, associate dean, assistant dean, director, department chair, or head of academic department.

(3) Executive Administrator--An administrator who holds the title of chancellor, deputy chancellor, vice chancellor, associate vice chancellor, assistant vice chancellor, or the equivalent, and an administrator who holds the title of president, executive vice president, provost, vice president, associate vice president, assistant vice president, or the equivalent.

(4) Other Key Administrator--An administrator other than a faculty administrator or an executive administrator whose position is considered a key administrative position within the institution's organizational structure and that meets the requirements of this paragraph. The most common position titles in this category are director or associate director, but included titles may vary by institution based on differences in organizational structure, size, mission, etc. All positions in this category, including positions with the title of director or associate director, shall meet the following criteria:

(A) serves as director or other administrative head of a major department or budget entity, as defined in §25.3 of this title, excluding the title of assistant director unless the assistant director position has responsibility for what is considered a major department or budget entity that is within a larger department or budget entity, as may be the case at large institutions;

(B) is responsible for the preparation and administration of the budget, policies, and programs of the major department or budget entity;

(C) usually reports to the office of a chancellor, president, vice chancellor, vice president, dean, or equivalent; and

(D) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the Chronicle of Higher Education or in newsletters or websites of national professional associations or at meetings of such associations.

(E) A position shall not be considered ORP-eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP-eligible.

(5) Librarian--A professional librarian who holds, at a minimum, a master's degree in library science or information science, and whose principal activity, as defined in §25.3 of this title, is library services.

(6) Athletic Coach--An athletic coach, associate athletic coach, or assistant athletic coach whose principal activity, as defined in §25.3 of this title, is coaching, excluding an athletic trainer, and excluding an athletic director or assistant athletic director unless the principal activity is coaching rather than administrative.

(A) Athletic trainers may be included in the "professional" category if the position requires the trainer to be a physician.

(B) Athletic directors whose principal activity is not coaching normally shall be included in one of the administrator categories.

(7) Professional--An employee whose principal activity, as defined in §25.3 of this title, is performing the duties of a professional career position, including, but not necessarily limited to, physician, attorney, engineer, and architect, that meets the following criteria:

(A) requires a terminal professional degree in a recognized professional career field that requires occupation-specific knowledge and appropriate professional licensure;

(B) is a non-classified position; and

(C) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the Chronicle of Higher Education or in newsletters of national professional associations or at meetings of such associations.

(D) A position shall not be considered ORP-eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP-eligible.

(8) Board Administrative Staff--A member of the executive or professional staff of the Board, as determined by the Commissioner of Higher Education, who fills a position with the following requirements:

(A) college graduation and prior experience in higher education or experience of such kind and amounts to provide a comparable background; and

(B) national mobility requirements similar to those of faculty.

(l) Position-Required Qualifications. An employee who meets the qualifications of a "professional" or a "librarian" as defined in subsection (k) of this section shall not be considered eligible to elect ORP as a professional or librarian unless the position requires the professional or librarian qualifications, respectively, as a principal activity. For example, an attorney who fills a position that does not require that the position be filled by an attorney shall not be considered ORP-eligible based solely on the fact that the person is an attorney.

(m) Counselors. The eligibility of counselors shall be determined as follows.

(1) Faculty. If the institution has established policies that consider and treat counselors in the same manner as faculty in such areas as, for example, employment contracts, oversight, and work schedules, then ORP eligibility for a counselor position shall be determined under the same requirements as a faculty position, except that the principal activity shall be counseling rather than teaching and/or research, and the title shall be counselor rather than the faculty titles listed in that category.

(2) Staff. If the institution has established policies that consider and treat counselors in the same manner as staff rather than faculty, in such areas as, for example, employment contracts, oversight, and work schedules, then ORP eligibility for a counselor position shall not be determined under the faculty category. Depending on the duties and required qualifications, a counselor who is considered staff rather than faculty may meet the criteria for one of the non-faculty ORP-eligible positions.

(n) Review of Positions for ORP Eligibility.

(1) Comprehensive Review. ORP employers shall periodically conduct a comprehensive review of all non-classified positions to ensure that ORP eligibility requirements are being applied fairly and consistently across all departments and divisions.

(2) New Position. ORP employers shall analyze newly created non-classified positions for ORP eligibility determination and shall maintain proper documentation of the analysis and determination for future reference.

(3) Re-classified Position. ORP employers shall re-classify a position as ORP-eligible if changes in the position's responsibilities or the employer's organizational structure result in a position that meets the ORP-eligibility requirements.

(A) Option to Elect ORP. ORP employers shall provide the incumbent in a position that is re-classified as ORP-eligible an opportunity to elect ORP as if newly hired into the position.

(B) Initial ORP Eligibility Date. The incumbent's initial ORP eligibility date, as defined by §25.3 of this title, shall be the date that the re-classification is effective, unless the re-classification is retro-active to a prior month, in which case, the initial ORP eligibility date shall be the date that the employee is notified of the re-classification.

(o) Administrative Errors.

(1) Orientation Procedures. Each ORP employer shall develop and implement effective orientation and enrollment procedures to ensure appropriate and timely processing of newly eligible employees' retirement plan choices.

(2) Rectification. In the event an administrative error occurs which prevents the normal processing of an ORP-eligible employee's election, the ORP employer shall rectify the error as soon as practicable and in a manner that results in a situation that is as close to

the originally expected outcome as possible, within applicable federal and state laws and rules.

(3) Documentation and Prevention. When an administrative error occurs, the ORP employer shall:

(A) maintain documentation of the error and the actions taken by the ORP employer to address the problem, with a copy placed in the employee's file; and

(B) immediately develop and implement appropriate administrative procedures to avoid such errors in the future.

(4) Failure to Notify Error. If an ORP employer fails to notify an ORP-eligible employee of his or her eligible status on or before the employee's initial ORP eligibility date, the ORP employer shall notify the eligible employee as soon as the oversight is discovered. The 90-day ORP election period for the eligible employee shall begin on the date that the employee is notified, and the participation start date shall be determined in accordance with subsection (g) of this section.

(p) Texas Commissioner of Education.

(1) ORP Eligibility. Notwithstanding other provisions in this chapter, the Texas Commissioner of Education shall be eligible to elect ORP in lieu of ERS.

(2) Employment in Higher Education. Notwithstanding other provisions in this chapter, a Texas public institution of higher education shall, for the purpose of determining ORP eligibility for a former Texas Commissioner of Education who is subsequently employed by the institution, treat an election of ORP in lieu of ERS made by the Texas Commissioner of Education at the Texas Education Agency in the same manner as if the election of ORP had been made in lieu of TRS at another Texas public institution of higher education.

§25.5. ORP Vesting and Participation.

(a) Vesting Requirement. An ORP participant at a Texas public institution of higher education shall be considered vested in ORP on the first day of the second year of active participation, as defined in §25.3 of this title (relating to Definitions), in ORP in lieu of TRS at one or more Texas public institutions of higher education. An ORP participant at the Board shall be considered vested in ORP on the first day of the second year of active participation, as defined in §25.3 of this title, in ORP in lieu of ERS at the Board.

(1) Year Defined. For purposes of this subsection, a year shall mean twelve cumulative, but not necessarily consecutive, months of ORP participation.

(2) Leave-without-Pay. A full calendar month of leave without pay shall not be included in the calculation of a year for vesting purposes.

(3) Summer Credit. Because a year for academic faculty members does not normally include the three summer months, an academic faculty member shall be credited the three summer months toward vesting in ORP provided the faculty member is participating in ORP at the end of the spring semester immediately preceding the summer and resumes participation in an ORP-eligible position at the same or another Texas public institution of higher education at the beginning of the fall semester immediately following the same summer.

(4) More than One Period of Employment. As provided in subsection (c) of this section, partial vesting credit shall be retained when there is a break in participation prior to satisfying the vesting requirement. Therefore, the vesting requirement may be satisfied during more than one period of participation. For example, a new faculty member who terminated employment after six months of active participation, and subsequently returns to ORP-eligible employment at the

same or another public Texas institution of higher education, with no intervening active service as a TRS member, shall only have to participate for an additional six months to meet the definition of "year" for vesting purposes.

(5) Non-Texas ORP Plan. The vesting requirement may not be satisfied by prior enrollment, participation or vested status in any plan other than the ORP plan authorized under Texas Government Code, Chapter 830.

(6) Separate Vesting. Because the election of ORP in lieu of TRS at a Texas public institution of higher education and the election of ORP in lieu of ERS at the Board shall be considered separate and distinct elections, the vesting requirement for ORP in lieu of TRS may not be satisfied by previous participation or vested status in ORP in lieu of ERS at the Board. The vesting requirement for ORP in lieu of ERS at the Board may not be satisfied by previous participation or vested status in ORP in lieu of TRS at a Texas public institution of higher education.

(b) Once Vested, Always Vested.

(1) Only One Vesting Period. An ORP participant who satisfies the vesting requirement for ORP in lieu of TRS shall not be required to satisfy the vesting requirement again by any Texas public institution of higher education. An ORP participant who satisfies the vesting requirement for ORP in lieu of ERS shall not be required to satisfy the vesting requirement again by the Board.

(2) Withdrawal of ORP Funds has No Effect. A reemployed ORP participant's vested status shall not be affected by any partial or total withdrawals of ORP funds made after termination from a prior period of employment.

(c) Partial Vesting Credit Retained. Unvested ORP participants shall retain partial vesting credit in the following circumstances.

(1) Termination of Employment. An ORP participant who terminates employment in all Texas public institutions of higher education prior to satisfying the vesting requirement shall, upon returning to ORP-eligible employment with the same or a different Texas public institution of higher education, retain credit for previous ORP participation in lieu of TRS. An ORP participant who terminates employment with the Board prior to satisfying the vesting requirement shall, upon returning to ORP-eligible employment with the Board, retain credit for previous ORP participation in lieu of ERS.

(2) Leave-Without-Pay. An ORP participant who goes on leave without pay for a full calendar month or more prior to satisfying the vesting requirement shall, upon resuming active ORP participation with the same or a different Texas public institution of higher education, retain credit for previous ORP participation in lieu of TRS. An ORP participant at the Board who goes on leave without pay for a full calendar month or more prior to satisfying the vesting requirement shall, upon resuming active ORP participation with the Board, retain credit for previous ORP participation in lieu of ERS.

(3) Direct Transfers. An ORP participant who, prior to satisfying the vesting requirement, directly transfers from one ORP-eligible position to another at the same or a different Texas public institution of higher education, shall retain credit for previous ORP participation in lieu of TRS. An ORP participant who, prior to satisfying the vesting requirement, directly transfers from one ORP-eligible position to another at the Board, shall retain credit for previous ORP participation in lieu of ERS.

(4) An ORP participant's partial vesting credit shall not be affected by any partial or total withdrawals of ORP employee contributions made after termination of employment.

(d) Benefits of Vested Status.

(1) A vested ORP participant shall have ownership rights to the employer contributions in his or her ORP accounts, meaning that, upon termination of employment with all ORP employers or reaching age 70-1/2, he or she may access both the employee and employer contributions (and any net earnings) in his or her ORP accounts.

(2) A vested ORP participant shall remain in ORP even if subsequently employed in a position that is not ORP-eligible, as provided in subsection (f) of this section.

(e) Unvested ORP Employer Contributions Forfeited. An ORP participant who terminates employment prior to meeting the vesting requirement shall forfeit all ORP employer contributions made during that period of employment in accordance with §25.6(a)(11) of this title (relating to Forfeited ORP Employer Contributions). Except as provided in §25.6(a)(11)(F) of this title (relating to Resumption of Participation within 93 Days), forfeited funds shall not be recoverable, even if the participant later satisfies the vesting requirement in a subsequent period of ORP-eligible employment. Such a participant shall be considered vested only in ORP employer contributions made during the subsequent and any future employment periods.

(f) Employment in a non-ORP-Eligible Position. An ORP participant who becomes employed in a position that is not eligible for ORP, but is eligible for the applicable retirement system, shall remain in ORP or become a member of the applicable retirement system in accordance with the following provisions.

(1) Not Vested in ORP. An ORP participant who has not satisfied the ORP vesting requirement and who becomes employed in a position that is not eligible for ORP, but is eligible for the applicable retirement system, shall become a member of the applicable retirement system, and shall thereafter be ineligible to participate in ORP in lieu of the applicable retirement system, even if subsequently employed in an ORP-eligible position and/or if membership in the applicable retirement system is canceled through a withdrawal of employee contributions.

(A) ORP in Lieu of TRS. An ORP participant who elected ORP in lieu of TRS at a Texas public institution of higher education, who has not satisfied the ORP vesting requirement, and who becomes employed with the same or another Texas public institution of higher education in a position that is not eligible for ORP, but is eligible for TRS, shall become a member of TRS for the remainder of his or her employment with any Texas public institution of higher education. This individual shall never be eligible to participate in ORP in lieu of TRS again, even if subsequently employed in an ORP-eligible position at the same or another Texas public institution of higher education and/or if the individual cancels his or her TRS membership by withdrawal of employee contributions.

(B) ORP in Lieu of ERS. An ORP participant who elected ORP in lieu of ERS at the Board, who has not satisfied the ORP vesting requirement, and who becomes employed with the Board in a position that is not eligible for ORP, but is eligible for ERS, shall become a member of ERS for the remainder of his or her employment with the Board. This individual shall never be eligible to participate in ORP in lieu of ERS again, even if subsequently employed in an ORP-eligible position at the Board and/or if the individual cancels his or her ERS membership by withdrawal of employee contributions.

(2) Vested in ORP. An ORP participant who has satisfied the ORP vesting requirement and who becomes employed in a position that is not eligible for ORP, shall remain in ORP unless he or she became an active member of the applicable retirement system during a break in service prior to employment in the non-ORP-eligible position,

in which case, he or she shall never be eligible for ORP in lieu of the applicable retirement system again, even if subsequently employed in an ORP-eligible position and/or if membership in the applicable retirement system was canceled through a withdrawal of employee contributions.

(A) ORP in Lieu of TRS. An ORP participant who has vested in ORP in lieu of TRS and subsequently becomes employed with any Texas public institution of higher education in a position that is not ORP-eligible, but is TRS-eligible, shall continue to participate in ORP and shall not be eligible for TRS membership, unless he or she terminates employment with all Texas public institutions of higher education and becomes employed in a TRS-eligible position with the Texas public school system (e.g., Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer ORP in lieu of TRS, which will require the participant to become a member of TRS. Such an individual, upon becoming subsequently reemployed with any Texas public institution of higher education:

(i) shall not resume participation in ORP; and

(ii) shall not thereafter be eligible to participate in ORP in lieu of TRS ever again, regardless of the individual's previous ORP vested status, employment in an ORP-eligible position, or if the individual's TRS membership was canceled by withdrawal of employee contributions following termination of employment from the TRS-covered position.

(B) ORP in Lieu of ERS. An ORP participant who has vested in ORP in lieu of ERS at the Board and subsequently becomes employed with the Board in a position that is not ORP-eligible, but is ERS-eligible, shall, nevertheless, continue to participate in ORP and shall not be eligible for ERS membership, unless he or she terminates employment with the Board and becomes employed in an ERS-eligible position with a Texas state agency that does not offer ORP in lieu of ERS, which will require the participant to become a member of ERS. Such an individual, upon becoming subsequently reemployed with the Board:

(i) shall not resume participation in ORP; and

(ii) shall not be eligible to participate in ORP in lieu of ERS ever again, regardless of the individual's previous ORP vested status, employment in an ORP-eligible position, or if the individual's ERS membership was canceled by withdrawal of employee contributions following termination of employment from the ERS-covered position.

(g) Employment in a Non-Benefits-Eligible Position. An employee who elected ORP in lieu of TRS and who terminates employment in the ORP-eligible position and becomes employed with the same or another Texas public institution of higher education in a non-benefits-eligible position shall not be eligible to participate in ORP (i.e., have contributions sent to the ORP company) for the period of time while employed in the non-benefits-eligible position.

(1) Definition. For purposes of this subsection, a non-benefits-eligible position shall be defined as a position that is one or more of the following:

(A) less than 50 percent effort;

(B) expected to last less than a full semester or a period of four and one-half months (i.e., temporary); or

(C) requires student status as a condition of employment.

(2) Combining of Percent Effort at Different Institutions Not Permitted. When calculating an employee's percent effort to determine whether a position is non-benefits-eligible as provided in paragraph (1) of this subsection, an institution shall include only the individual's employment with that institution. For example, an individual who is simultaneously employed at 25 percent effort with Institution A and at 50 percent effort with Institution B shall not be eligible to participate in ORP at Institution A even though he or she may already be participating at Institution B based on a minimum 50 percent effort at Institution B. An exception may be made for an individual who is simultaneously employed with more than one component institution under the same governing board that operates its ORP either as a single plan for all components or includes the applicable components in the same plan. In this case, the employee's percent effort at each component may be combined to meet the minimum 50 percent effort requirement.

(3) Regardless of Vested Status. An employee shall not be eligible to participate in ORP while employed in a non-benefits-eligible position regardless of his or her ORP vested status.

(4) No Effect on ORP Eligibility. Because a non-benefits-eligible position is not eligible for TRS, employment in a non-benefits-eligible position normally shall have no effect on an employee's ORP eligibility status upon his or her subsequent return to a benefits-eligible position, regardless of vested status.

(5) Alternate Plan at Certain Community Colleges. Participation in an alternate retirement plan for part-time employees who are not eligible for TRS at a community college that has opted out of the federal social security program shall have no effect on a person's ORP eligibility status upon his or her subsequent return to a benefits-eligible position.

(h) Retirement System Membership after ORP Vesting. A vested ORP participant shall not be eligible for active membership in the applicable retirement system unless he or she terminates all employment with the ORP employer and becomes employed in a position that is eligible for the applicable retirement system with an employer that does not offer ORP.

(1) ORP in Lieu of TRS. A vested ORP participant who elected ORP in lieu of TRS shall not be thereafter eligible for TRS membership, unless he or she terminates employment with all Texas public institutions of higher education and becomes employed in a TRS-eligible position with the Texas public school system (e.g., Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer ORP in lieu of TRS, which will require the participant to become a member of TRS. Such an individual, upon becoming subsequently reemployed with any Texas public institution of higher education:

(A) shall not resume participation in ORP; and

(B) shall not thereafter be eligible to participate in ORP in lieu of TRS ever again, regardless of the individual's previous ORP vested status, employment in an ORP-eligible position, or if the individual's TRS membership was canceled by withdrawal of employee contributions following termination of employment from the TRS-covered position.

(2) ORP in Lieu of ERS. A vested ORP participant who elected ORP in lieu of ERS shall not thereafter be eligible for ERS membership, unless he or she terminates employment with the Board and becomes employed in an ERS-eligible position with a Texas state agency that does not offer ORP in lieu of ERS, which will require the

participant to become a member of ERS. Such an individual, upon becoming subsequently reemployed with the Board:

(A) shall not resume participation in ORP; and

(B) shall not be eligible to participate in ORP in lieu of ERS ever again, regardless of the individual's previous ORP vested status, employment in an ORP-eligible position, or if the individual's ERS membership was canceled by withdrawal of employee contributions following termination of employment from the ERS-covered position.

(i) ORP Retirees Not Eligible to Participate. ORP retirees, as defined in §25.3 of this title, who later return to employment with the same or another Texas public institution of higher education or with the Board in what would otherwise be considered a benefits-eligible position shall not be eligible to participate in ORP, with the following exceptions:

(1) ORP retirees who enrolled in retiree group insurance on or before June 1, 1997;

(2) employees who elected ORP in lieu of ERS at the Board and who, after terminating employment with the Board and enrolling in retiree group insurance as an ORP retiree from the Board, subsequently become employed in an ORP-eligible position at a Texas public institution of higher education;

(3) employees who elected ORP in lieu of TRS at a Texas public institution of higher education and who, after terminating employment with all Texas public institutions of higher education and enrolling in retiree group insurance as an ORP retiree from a Texas public institution of higher education, subsequently become employed in an ORP-eligible position at the Board; and

(4) ORP retirees who enroll in retiree group insurance as part of a phased retirement program.

(A) Definition. For the purposes of this subsection, a phased retirement program shall be a locally designed option that is offered by a limited number of institutions as a means of transitioning active employees to retired status through a contractual agreement that requires the employee to meet certain milestones during the contractual period, which is typically one or two years, such as a reduction in percentage of effort and/or enrollment in retiree group insurance prior to termination of employment. At the end of the contractual period, the employee is considered to be in a retired status for all purposes.

(B) Exemption. ORP participants who are covered by a phased retirement program agreement shall remain eligible for ORP contributions during the contractual period as long as they maintain at least 50 percent effort, even after they are required to enroll in retiree group insurance as an ORP retiree. Once the contractual period has expired, the participant shall no longer be exempt from the provisions of this subsection.

(5) ORP retirees who meet the exceptions described in paragraphs (1) - (4) of this subsection shall not be considered eligible to participate in ORP or to elect ORP in lieu of the retirement system from which they did not retire unless they meet the same eligibility criteria as employees who have not established ORP retiree status.

(j) Termination of Participation. An employee shall terminate participation in ORP only upon death, retirement (including disability retirement), or termination of employment with all Texas public institutions of higher education (if the election of ORP was in lieu of TRS) or termination of employment with the Board (if the election of ORP was in lieu of ERS).

(1) Employment Transfer is not a Termination. A participant's transfer of employment between Texas public institutions of higher education without a break in service, as defined in §25.3 of this title, shall not be considered a termination of employment for ORP purposes, unless the new position is non-benefits-eligible, as defined in subsection (g) of this section.

(2) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP companies shall not be considered a termination of employment for ORP purposes.

§25.6. Uniform Administration of ORP.

(a) Contributions.

(1) Tax-Deferred. All ORP contributions shall be made on a tax-deferred basis.

(2) IRS Limits on Defined Contributions. Contributions to a participant's ORP account shall not exceed the maximum amount allowed under §415(c) of the Internal Revenue Code of 1986, as amended.

(A) 415(m) Plan. Institutions are authorized by the ORP statute to establish a plan authorized under §415(m) of the Internal Revenue Code of 1986, as amended, for a participant's ORP contributions that exceed the 415(c) limit.

(B) Stopping ORP Contributions. In the absence of a 415(m) plan, an ORP employer shall discontinue ORP contributions for participants who reach the 415(c) limit for the remainder of the applicable plan year.

(C) Interaction with TSA/TDA Program. An employee's contributions under the voluntary supplemental Tax-Sheltered Annuity/Tax-Deferred Account Program shall be included in the 415(c) limit.

(3) No Co-Mingling of ORP and non-ORP Funds.

(A) No Non-Texas ORP Funds. No non-Texas ORP funds may be rolled over or transferred to an ORP account prior to the earlier of the participant's termination of ORP participation or reaching age 70-1/2, other than a rollover of the participant's employee contributions, and any accrued interest, that were withdrawn from the applicable retirement system in conjunction with the participant's election of ORP in lieu of that retirement system.

(B) No TSA/TDA Funds. Amounts that have been contributed by the participant through the Tax-Sheltered Annuity/Tax-Deferred Account Program, including any amounts that may have been contributed during the employee's 90-day waiting period for membership in the applicable retirement system, may not be rolled over or transferred to an ORP account prior to the earlier of the participant's termination of ORP participation or reaching age 70-1/2.

(C) Texas ORP Contract Required. ORP contributions may only be made to a contract that is authorized by the participant's current ORP employer for Texas ORP contributions, even if the participant already has a contract with a company from a prior period of employment with another employer, whether a Texas ORP employer or not.

(4) No Dual Contributions. A contribution to the applicable retirement system and to an ORP company within the same calendar month shall not be permitted, except when a person terminates employment in a position covered by the applicable retirement system and, prior to the end of the calendar month in which the termination occurs, becomes employed in an ORP-eligible position at a different ORP employer and elects to participate in ORP by signing and submitting the appropriate forms to the ORP employer in such manner that

the ORP participation start date is prior to the end of that same calendar month, as provided in §25.4(g) of this title (relating to Participation Start Date).

(5) Eligible Compensation.

(A) Definition. For purposes of determining the amount of a participant's ORP contribution, institutions shall use the same definition of eligible compensation that is used for TRS members in §821.001 of the Texas Government Code.

(B) IRS Limits. The maximum amount of salary that can be taken into account for ORP purposes shall not exceed the limits established by §401(a)(17) of the Internal Revenue Code of 1986, as amended. An individual who first participated in ORP prior to September 1, 1996, regardless of a subsequent break in service, shall qualify for the "grandfathered" rate established by IRC §401(a)(17).

(C) 415(m) Plan. Institutions are authorized by the ORP statute to establish a plan authorized under §415(m) of the Internal Revenue Code of 1986, as amended, for a participant's ORP contributions that exceed the 401(a)(17) limit.

(D) Stopping ORP Contributions. In the absence of a 415(m) plan, an ORP employer shall discontinue ORP contributions for participants who reach the 401(a)(17) limit for the remainder of the applicable plan year.

(6) Contribution Rates. The amount of each participant's ORP contribution shall be a percentage of the participant's eligible compensation as established by the ORP statute and the General Appropriations Act for each biennium. Each contribution shall include an amount based on the employee rate and an amount based on the employer rate.

(A) Employee Rate. The employee contribution rate shall neither exceed nor be less than the rate established in the ORP statute for employee contributions.

(B) Employer Rate. The employer contribution rate shall consist of a state base rate (minimum), as established each biennium in the General Appropriations Act, and an optional supplemental rate, as provided in subparagraph (C) of this paragraph.

(C) Supplemental Employer Rate. Institutions may provide a supplement to the state base rate under the following conditions.

(i) Amount of Supplemental Rate. The supplemental rate may be any amount that, when added to the state base rate, does not exceed the maximum employer rate established in the ORP statute. For example, if the state base rate is 6 percent and the maximum statutory rate is 8.5 percent, then the supplement may be any amount up to and including 2.5 percent.

(ii) Component Institution Policies. Governing boards may establish a supplemental rate policy that covers all component institutions or may establish different policies for one or more individual components.

(iii) Annual Determination. The governing board of each institution shall determine the amount of the supplement once per fiscal year, to be effective for the entire fiscal year.

(iv) Method 1--All Participants. Institutions may provide the same supplemental rate to all ORP participants, regardless of the participant's first date to participate in ORP or a break in service. If this method is selected, each ORP participant shall receive the same supplemental rate as every other participant.

(v) Method 2--Two Groups. Institutions may, instead of providing the same supplemental rate to all participants, provide two different supplemental rates based on a participant's first date to participate in ORP, as follows.

(I) Grandfathered. Each participant whose first date to participate in ORP in lieu of the applicable retirement system at any ORP employer, is prior to September 1, 1995, shall receive the same supplemental rate as other participants in this group, regardless of any break in service. This group of participants shall be referred to as the grandfathered group.

(II) Non-Grandfathered. Each participant whose first date to participate in ORP in lieu of the applicable retirement system at any ORP employer is on or after September 1, 1995, shall receive the same supplemental rate as other participants in this group, regardless of any break in service. This group of participants shall be referred to as the non-grandfathered group.

(7) Proportionality.

(A) ORP employers Other than Community Colleges. Texas public institutions of higher education, not including public community colleges, and the Board shall pay ORP employer contributions on a proportionate basis from the same funding source that a participant's salary is paid from. General Revenue funds may only be used for ORP employer contributions for the portion of a participant's salary that is actually paid with General Revenue.

(B) Public Community Colleges. Public community colleges shall pay ORP employer contributions on a proportionate basis from the same funding source that a participant's salary is paid from, except that all participants who are eligible to have all or part of their salary paid from General Revenue shall be eligible for General Revenue funding of their ORP employer contributions for the part of their salaries that is eligible for General Revenue funding, whether or not the salary is actually paid from General Revenue. Eligibility for General Revenue funding shall be based on the Elements of Expenditure.

(8) Three-Day Submission Deadline. ORP employers shall send ORP contributions to the ORP company within three business days of legal availability, except for contributions made on a supplemental payroll or contributions that are sent to a grandfathered company with less than 50 participants.

(A) Legal Availability. Contributions shall generally be considered legally available on payday. For ORP employers that normally pay participants on a twice-monthly basis, the three-day minimum shall apply to each payday in the month.

(B) Grandfathered Company. For purposes of this paragraph, a grandfathered company shall be a company that is no longer on a particular ORP employer's list of authorized ORP companies, but that continues to receive ORP contributions for certain participants as authorized by that ORP employer.

(C) Exception Deadline. Contributions that are accepted from the three-day submission deadline shall be sent to the company as soon as practicable, but not later than 10 business days after they are legally available.

(9) Electronic Funds Transfer (EFT).

(A) Requirement. ORP employers shall send all ORP contributions, including contributions based on a supplemental payroll and contributions sent to a grandfathered company as defined in paragraph (8) of this subsection, to each ORP company by electronic funds transfer (EFT) if the ORP employer is currently able to send funds by EFT and the company is currently able to receive funds by EFT.

(B) Inability to Receive. If a company is unable to receive funds by EFT, the ORP employer shall send contributions to the ORP company by check and provide the following notifications.

(i) Certification. The ORP employer shall certify to the Board, on the ORP employer's annual ORP report as required by subsection (g) of this section, that the company is unable to receive funds by EFT.

(ii) Participant Notification. At least once per fiscal year, the ORP employer shall provide notice to each participant indicating which ORP companies are unable to receive funds by EFT.

(10) Same-Day Credit. ORP companies shall deposit each participant's ORP contributions into the accounts and/or funds designated by the participant effective on the same day that the contributions are received by the company. A company that does not comply with this provision shall not be eligible to be authorized as an ORP company by any ORP employer.

(11) Forfeited ORP Employer Contributions. If a participant forfeits ORP employer contributions under §25.5(a) of this title (relating to Vesting Requirement), the ORP employer shall return the forfeited contributions to the originating fund in accordance with the following procedures.

(A) 93-Day Deadline for Request. Not later than 93 calendar days after the last day of the calendar month in which an unvested participant terminates all employment with all ORP employers, the ORP employer shall send a request to the ORP company or companies for a return of the ORP employer contributions that were sent to the company or companies for that participant during that period of employment. This request may be referred to as a vesting letter because it indicates that the participant has not met the vesting requirement.

(i) 93 Days is Outside Limit. An ORP employer may send the request for forfeited ORP employer contributions immediately upon a participant's termination if the ORP employer has knowledge that the participant has not become employed and is not anticipating becoming employed in a position that is eligible for ORP in lieu of the same retirement system at the same or another ORP employer within the 93-day period.

(ii) If Deadline is Missed. If the ORP employer fails to request the forfeited amounts within the 93-day deadline, then the ORP employer shall make the request immediately upon discovering the oversight, even if the participant later resumes participation after the 93-day deadline as described in subparagraph (B) of this paragraph.

(B) If Participant Returns After 93 Days. If an unvested participant returns to employment that is eligible for ORP in lieu of the same retirement system at the same or another ORP employer and resumes active participation on a date that is more than 93 calendar days after the last day of the calendar month in which he or she previously terminated participation, the participant's unvested ORP employer contributions from the prior period of employment shall still be forfeited, even if the participant subsequently satisfies the vesting requirement.

(C) Forfeited Amount. The forfeited amount shall be the actual amount of ORP employer contributions sent to the participant's ORP accounts during his or her current period of employment.

(i) Excess Amounts not Included. The forfeited amount shall not include any amounts in the participant's ORP account in excess of the actual ORP employer contributions that are attributable to net earnings.

(ii) If Account is Less than Actual Amount. The entire amount of actual ORP employer contributions shall be returned even if the account balance is less than the amount of the actual ORP

employer contributions because of investment loss, transfer, or other occurrence or transaction.

(I) Company's Responsibility. The ORP company shall be responsible for making arrangements to cover any loss of unvested ORP employer contributions, so that the entire amount of actual ORP employer contributions is returned to the ORP employer upon request.

(II) Certification. Before an ORP employer may authorize a company to receive ORP contributions from unvested participants, as provided in subsection (c) of this section, the ORP employer shall require the company to certify that the entire amount of actual unvested ORP employer contributions will be returned upon request. The ORP employer may require the company to indicate what method will be used, for example, restriction of unvested funds to money market or similar accounts.

(D) Company Response Deadline. Within 30 days of receiving the ORP employer's request for a return of unvested ORP employer contributions, the ORP company shall:

(i) process a reimbursement to the ORP employer;
and

(ii) send notification of the transaction to the employee indicating the reason for the reduction in the account balance.

(E) Deposit into Originating Fund. The ORP employer shall deposit the reimbursed ORP employer contributions into the originating fund or funds in accordance with instructions from the Texas Comptroller of Public Accounts and any other applicable policies and procedures.

(F) Resumption of Participation within 93 Days.

(i) If unvested ORP employer contributions are returned to the originating fund when the participant did, in fact, resume ORP participation in lieu of the same retirement system at the same or another ORP employer within 93 calendar days of the last day of the calendar month in which the termination of participation occurred, the ORP employer that requested the reimbursement shall, immediately upon being notified of the employee's resumption of participation, return the reimbursed amount to the ORP company for re-deposit into the participant's account.

(ii) The ORP employer with which the participant resumes participation, if not the ORP employer that requested the reimbursement, shall notify the ORP employer that requested the reimbursement of the participant's status as soon as practicable after the participant resumes participation.

(iii) The entire amount of actual ORP employer contributions that were returned to the originating fund under the provisions in this paragraph shall be sent back to the company. There shall be no allowance for any earnings or losses on the ORP employer contributions that may have accrued during the time that the amounts were not in the participant's account.

(b) Withdrawal of Retirement System Funds. An employee who elects to participate in ORP may withdraw any employee contributions (plus accrued interest, if any) that he or she may have accumulated in the applicable retirement system prior to the election of ORP. Contributions refunded by the applicable retirement system to ORP participants may be rolled over to the participant's ORP account.

(c) ORP Companies.

(1) Authorized by Each ORP Employer. Each ORP employer shall establish its own list of companies that are authorized to provide ORP products to that employer's ORP participants. Governing

boards with more than one component institution may establish one list for all components or separate lists for one or more component institutions.

(2) Qualified Companies. Companies authorized by an ORP employer shall be qualified to do business in the state of Texas as determined by the Texas Department of Insurance, the Texas State Securities Board, and any other applicable state or federal agency.

(3) Minimum Number of Companies.

(A) Minimum of Four. Each ORP employer shall authorize a minimum of four qualified companies, including at least one company that offers 403(b)(1) annuity accounts and at least one company that offers 403(b)(7) custodial accounts.

(B) Variety of Choices. Each ORP employer's list of authorized companies and products shall provide a reasonable variety of choices among types of accounts and funds.

(C) No Maximum Number. Each ORP employer may authorize as many ORP companies as the ORP employer deems appropriate.

(4) Return of Unvested Employer Contributions. Before an ORP employer may authorize a company to receive ORP contributions from unvested participants, the ORP employer shall require the company to certify that the entire amount of actual unvested ORP employer contributions will be returned upon request, in accordance with the procedures in subsection (a)(11) of this section. The ORP employer may require the company to indicate what method will be used, for example, restriction of unvested funds to money market or similar accounts.

(5) Authorization Policies and Procedures. Each ORP employer shall be responsible for establishing local policies and procedures for authorizing or certifying companies to provide ORP products to the ORP employer's ORP participants. Governing boards with more than one component institution may establish one policy for all components or separate policies for one or more component institutions.

(A) Consultants. ORP employers may enlist the assistance of consultants or other outside parties to develop selection criteria.

(B) Competitive Bids. ORP employers may scrutinize the quality of ORP products and select ORP companies and products through a competitive bid process.

(C) Participant Requests. ORP employers shall not be required to authorize any ORP company, company representative, or product requested by any participant, although ORP employers may take such requests into account if it may be done in accordance with applicable laws, rules and policies.

(D) Periodic Review of Policies. Each ORP employer shall periodically review and update its authorization or certification policies and procedures.

(E) Periodic Re-Authorization. Each ORP employer shall periodically re-authorize or re-certify companies.

(6) Participant's Change of Companies.

(A) Two Opportunities per Year. Each ORP employer shall provide ORP participants with at least two opportunities during each fiscal year to select a different company from the ORP employer's list of authorized companies. The opportunities may be provided on set dates during the year or on a flexible individualized basis.

(B) Two Changes per Year. Each ORP employer shall allow a participant to change his or her company selection on either

or both of the opportunities provided by the ORP employer under subparagraph (A) of this paragraph.

(C) Effective within 35 Days. The ORP employer shall start sending the participant's ORP contributions to his or her newly selected company beginning with the next payroll period if practicable, but not later than 35 days after the date the participant signs and submits the appropriate forms to the ORP employer.

(i) Problems. If the ORP employer cannot comply with this deadline due to circumstances beyond the ORP employer's control, the ORP employer shall notify the participant of the problem and shall provide the participant with an opportunity to change his or her company selection.

(ii) Additional Change. A participant's change of companies made in accordance with clause (i) of this subparagraph shall not be counted against the number of changes required under subparagraph (B) of this paragraph.

(D) Prior Contributions. Amounts contributed by the participant to previously selected ORP companies, including ORP contributions made during prior periods of employment with the same or another ORP employer, shall be under the same statutory distribution restrictions as the contributions in the participant's account with his or her newly selected ORP company.

(7) Grandfathered Companies.

(A) ORP employers may allow participants to continue contributing to an ORP company that is no longer on the ORP employer's list of authorized companies. Such a company shall be referred to as a grandfathered company.

(B) Institutions may allow participants who directly transfer from another Texas public institution of higher education to continue contributing to the same ORP company that they were contributing to at their prior ORP employer, provided the institution verifies that the contract includes the statutory distribution restrictions.

(8) Confirmation of ORP Contributions. ORP employers shall require ORP companies that receive contributions for the ORP employer's ORP participants to submit confirmation of receipt of funds directly to each participant at least quarterly. The confirmation shall contain the date and amount of each ORP contribution received during the reporting period.

(9) Confirmation of Funds Transfer. ORP employers shall require ORP companies that receive contributions for the ORP employer's ORP participants to, immediately upon execution of a transfer from one fund or investment or account to another fund or investment or account, submit a confirmation directly to the participant, unless specifically waived by the participant in writing. The confirmation shall include all transfer information, including a statement of any applicable charges.

(10) Required Company Reports. Each ORP employer shall require all ORP companies that receive contributions for the ORP employer's ORP participants to submit, at least annually, a report or reports to each participant having ORP accounts with that company, including accounts that are no longer receiving current contributions, containing the information indicated in paragraphs (11) - (13) of this subsection.

(11) For all accounts, the following information shall be provided:

(A) name and address of the participant;

(B) identifying number;

(C) total payments received during the reporting period;

(D) expense charges during the reporting period;

(E) net payments during the reporting period;

(F) total value of account at the end of the reporting period; and

(G) net cash surrender value of account at the end of the reporting period reflecting all potential charges against the account if it were surrendered for cash as of the last day of the reporting period.

(12) For fixed and variable annuity accounts, the following additional information shall be provided:

(A) interest rate or rates paid on the account from the previous reporting period to the end of the current reporting period; and

(B) where multilevel rates of interest were paid on an account, a breakdown showing the amount in the participant's account at each interest level, the amount of interest earned at each interest level, and the rates of interest. An ORP company may exclude the information required by this subparagraph concerning multilevel rates of interest from the annual report, but if this information is not provided on at least an annual basis, the company shall provide it at any time upon the participant's request.

(13) For variable annuity and custodial accounts, the following additional information shall be provided:

(A) units of each fund or investment or account purchased during the reporting period;

(B) total units of each fund or investment in the account at the end of the reporting period; and

(C) value of unit of each fund or investment or account at the end of the reporting period.

(14) Optional Information. ORP employers may require ORP companies to provide participants with other information in addition to the reporting requirements in paragraph (10) of this subsection, including, but not limited to:

(A) additional account-related information;

(B) information about the company; and

(C) general educational information related to investments.

(15) Authorized Company Representatives.

(A) Designated Representatives. ORP employers may require ORP companies to designate representatives, or may require that the company and the ORP employer jointly designate representatives, who are authorized to communicate directly with the ORP employer's ORP-eligible employees concerning the company and its products.

(B) Restricted Number. ORP employers may restrict the number of representatives authorized to represent each company.

(C) Brokers. ORP employers may authorize brokers who represent more than one authorized company. Such authorization may be in addition to the number of designated representatives of a particular company.

(D) Representative's ORP Knowledge. ORP employers may require ORP companies to certify that their designated representatives are sufficiently trained and knowledgeable about ORP, including an understanding of the statutory distribution restrictions that must be included in all ORP contracts.

(E) Responsibility to Correct Mistakes. ORP employers may require a company to fully rectify, at the company's cost, any mistakes made by a designated company representative concerning the delivery of incorrect ORP information and any resulting problems.

(16) Solicitation Practices. Each ORP employer shall establish the following procedures related to company solicitation practices.

(A) Sales Presentations. Authorized representatives shall be permitted to make sales presentations to ORP-eligible employees on the ORP employer's premises, under the following conditions:

- (i) only at the employee's request;
- (ii) as a guest of the employee and ORP employer;
- (iii) in compliance with the ORP employer's applicable policies and procedures.

(B) Prohibited Gifts. ORP company representatives shall be prohibited from providing gifts or monetary rewards directly or indirectly to any employee of the ORP employer for information on newly eligible employees.

(C) Bulk Campaigning Prohibited. Authorized representatives shall be responsible for providing appropriate sales literature and service at locations designated by the ORP employer. Unless specifically authorized by the ORP employer, ORP company representatives shall be prohibited from using campus bulk mailing (including electronic mail) or telephone campaigning.

(D) Violations. ORP employers shall reserve the right to restrict solicitation privileges of authorized representatives based on violations of the solicitation procedures in this paragraph and each ORP employer's local policies and procedures.

(d) Qualified Domestic Relations Orders (QDROs).

(1) Company Responsibilities. Each ORP employer shall ensure that all ORP contracts include a provision that the ORP company is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with Texas Government Code, Chapter 804.

(2) Company Interpretation. ORP employers may include criteria relating to an ORP company's interpretation of Texas Government Code, Chapter 804, in the ORP employer's ORP company authorization or certification process as provided in subsection (c) of this section.

(e) Investment Advisory Fees. Participants may pay certain investment advisory fees with tax-deferred funds in their ORP account in accordance with the following conditions.

(1) Investment advisory fees may only be paid with amounts in a participant's ORP account in accordance with the following provisions.

(A) The investment advisory fees for each fiscal year shall not exceed two percent of the annual value of the participant's account as of the last day of that fiscal year.

(B) The fees shall be paid directly to a registered investment advisor that provides advice to the participant.

(C) The investment advisor to whom the fees are paid shall be registered with the Securities and Exchange Commission and any other applicable federal or state agencies, and shall be engaged full-time in the business of providing investment advice.

(D) The participant and the investment advisor shall enter into a contract for a term of no more than one year. A contract that automatically renews each year shall be considered acceptable as long as both parties have the right to sever the relationship, with reasonable notification, at any time.

(2) An ORP employer shall not prohibit participants from utilizing this right and shall not restrict the payment percentage to less than two percent.

(3) An ORP employer may include in its ORP company authorization or certification process, as provided in subsection (c) of this section, a provision that prohibits commissions to an individual who also receives investment advisory fees for the same ORP account.

(4) An ORP company may request the ORP employer to sign a statement that investment advisory fees are permissible under the plan to provide assurance to the company that it is releasing ORP funds to the advisor in accordance with applicable ORP provisions.

(A) An ORP employer shall not sign the company's form indicating that investment advisory fees are permissible under the plan unless the ORP employer has received satisfactory documentation that the four conditions described in paragraph (1) of this subsection have been met.

(B) An ORP employer shall not sign a form that actually authorizes the payments because that is a relationship between the advisor, the participant and the company.

(f) Distribution Restrictions.

(1) Restricted Access.

(A) No Pre-Termination Access unless Age 70-1/2. ORP participants shall not access any of their ORP funds by any means until the earlier of the date that they:

(i) terminate all employment with all ORP employers; or

(ii) reach age 70-1/2 years.

(B) No Loans or Hardship Withdrawals.

(i) Loans, financial hardship withdrawals, or any other method that provides a participant with any type of access to ORP funds prior to the earlier of termination of employment or attainment of age 70-1/2 shall not be permitted.

(ii) ORP products may provide for loans or hardship withdrawals after the participant's termination of employment or attainment of age 70-1/2, if permissible under applicable laws and regulations.

(C) Previously Contributed Amounts. ORP contributions made during prior periods of employment with the same or another ORP employer and ORP contributions made to previously selected ORP companies with the current ORP employer shall be under the same statutory distribution restrictions as the contributions in the participant's current active account.

(D) Employment Transfer is not a Termination. A participant's transfer of employment between Texas public institutions of higher education without a break in service, as defined in §25.3 of this

title (relating to Definitions), shall not be considered a termination of employment for ORP purposes, unless the new position is non-benefits-eligible, as defined in §25.5(g) of this title (relating to Employment in a Non-Benefits-Eligible Position).

(E) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP companies shall not be considered a termination of employment for ORP purposes.

(F) Simultaneous Contributions and Withdrawals. An ORP participant shall not simultaneously make ORP contributions and withdraw funds from ORP accounts unless that participant is at least age 70-1/2.

(G) Documentation of Restrictions. ORP employers shall ensure that all ORP contracts specifically contain the statutory ORP distribution restriction provisions, which are sometimes referred to as the ORP endorsement.

(2) Authorization to Release ORP Funds. An ORP company shall not release any ORP funds to a participant until receipt of notification from the participant's ORP employer that a break in service has occurred, except when the participant has reached age 70-1/2, in which case, the ORP company may release funds upon verification that the participant has reached age 70-1/2. The ORP employer's termination notification may be referred to as a vesting letter because it indicates whether the participant has met the ORP vesting requirement.

(A) Unvested Participants. If a participant terminates prior to meeting the vesting requirement, the ORP employer's notification shall include a request for the return of the participant's forfeited ORP employer contributions, as provided in §25.6(a)(11) of this title (relating to Forfeited ORP Employer Contributions).

(B) Vested Participants. If a participant terminates after meeting the vesting requirement, all funds shall be available in accordance with applicable federal law and contractual provisions, but non-ORP-related early withdrawal penalties, such as additional federal income taxes or contractual surrender fees, may apply depending on factors such as the participant's product selection and age at termination.

(3) Prohibited Distribution by ORP Company. If an ORP company provides a participant with any access to ORP funds prior to the earlier of the participant's termination of employment with all ORP employers or attainment of age 70-1/2, then that company shall be responsible for making a prohibited distribution and the following provisions apply.

(A) Redeposit. The participant's ORP employer shall require the company to:

(i) redeposit funds to the employee's ORP account as if no withdrawal had been made; and

(ii) provide written verification to the ORP employer that the account has been fully restored with no adverse impact to the employee.

(B) Company Suspension. The ORP employer may suspend a company from doing further business with the ORP employer's participants at any time a company fails to comply with these provisions.

(g) ORP Employer Reports.

(1) Required Information. All ORP employers shall submit the following information to the Board:

(A) number of ORP participants;

(B) amount of contributions sent to ORP companies;

(C) list of ORP-eligible positions; and

(D) any other information required by the Board.

(2) Annual Report.

(A) Format. The required information shall be provided in a reporting format developed by the Board, which may include an electronic format.

(B) Due Date. The required information shall be reported on a fiscal year basis and shall normally be due on November 1 of each year for the most recent fiscal year ending August 31.

(3) Additional Information as Needed. ORP employers shall provide additional information to the Board as needed to carry out its functions under the ORP statute, which may be in the form of ad hoc reports, formal or informal surveys, or other format, and may be requested in an electronic format.

(h) Required Notices to Employees.

(1) Basic Information for Newly Eligible Employees. On or before an ORP-eligible employee's initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each institution shall provide the ORP-eligible employee with written introductory information on ORP developed by the Board and titled, "An Overview of TRS and ORP for Employees Eligible to Elect ORP."

(A) Uniform and Unbiased. The purpose of this notification requirement is to ensure that all employees who become eligible to elect ORP are provided general, uniform and unbiased information on which to base their decision.

(B) Electronic Notification. An institution may meet this notification requirement by:

(i) placing on its website the electronic version of the Overview document that is provided by the Board, and/or placing a link on its website to the Overview document that is available on the Board's website;

(ii) providing the ORP-eligible employee with local internet/intranet access to the electronic version of the document or link; and

(iii) within the required timeframe, notifying the ORP-eligible employee in writing of the location of the electronic version or link.

(C) Employees Subject to 90-Day TRS Waiting Period. Institutions may provide the required ORP information on or before the employee's first date of employment if the employee is subject to the 90-day TRS waiting period. An election of ORP in lieu of TRS may not be made before the employee has satisfied the TRS waiting period, but the ORP employer may encourage ORP-eligible employees to consider their retirement plan choices during the TRS waiting period. Employees who elect ORP as soon as the TRS waiting period has been satisfied will maximize their ORP contributions and minimize the time it takes to satisfy the ORP vesting period.

(2) Participant's ORP Responsibilities. On or before an ORP-eligible employee's initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each ORP employer shall provide written notification to the ORP-eligible employee that:

(A) an election of ORP entails certain responsibilities for the employee, including selection and monitoring of ORP companies and investments; and

(B) the ORP employer has no fiduciary responsibility for the market value of a participant's ORP investments or for the financial stability of the ORP companies chosen by the participant.

(3) Possible Retiree Group Insurance Eligibility. ORP employers shall include in their normal out-processing procedures for terminated employees, a notification to ORP participants that includes the following information:

(A) the participant's possible future eligibility for retiree group insurance as an ORP retiree;

(B) the ORP employer's policies for handling certification that an ORP participant meets the eligibility requirements for enrollment in retiree group insurance as an ORP retiree; and

(C) a caution to the participant to refrain from withdrawing all of his or her ORP funds if the participant anticipates enrolling in retiree group insurance as an ORP retiree at a later date.

(D) The notification may be either general in nature or specific to each participant.

(4) Verification of Notification Receipt. ORP employers shall develop forms and/or procedures to carry out the notification requirements in this subsection that provide documentation of the employee's acknowledgement of receipt of this information, including the date of receipt, such as a signature or electronic verification.

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 February 5, 2004.

TRD-200400738

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 22, 2004

For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

The Texas Education Agency (TEA) proposes amendments to §§89.1053, 89.1055, 89.1076, and 89.1096, and the repeal of §89.1095, concerning special education services for students with disabilities. The sections clarify federal regulations and state statutes pertaining to delivering special education services to students with disabilities. The proposed changes reflect revised rules and a repeal resulting from revisions to the Texas Education Code (TEC) and expiration of a rule.

During the 78th Texas Legislative Session, 2003, several sections of law impacting special education were amended. As a result of the changes to the state law, 19 TAC Chapter 89, Subchapter AA, must be amended to incorporate these changes to ensure school district compliance with new procedural requirements. The proposed amendments address the legislative requirements by providing clarification to 19 TAC §§89.1053, 89.1055 and 89.1076. Additionally, this proposal repeals 19 TAC §89.1095, which expired on June 30, 2001, and amends 19 TAC §89.1096.

The proposed amendments and repeal related to 19 TAC Chapter 89, Subchapter AA, include the following.

Section 89.1053, Procedures for Use of Restraint and Time-Out, would be amended to reflect changes made in TEC, §37.0021, related to the definitions of restraint and time-out and the applicability of the law and rules to certain individuals and entities. During the legislative session in 2003, TEC, §37.0021, was amended to revise language related to the procedures for use of confinement, restraint, seclusion, and time-out. The definitions for restraint and time-out were revised, and language was added to indicate that the law, and any rules or procedures adopted under the law, do not apply to peace officers while performing law enforcement duties; juvenile probation, detention, or corrections personnel; or an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

Section 89.1055, Content of the Individualized Education Program (IEP), would be amended to reflect legislative intent related to transition and to add language related to the new transition requirements as reflected in TEC, §29.011. The amended law no longer requires a memorandum of understanding (MOU) on transition planning for students with disabilities, but requires the ARD committee to consider, and, if appropriate, address in the IEP nine issues related to transition planning for students with disabilities.

Section 89.1076, Interventions and Sanctions, would be amended to reflect language changes made in TEC, §39.131. The amended law revises language related to the appointment of a conservator, as opposed to a master, to oversee the operations of a district, and it is proposed that 19 TAC §89.1076 be amended to reflect this revised reference consistent with the statute. It is further proposed that language be added to reflect that, in building a new monitoring system for educational programs, the focus has expanded beyond compliance-based issues to encompass student performance, including program effectiveness.

Section 89.1095, Provision of Services for Students Placed by their Parents in Private Schools, which expired on June 30, 2001, would be repealed since it is no longer in effect.

Section 89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities, would be amended to remove its expiration date of June 30, 2004, and reference to 19 TAC §89.1095. These changes reflect both the repeal of §89.1095 and the commissioner's intent to extend the current timeline in regard to the availability of dual enrollment for eligible students with disabilities ages 3 or 4. The extension of this requirement will allow students with disabilities ages 3 and 4 to continue to be dually enrolled in both public and private schools and to receive the services and protections available under an individualized education plan. The proposed amendment also

clarifies that the protections afforded to 3- and 4-year-old children under this section are intended to impact those students not yet eligible to attend kindergarten in a public school district.

A two-day stakeholder meeting of parents, advocates, school districts, education service centers, institutions of higher education, support personnel organizations, teacher organizations, administrator organizations, and the school board association was convened in December 2003 to discuss major issues surrounding the development of rules related to restraint/ time-out and transition. Statewide public hearings will be held on March 1, 2004, and March 8, 2004. In addition, the public will be given the opportunity to submit written/ electronic comments.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendments and repeal are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the amendments and repeal.

Dr. Barnes has determined that for each year of the first five years the amendments and repeal are in effect the public benefit anticipated as a result of enforcing the amendments and repeal will be the revision of rules as required by the 78th Texas Legislature, the clarification of legislative intent and/or state requirements related to transition planning for students with disabilities, and the provision of guidance relating to procedures for use of restraint and time-out for students with disabilities. Additionally, the proposed amendments clarify the commissioner's intent in regard to the provision of special education services to students enrolled by their parents in private schools. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments and repeal as proposed.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 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) 463-0028. All requests for a public hearing on the proposed amendments and repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

19 TAC §§89.1053, 89.1055, 89.1076, 89.1096

The amendments are proposed under the Texas Education Code, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program; TEC, §29.011, which authorizes the commissioner to adopt by rule procedures for compliance with federal requirements relating to transition; and TEC, §37.0021, which authorizes the commissioner to adopt by rule procedures for the use of restraint and time-out.

The proposed amendments implement 34 Code of Federal Regulations (CFR), §300.347 and §300.452, and TEC, §§29.001, 29.005, 29.011, 37.0021, 37.004 and 39.131.

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.346(a)(2)(i) and (c), school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including

students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A [with dignity and respect].

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit [student] is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object [prevented from leaving].

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint shall be discontinued at the point at which the emergency no longer exists.

(3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint shall not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) Not later than April 1, 2003, a core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) After April 1, 2003, personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).

(5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:

- (A) name of the student;
- (B) name of the staff member(s) administering the restraint;
- (C) date of the restraint and the time the restraint began and ended;
- (D) location of the restraint;
- (E) nature of the restraint;
- (F) a description of the activity in which the student was engaged immediately preceding the use of restraint;
- (G) the behavior that prompted the restraint;
- (H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and
- (I) information documenting parent contact and notification.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. [For the purposes of subsections (e)-(e) of this section, restraint] Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include [the use of]:

(1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

(2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or calm and provide comfort;

(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) to reduce and/or prevent the need for ongoing intervention ; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

(1) Physical force or threat of physical force shall not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP [individualized education program (IEP)]

and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) Not later than April 1, 2003, general or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.

(2) After April 1, 2003, newly-identified personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting [collection requirement]. Beginning with the 2003-2004 school year, with the exception of actions covered by subsection (f) of this section, [cumulative] data regarding the use of restraint must be reported to the Texas Education Agency [through the Public Education Information Management System (PEIMS)].

(l) The provisions adopted under this section do not apply to:

(1) a peace officer while performing law enforcement duties;

(2) juvenile probation, detention, or corrections personnel;

or
(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

§89.1055. Content of the Individualized Education Program (IEP).

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.346 and §300.347, and Part 300, Appendix A.

(b) The IEP must include a statement of any individual allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment. If the ARD committee determines that the student will not participate in a particular state- or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:

- (1) why that assessment is not appropriate for the child; and
- (2) how the child will be assessed using a locally developed alternate assessment.

(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services (ESY Services)), then the IEP must also include goals and objectives for ESY services from the student's current IEP.

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) shall also meet the requirements of TEC, §30.002(e).

(e) For students with autism/pervasive developmental disorders, information about the following shall be considered and, when needed, addressed in the IEP:

- (1) extended educational programming;
- (2) daily schedules reflecting minimal unstructured time;
- (3) in-home training or viable alternatives;
- (4) prioritized behavioral objectives;
- (5) prevocational and vocational needs of students 12 years of age or older;
- (6) parent training; and
- (7) suitable staff-to-students ratio.

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e)(1)-(7) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(g) In accordance with 34 CFR §300.29 and §300.347, for each student with a disability, beginning at age 14 (prior to the date on which a student turns 15 years of age) or younger, if determined appropriate by the ARD committee, the following issues must be considered in the development of the IEP, and, if appropriate, integrated into the IEP:

- (1) appropriate student involvement in the student's transition to life outside the public school system;
- (2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;
- (3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;
- (4) any postsecondary education options;
- (5) a functional vocational evaluation;
- (6) employment goals and objectives;
- (7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;
- (8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

§89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) shall establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 USC, §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.131(a), the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

- (1) on-site review for failure to meet program or compliance requirements;
- (2) required fiscal audit of specific program(s) and/or of the district, paid for by the district;
- (3) required submission of corrective action(s), including compensatory services, paid for by the district;
- (4) required technical assistance from the education service center, paid for by the district;
- (5) public release of program or compliance review findings;
- (6) special investigation and/or follow-up verification visits;
- (7) required public hearing conducted by the local school board of trustees;
- (8) assignment of a special purpose monitor, conservator [master], or management team, paid for by the district;
- (9) hearing before the commissioner of education or designee;
- (10) reduction in payment or withholding of funds; and/or
- (11) lowering of the special education compliance status and/or the accreditation rating of the district.

§89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

~~{(a) The provisions of this section shall be implemented beginning July 1, 2004, and at that time shall supersede §89.1095 of this title (relating to Provision of Services for Students Placed by their Parents in Private Schools). This section will expire on June 30, 2004.}~~

(a) ~~{(b)}~~ Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.454, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.450-300.462.

(b) ~~{(e)}~~ When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.450-300.462 or

subsection (d) of this section, until such time as the parents choose to enroll the student in public school full-time.

(c) [(d)] Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to the following.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.550-300.553, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(d) [(e)] The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.

(e) [(f)] Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) [(d)] of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.660-300.662. The procedures in 34 CFR, §§300.504-300.515 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) [(d)].

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 February 9, 2004.

TRD-200400805

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: March 21, 2004

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

19 TAC §89.1095

(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.)

The repeal is proposed under the Texas Education Code (TEC), §29.001, which authorizes the commissioner of education to

adopt rules for the administration and funding of the special education program.

The proposed repeal implements 34 Code of Federal Regulations (CFR), §300.347 and §300.452, and TEC, §§29.001, 29.005, 29.011, 37.0021, 37.004 and 39.131.

§89.1095. *Provision of Services for Students Placed by their Parents in Private Schools.*

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 February 9, 2004.

TRD-200400806

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: March 21, 2004

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

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. PRACTICE AND PROCEDURE

The Texas Board of Professional Engineers proposes to repeal Texas Administrative Code, Title 22, Part 6, Texas Board of Professional Engineers, Chapter 131, Practice and Procedure in its entirety as a part of the rule review required by Chapter 2001, Texas Government Code. The rules to be repealed and replaced by new rules in new chapters are: Subchapter A, Bylaws and Definitions, §§131.1 - 131.22, Subchapter B, Application for License, §§131.31 - 131.38 and §§131.51 - 131.55, Subchapter C, References, §§131.71 - 131.73, Subchapter D, Engineering Experience, §131.81, Subchapter E, Education, §§131.91 - 131.94, Subchapter F, Examinations, §§131.101 - 131.108, Subchapter G, Board Review of Application §§131.111 - 131.116, Subchapter H, Licensing, Division 1, Professional Engineer License, §§131.131 - 131.139, Division 2, Registration of Firms, §§131.141 - 131.144, Subchapter I, Professional Conduct and Ethics, §§131.151 - 131.156, Subchapter J, Compliance and Enforcement, §§131.161 - 131.168, Subchapter K, Complaints, §§131.171 - 131.177, Subchapter L, Hearings--Contested Cases, §§131.181 - 131.223 and Subchapter M, Policy Advisory Opinions, §§131.301 - 131.307.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Professional Engineers is publishing additional comment information relating to the recent adoption of §131.139, concerning Continuing Education Program, in the January 30, 2004, issue of the *Texas Register* (29 TexReg 958). Section 131.139 is being repealed and replaced as new §137.17 in this proposal package.

The Board proposes this action in conjunction with proposing five new chapters to better organize the agency rules and procedures. Since the statutory references in the Board Rules must be changed to reflect the new designations in the re-codified Act, nearly every rule must be re-proposed and adopted with the new

references. The Board has chosen this time to fix some organization problems in the existing rules and as well as incorporate new legislative requirements.

Victoria J. L. Hsu, P.E., Executive Director for the board, has determined that for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering upon repeal since the substance of the repealed rules will be re-proposed and adopted under new chapters.

Ms. Hsu has also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing and administering the proposed repeals will be that the general public and license holders of Texas will be able to follow more organized rules and streamlined processes and procedures in the new rules. For the same period, there is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments may be submitted, no later than 30 days after publication, to Victoria J. L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741 or faxed to her attention at (512) 442-1414.

SUBCHAPTER A. BYLAWS AND DEFINITIONS

22 TAC §§131.1 - 131.22

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

- §131.1. *Headquarters of the Board.*
- §131.2. *Organization of the Board.*
- §131.3. *Chairman of the Board.*
- §131.4. *Vice Chairman of the Board.*
- §131.5. *Pro Tem Chairman of the Board.*
- §131.6. *Secretary of the Board.*
- §131.7. *Vacancies in the Board.*
- §131.8. *All Meetings Open to the Public.*
- §131.9. *Regular Board Meetings.*
- §131.10. *Special Board Meetings.*
- §131.11. *Rules of Order.*
- §131.12. *Order of Business.*
- §131.13. *Fiscal Matters.*
- §131.14. *Seal of the Board.*
- §131.15. *Executive Director.*
- §131.16. *Minutes of Board Meetings.*
- §131.17. *National Council.*
- §131.18. *Definitions.*
- §131.19. *Requests for Information.*
- §131.20. *Committees.*

§131.21. *Self-Directed Semi-Independent Agency Project.*

§131.22. *Employee Training.*

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 February 9, 2004.

TRD-200400826

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER B. APPLICATION FOR LICENSE

22 TAC §§131.31 - 131.38, 131.51 - 131.55

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.31. *Purpose.*

§131.32. *Amendments, Deletions, and Additions of Rules.*

§131.33. *Petition for Adoption of Rules.*

§131.34. *Petition Decision by Board.*

§131.35. *Suspension of Rules.*

§131.36. *Invalid Portions and Saving Provisions.*

§131.37. *Effective Date.*

§131.38. *Rules Identification and Format.*

§131.51. *Authority.*

§131.52. *Applications for a Professional Engineer License.*

§131.53. *Applications--General.*

§131.54. *Applications from Former Texas License Holders.*

§131.55. *Applications from Engineering Educators.*

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 February 9, 2004.

TRD-200400827

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723

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SUBCHAPTER C. REFERENCES

22 TAC §§131.71 - 131.73

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.71. *References.*

§131.72. *Reference Statements.*

§131.73. *Reference Communication.*

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 February 9, 2004.

TRD-200400828

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723

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SUBCHAPTER D. ENGINEERING EXPERIENCE

22 TAC §131.81

(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 Board of Professional Engineers or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeal:

Texas Occupations Code §1001.202

§131.81. *Experience Evaluation.*

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 February 9, 2004.

TRD-200400829

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723

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SUBCHAPTER E. EDUCATION

22 TAC §§131.91 - 131.94

(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 Board of Professional Engineers or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.91. *Educational Requirements for Applicants.*

§131.92. *Proof of Educational Qualifications--Non-Accredited/Non-Approved Programs.*

§131.93. *Proof of Educational Qualifications--Accredited/Approved Programs.*

§131.94. *English Translation.*

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 February 9, 2004.

TRD-200400830

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723

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SUBCHAPTER F. EXAMINATIONS

22 TAC §§131.101 - 131.108

(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 Board of Professional Engineers or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and

bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.101. *Engineering Examinations Required for a License to Practice as a Professional Engineer.*

§131.102. *Texas Engineering Professional Conduct and Ethics Examination.*

§131.103. *Examination on the Fundamentals of Engineering.*

§131.104. *Examination on the Principles and Practice of Engineering.*

§131.105. *Waiver of Examinations.*

§131.106. *Examination for Record Purposes.*

§131.107. *Examination Analysis.*

§131.108. *Examination Irregularities.*

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 February 9, 2004.

TRD-200400831

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER G. BOARD REVIEW OF APPLICATION

22 TAC §§131.111 - 131.116

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.111. *Reviewing, Evaluating and Processing Applications.*

§131.112. *Processing of Administratively Withdrawn Applications.*

§131.113. *Reconsideration of Denied Applications or Examination Waivers.*

§131.114. *Personal Interviews of Applicants.*

§131.115. *Application Files.*

§131.116. *Issuance of License.*

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 February 9, 2004.

TRD-200400832

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER H. LICENSING DIVISION 1. PROFESSIONAL ENGINEER LICENSE

22 TAC §§131.131 - 131.139

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.131. *Regular and Temporary Licenses.*

§131.132. *Provisional Licenses.*

§131.133. *Professional Designations.*

§131.134. *Expirations and Renewals.*

§131.135. *Replacement Certificates.*

§131.136. *New Design Certificates.*

§131.137. *Engineer-in-Training.*

§131.138. *Engineer-in-Training Certificates.*

§131.139. *Continuing Education Program.*

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 February 9, 2004.

TRD-200400833

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



DIVISION 2. REGISTRATION OF FIRMS

22 TAC §§131.141 - 131.144

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.141. *Authority.*

§131.142. *Application for a Certificate of Registration.*

§131.143. *Registration Modification, Renewal and Expiration.*

§131.144. *Firm Registration Compliance.*

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 February 9, 2004.

TRD-200400834

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER I PROFESSIONAL CONDUCT AND ETHICS

22 TAC §§131.151 - 131.156

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.151. *Engineers Shall Protect the Public.*

§131.152. *Engineers Shall Be Objective and Truthful.*

§131.153. *Engineers' Actions Shall Be Competent.*

§131.154. *Engineers Shall Maintain Confidentiality of Clients.*

§131.155. *Engineers' Responsibility to the Profession.*

§131.156. *Action in Another Jurisdiction.*

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 February 9, 2004.

TRD-200400835

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER J. COMPLIANCE AND ENFORCEMENT

22 TAC §§131.161 - 131.168

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.161. *General.*

§131.162. *Firm Compliance.*

§131.163. *Engineer Compliance.*

§131.164. *Business Names.*

§131.165. *A License Holder's Responsibility to the Board.*

§131.166. *Engineers' Seals.*

§131.167. *Disciplinary Actions.*

§131.168. *Actions Against Non-License Holders.*

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 February 9, 2004.

TRD-200400836

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER K. COMPLAINTS

22 TAC §§131.171 - 131.177

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

- §131.171. *General.*
- §131.172. *Complaints Against License Holders.*
- §131.173. *Complaints Against Unlicensed Persons, or Firms, Partnerships and Other Entities.*
- §131.174. *Investigating a Complaint.*
- §131.175. *Final Resolution of Complaint.*
- §131.176. *Reporting Complaint Status to the Board.*
- §131.177. *Technical Consultants.*

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 February 9, 2004.

TRD-200400837

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER L. HEARINGS-CONTESTED CASES

22 TAC §§131.181 - 131.223

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

- §131.181. *State Office of Administrative Hearings.*
- §131.182. *Board Responsibilities.*
- §131.183. *Jurisdiction; Request for Hearing or Law Judge.*
- §131.184. *Filings.*
- §131.185. *Stipulations; Agreements.*
- §131.186. *Service.*
- §131.187. *Conduct and Decorum.*
- §131.188. *Classification of Parties.*
- §131.189. *Appearances in Person or by Representative; Waivers; Default.*

- §131.190. *Classification of Pleadings.*
- §131.191. *Form and Content of Pleadings.*
- §131.192. *Discovery.*
- §131.193. *Motions; Amendments.*
- §131.194. *Prehearing Conferences and Orders.*
- §131.195. *Notice of Hearing.*
- §131.196. *Certificates of Registration.*
- §131.197. *Conduct of Hearings.*
- §131.198. *Formal Exceptions.*
- §131.199. *Motions for Postponement, Continuance, Withdrawal, or Dismissal of Matters before the Board.*
- §131.200. *Place and Nature of Hearings.*
- §131.201. *Administrative Law Judge.*
- §131.202. *Order of Proceedings.*
- §131.203. *Reporters and Transcript.*
- §131.204. *Telephone Hearings.*
- §131.205. *Dismissal, Settlement without Hearing.*
- §131.206. *Rules of Evidence.*
- §131.207. *Documentary Evidence.*
- §131.208. *Official Notice.*
- §131.209. *Prepared or Prefiled Testimony.*
- §131.210. *Limitations on Number of Witnesses.*
- §131.211. *Exhibits.*
- §131.212. *Offer of Proof.*
- §131.213. *Depositions.*
- §131.214. *Subpoenas.*
- §131.215. *Proposals for Decision.*
- §131.216. *Filing of Exceptions, Briefs, and Replies.*
- §131.217. *Form and Content of Briefs, Exceptions, and Replies.*
- §131.218. *Oral Argument.*
- §131.219. *Final Decisions and Orders.*
- §131.220. *Administrative Finality.*
- §131.221. *Motions for Rehearing.*
- §131.222. *Rendering of Final Decision or Order.*
- §131.223. *The Record.*

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 February 9, 2004.

TRD-200400838

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER M. POLICY ADVISORY OPINIONS

22 TAC §§131.301 - 131.307

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

The repeals are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeals:

Texas Occupations Code §1001.202

§131.301. *Definitions.*

§131.302. *Subject of an Advisory Opinion.*

§131.303. *Request for an Advisory Opinion.*

§131.304. *Board Initiated Opinion.*

§131.305. *Receipt, Review, and Processing of a Request.*

§131.306. *Compilation of Advisory Opinions.*

§131.307. *Time Period.*

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 February 9, 2004.

TRD-200400839

Victoria J. L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



CHAPTER 131. ORGANIZATION AND ADMINISTRATION

The Texas Board of Professional Engineers proposes new rules in Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration. The proposed new rules are: Subchapter A, Organization and Administration, §§131.1, 131.3, 131.5, 131.7, 131.9, 131.11, 131.13, 131.15, Subchapter B, Organization of the Board Staff, §§131.31, 131.33, 131.35, Subchapter C, Meetings, §§131.41, 131.43, 131.45, 131.47, 131.49, 131.51, 131.53, Subchapter D, Fiscal Matters, §131.61, §131.63, Subchapter E, Cooperative Affiliations, §131.71, §131.73, Subchapter F, Administration, §§131.81, 131.83, 131.85, Subchapter G, Advisory Opinions, §§131.101, 131.103, 131.105, 131.107, 131.109, and, 131.111. The Board proposes this action in conjunction with repeal of the existing Chapter 131: Practice and Procedure. Also, the board proposes this action in conjunction with proposing five new chapters to better organize the agency rules and procedures.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. Since the statutory references in the Board Rules must

be changed to reflect the new designations in the re-codified Act, nearly every rule must be re-proposed and adopted with the new references. The Board has chosen this time to re-organize the existing rules, incorporate new legislative requirements, and develop a framework to aid in future rule expansion.

Since most of the content of the proposed rules are a repeat of the existing rules with few changes, the board will highlight substantive changes by subchapter. The rules proposed are not number consecutively and reserves numbers for future expansion.

In the proposed Subchapter A: Organization of the Board, the board includes the statutory provision requiring the governor to appoint the presiding officer of the board. In addition, the new rules summarize the board member responsibilities and duties. The proposed rule for board committees establishes a new policy advisory opinion committee and summarizes the statutory requirements for the joint committee on the practice of engineering and architecture.

In the proposed Subchapter B: Organization of the Board Staff, the board expands its employee training rules to comply with the State Employee Training Act, §656, Texas Government Code.

In the proposed Subchapter C: Meetings, the board establishes by rule a procedure for public comment at committee and full board meetings. The new rule also allows for a member of the public to request a topic within the jurisdiction of the board be placed on a committee or full board agenda subject to the discretion of the committee or board chair. In this subchapter, the existing rules regarding meetings were modified to reflect the current language in the statute.

In the proposed Subchapter D: Fiscal Matters, the board proposes new rules to adopt by reference procedures required by Chapter 2161 and Chapter 2260, Texas Government Code, relating to HUB requirements and negotiating contract disputes.

In the proposed Subchapter E: Cooperative Affiliations, the board proposes rules to clarify participation with the National Council of Examiners for Engineering and Surveying, including establishing the role and function of emeritus members from the board to that organization. The new rule also describes the board's initiative to develop memoranda of understanding with organizations with engineering related requirements.

In the proposed Subchapter F: Administration, the board proposes definitions of commonly used terms and phrases in the rules and adds several new definitions to the existing list of definitions including advisory opinion and number, various acronyms for organizations related to licensure, and recognized institution of higher education relevant toward meeting the educational requirements for licensure. The new rules also summarize the procedures for making board rules and provides a provision for the statute to take precedent over an existing rule if the statute becomes effective before the rule can be modified.

And, finally, in the proposed Subchapter G: Advisory Opinions, the board proposes the existing rules regarding advisory opinions; however, the definitions of the previous rule have been moved to the earlier section on definitions and the board adds a provision to clarify that reconsideration or revision of an existing opinion shall be treated as a new request.

Victoria J. L. Hsu, P.E., Executive Director for the board, has determined that for the first five-year period the new rules are in effect, there will be minimal fiscal implications for state or local government as a result of enforcing or administering the new

rules since the substance of the proposed rules comes from the current rules.

Ms. Hsu has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing and administering the proposed rules will be that the general public and license holders of Texas will be able to follow more organized rules and streamlined processes and procedures in the new rules. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Comments may be submitted, no later than 30 days after publication, to Victoria J. L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741 or faxed to her attention at (512) 442-1414.

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §§131.1, 131.3, 131.5, 131.7, 131.9, 131.11, 131.13, 131.15

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration - Occupations Code §1001.202.

§131.1. Purpose and Duties.

(a) The board is statutorily empowered to regulate the practice of engineering in Texas.

(b) The board shall promulgate and adopt rules as authorized and required by statute, which are necessary for the performance of its duties. Such rules shall establish standards of conduct and ethics for engineers, ensure strict compliance with and enforcement of the provisions of the Act, ensure uniform standards of practice and procedure, including fees for services, and provide for public participation, notice of the agency actions, and a fair and expeditious determination of causes before the board.

(c) The board may act directly under its statute and rules or through the executive director or a committee of the board.

(d) Pursuant to the Texas Engineering Practice Act, the board is responsible for policy-making decisions and the executive director is responsible for the agency's management decisions.

§131.3. Headquarters of the Board.

The headquarters and administrative offices of the Texas Board of Professional Engineers (board) shall be located at 1917 IH 35 South, Austin, Texas 78741-3702.

§131.5. Board Seal.

The seal of the board shall be an embossed circular seal consisting of two concentric circles. The diameter of the inner circle shall be approximately 60% of the size of the outer circle which shall be the official seal of the State of Texas. The area between the two circles shall contain the wording "Texas Board of Professional Engineers." The executive director shall be the custodian of the seal. The seal may be reproduced in other sizes provided the dimensions remain proportionate.

§131.7. Organization of the Board.

(a) In accordance with Texas Occupations Code, §§1001.101 through 1001.112, the board shall consist of members appointed by the Governor with the advice and consent of the Senate.

(b) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The presiding officer shall be the Chair of the board.

(c) The terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. The terms of two members who are practicing licensed engineers and one member who is a representative of the public expire on August 31 of each odd-numbered year. Upon completion of a term, a member may continue to serve until a successor has been appointed. A member may be reappointed to successive terms at the discretion of the Governor.

(d) The board shall elect from its own membership a vice chair and a secretary. These officers shall serve from September 1 through August 31 and shall be elected annually at a board meeting prior to September 1.

(e) The board as a whole may act as an executive committee.

(f) Five members of the board shall constitute a quorum.

(g) The board may transact official business only when in session with a quorum present and shall not be bound in any way by any statement or action on the part of any individual member except when such statement or action is in pursuance of specific instructions of the board. No order or decree shall be adopted by the board except in open meeting and in accordance with the Texas Government Code, Chapter 551.

§131.9. Officers of the Board.

(a) Chair of the Board. The presiding officer shall be the chair of the board. When present, the chair shall preside at all meetings. The chair shall appoint such committees required by rule and may appoint any additional committees as needed. The chair shall perform all other duties usually pertaining to the office of chair and permitted by law, and shall have the authority to delegate any of those duties to the executive director. The chair shall have the authority to review the performance of the executive director and initiate alterations in the executive director's job requirements or employment status. The chair shall select and determine the agenda for meetings of the full board and may delegate that authority to the executive director.

(b) Vice Chair of the Board. The vice chair, in the absence of the chair, shall perform the duties of the chair as specified in subsection (a) of this section. In the event the office of the chair shall become vacant, the vice chair shall serve until a new presiding officer has been appointed by the governor.

(c) Pro Tem Chair of the Board. In the absence of the chair and vice chair from a regular or special meeting of the board, the remaining members, providing there is a quorum, shall elect a chair who shall serve until the conclusion of the meeting or until the arrival of the chair or vice chair.

(d) Secretary of the Board. The secretary of the board is charged with carrying out the duties prescribed in the Act, §§1001.109, 1001.211, and 1001.308 and may delegate those duties prescribed in §§1001.109 and 101.211 to the executive director.

§131.11. Board Member Responsibilities and Duties.

(a) Each board member shall meet and maintain the qualifications for board membership as set by §§1001.201 and 1001.202 of the Act.

(b) Each board member appointed after September 1, 2003 shall attend a board member training prior to attendance and participation in a board or committee meeting.

(c) A board member is subject to the provisions of §1001.106 of the Act relating to grounds for removal.

(d) In order to be reimbursed for travel for other than travel to board and committee meetings, a board member shall have the approval of the chair or full board or executive director.

(e) Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

(f) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not participate in the discussion of or vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting and record in the minutes why the member is prohibited from participating in the discussion of or voting on the matter.

(g) Board members shall submit an activity report that shall document the board member's activities related to the board that have occurred since the previous activity report was submitted including activities that occurred in a meeting that was noticed and held in accordance with the open meeting requirements of Chapter 551 of the Texas Government Code.

§131.13. Vacancies in the Board.

If for any reason a vacancy shall occur in the board, the chair shall prepare a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in offices of vice chair or secretary of the board, the board shall elect a new officer to serve for the remainder of the unexpired term from its own membership at the first regular or special meeting following the vacancy.

§131.15. Committees.

(a) The board chair shall appoint the following standing committees as stated in paragraphs (1)-(5) of this subsection, composed of four board members at least one of whom is a public member. A committee quorum shall consist of three members. Committee appointments shall be made by the chair for a term of two years but may be terminated at any point by the chair. Committee members may be re-appointed at the discretion of the chair. The board chair shall appoint a committee chair.

(1) General Issues Committee. The committee shall meet no less than twice each fiscal year to evaluate issues and possibly develop proposed actions for the full board on issues of importance to the board and the profession. Such issues might include engineering ethics, professionalism in practice, legislation, board management, and engineering business issues. The vice chair of the board shall be a committee member and shall chair the committee during his or her elected term.

(2) Licensing Committee. The committee shall meet no less than twice each fiscal year to evaluate issues and possibly develop proposed actions for the full board on licensing issues. The committee may participate in activities such as evaluating rules concerning licensing of engineers; evaluating education and continuing education program requirements; conducting personal interviews of applicants; evaluating applications; participating in national and international engineering licensing activities on the board's behalf; providing general

guidance to the executive director on licensing issues; and evaluating any other issue indirectly or directly relating to engineering licensing.

(3) Compliance and Enforcement Committee. The committee shall meet no less than twice each fiscal year to evaluate issues and possibly develop proposed actions for the full board on enforcement issues. The committee may participate in activities such as evaluating rules concerning enforcement of the Act; reviewing the progress of major enforcement cases or groups of cases; suggesting sanctions for violations of the Act; participation in national and international engineering law enforcement activities on the board's behalf; providing general guidance to the executive director on enforcement issues; and evaluating any other issue indirectly or directly relating to engineering law enforcement.

(4) Policy Advisory Opinion Committee. The committee shall meet as required to review, prepare and recommend policy advisory opinions regarding the interpretation or application of the Act and to perform related activities pursuant to board approval. The committee shall follow the process and procedures for issuing advisory opinions as prescribed in Subchapter G: Advisory Opinions of this chapter.

(5) Legislative Issues Committee. The committee shall meet at least twice a year to consider legislative matters that may affect the practice of engineering in the state. Pursuant to the Chapter 556, Texas Government Code, the committee shall not lobby or strive to influence legislation regarding the practice of engineering but meet to consider board responses to pending legislation and assist in answering related inquiries from the Texas Legislature, Governor or other state agency or governmental entity during the legislative session. The committee shall report to the full board on actions and activities addressed on behalf of the board.

(b) Nominating Committee. The board's chair shall appoint a nominating committee consisting of the chair and two board members to nominate candidates for the offices of vice chair and secretary. The nominating committee shall meet prior to the regular board meeting prior to September 1 of each year to allow election of officers at that meeting.

(c) Ad Hoc Committees. The board and its committees may appoint temporary committees to assist in resolving particular engineering issues.

(1) The board's chair, board, and/or committee chair may appoint ad hoc committees composed of committee members, other board members, and other persons to address particular issues.

(2) The chair or committee chair shall establish a specific purpose and duration for each ad hoc committee. Ad hoc committees previously appointed may be reappointed in part or in whole for a specific purpose and duration.

(3) Ad hoc committees shall be limited to investigating and evaluating issues assigned, and making a report to the full board or appropriate standing committee with recommendations concerning possible board positions, actions or inactions. The board or appropriate standing committee shall receive the report of each ad hoc committee publicly, and shall recommend appropriate action, if any, to the full board.

(d) Advisory Committees. The chair or board may convene the following committees in an advisory capacity:

(1) Educational. The educational advisory committee shall consist of the deans of the colleges or the department heads or other program administrator for those institutions without a college of engineering or the representatives for the deans or department heads and

other invited representatives of the academic community. The committee shall meet as needed and submit any reports or recommendations to the Licensing Committee. If requested by the advisory committee, the executive director or staff may act as the secretary for the meeting.

(2) Industry. The industry advisory committee shall consist of practicing engineers from various disciplines and functions in engineering including, but not limited to, consulting, manufacturing, regulatory, research, and utility service. The committee shall meet as needed and submit any reports or recommendations to the General Issues Committee. If requested by the advisory committee, the executive director or staff may act as the secretary for the meeting.

(e) Joint Advisory Committee on Practice of Engineering and Architecture. Pursuant to §1001.216 of the Act, the advisory committee shall work to resolve issues that result from the overlap between activities that constitute the practice of engineering and those that constitute the practice of architecture. The chair shall appoint three members of the board and one practicing architectural engineer to the Joint Advisory Committee on Practice of Engineering and Architecture.

(1) Members of the advisory committee serve staggered six-year terms with the terms of one or two members appointed by the board expiring each odd-numbered year.

(2) The advisory committee shall meet at least twice a year.

(3) The advisory committee shall assist each agency in protecting the public rather than advancing the interests of either agency or the profession it regulates.

(4) The advisory committee shall issue advisory opinions to the board and to the Texas Board of Architectural Examiners on matters relating to the practice of engineering and the practice of architecture, including:

(A) opinions on whether certain activities constitute the practice of engineering or the practice of architecture;

(B) specific disciplinary proceedings initiated by either agency; and

(C) the need for persons working on particular projects to be licensed by the board or registered by the Texas Board of Architectural Examiners.

(5) If the advisory committee issues an advisory opinion to the board and/or the Texas Board of Architectural Examiners on a matter, that agency shall notify the committee of the final action taken with regard to the matter. The advisory committee shall consider the action taken by the agency on the matter in any advisory opinion subsequently issued by the committee on a related matter.

(6) The board and the Texas Board of Architectural Examiners shall enter into a memorandum of understanding regarding the advisory committee that includes the composition and purpose of the committee.

(f) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting or if authorized by rule.

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 February 9, 2004.

TRD-200400840

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723

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SUBCHAPTER B. ORGANIZATION OF THE BOARD STAFF

22 TAC §§131.31, 131.33, 131.35

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration - Occupations Code §1001.202.

§131.31. Executive Director.

(a) The executive director shall be employed by the board to be the administrator of the agency.

(b) The executive director shall be a licensed professional engineer, and shall faithfully execute all directives of the Texas Board of Professional Engineers that are within the scope of the board's legal authority.

(c) The duties of the executive director shall be to administer and enforce the applicable law, to assist in conducting meetings of the board, and to carry out other responsibilities as assigned by the board. The executive director shall have sole authority to employ a staff within the budget authorized; perform all supervisory functions including employee evaluations, promotions, disciplinary actions and terminations; and develop and implement all agency policies and procedures concerning the operation of the agency office. The duties imposed on the executive director under this section may be executed through board staff.

(d) The executive director shall be evaluated by the chair as needed. The executive director serves at the pleasure of the board and employment may be terminated at any time by a negative vote of confidence from a simple majority of the full board.

§131.33. Career Ladder.

The agency career ladder program and guidelines shall be maintained by the executive director or executive director's designee in the agency employee handbook.

§131.35. Employee Training.

(a) Pursuant to the State Employees Training Act, Section 656 of the Texas Government Code, the board may provide training and educational programs for its administrators and employees as a part of staff development and continuing education. These programs shall be offered in order for the staff to keep abreast of changes in technologies, legal developments, human resource issues, and to further enhance the employees' knowledge, skills, and abilities, and to provide continuing professional competency education for the engineering staff members.

(b) Employees may be approved to attend workshops, seminars, conferences, and other special programs or activities that directly

benefit the employee and the agency. The approval decision shall be made in advance and shall be at the discretion of the executive director. Any membership fees, dues, and travel associated with an employee's attendance at these functions shall be paid for by the board as long as there is a direct benefit to the board and the activity is part of the agency's official business.

(c) Financial assistance may be awarded for some or all of the following expenses:

(1) tuition, including correspondence courses that fulfill degree, professional or General Equivalence Diploma (GED) program plan requirements;

(2) degree plan pertinent College Level Equivalency Program examinations if the employee receives college credit or waiver of course requirements;

(3) degree plan pertinent Life Experience Assessments if the employee receives college credit; and

(4) required fees, including lab fees, and books.

(d) Financial assistance granted under this program shall not exceed \$900 per year per employee

(e) To be eligible for consideration for training and education assistance, an employee must:

(1) be in good standing with the board;

(2) meet and continue to meet all performance expectations;

(3) have at least 12 months of service with the board or state; and

(4) seek enrollment and participation in a field of study that relates to assigned or prospective job duties, a professional development requirement, a GED program or a higher education degree plan.

(f) To maintain eligibility in a degree program, an employee must be enrolled in an institution of higher education in a course of instruction leading toward a degree and maintain a passing grade point average.

(g) To maintain eligibility in a GED program an employee must be enrolled each semester in a GED program and maintain a passing grade point average.

(h) The employee must attend and satisfactorily complete the education and training, including passing tests or other types of performance measures where required.

(i) Each semester an employee must provide grade reports to verify that full credit was received for courses taken.

(j) An employee must provide fee receipts for courses to be taken and must promptly report outside funds such as grants, scholarships or other financial aid received. The executive director may adjust the assistance provided to the employee at any time for any reason.

(k) Any employee who has received assistance under this program shall repay the entire amount of the assistance received if the employee voluntarily leaves the board's employ within six months of concluding an educational program for which assistance was granted.

(l) The executive director may require a written agreement between the board and the employee describing the terms and conditions of the education or training assistance to be provided by the board. The board may impose such terms and conditions as may be reasonable and appropriate, including but not limited to, specifying the circumstances

under which the assistance may be terminated and the employee may be required to repay the amount of assistance.

(m) The executive director will reconsider each employee's participation in the Education Assistance Program each semester.

(n) Assistance may be terminated and the employee may be required to repay all funds received from the institution if the employee:

(1) withdraws from the institution;

(2) is removed or prohibited from attending the institution;

(3) fails to comply with one or more terms of the assistance agreement, including but not limited to, additional terms concerning termination and repayment of assistance; or

(4) is terminated by the board during the duration of the assistance agreement.

(o) The board may pay the license fees of employees who are required to provide services as part of their duty assignments. The board will not pay for driver's license fees or other license fees where the license can be considered a basic personal resource.

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 February 9, 2004.

TRD-200400867

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER C. MEETINGS

22 TAC §§131.41, 131.43, 131.45, 131.47, 131.49, 131.51, 131.53

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration - Occupations Code §1001.202.

§131.41. Open to the Public.

All meetings of the board and standing committees shall be held in accordance with Chapter 551, Texas Government Code.

§131.43. Public Participation.

(a) The board shall include "public comment" as a topic on the agenda for each regularly scheduled board or committee meeting.

(b) A person wishing to address the board about any subject under the board's jurisdiction shall fill out a Public Comment form prior to the start of the meeting and submit the form to the chair.

(c) The chair will recognize those requests to address the board during the "public comment" portion of a meeting.

(d) A person may address the board regarding any issue related to the jurisdiction of the board. The chair or executive director may impose a time limit for those wishing to address or make a presentation to the board. The allotted period for a person addressing the board may only be extended by board vote and may not be extended by another person delegating, ceding, passing or otherwise granting allotted comment time in lieu of addressing the board.

(e) The board may not comment or make a decision about a subject not listed on the agenda except to reply with:

(1) a statement of specific factual information in response to the inquiry;

(2) a recitation of existing policy in response to the inquiry;
or,

(3) a proposal to place the subject on the agenda for a subsequent board or committee meeting.

(f) At least 20 days prior to a meeting, a person from the general public may submit a written request to the chair, a committee chair, or executive director for an item to be placed on the meeting agenda. The executive director shall forward such requests to the chair or appropriate committee chair. The chair or committee chair shall consider the request but has the discretion to include the requested item on the agenda or to only allow for comment as described in subsections (a) through (e) of this section.

§131.45. Regular Board Meetings.

The board shall hold a minimum of two regular meetings each calendar year. Board meetings shall take place at the headquarters of the board or at other places as designated by the board.

§131.47. Special Board Meetings.

Special meetings may be called by the chair or upon the request of at least three board members.

§131.49. Rules of Order.

Conduct of board meetings shall be guided by Roberts' Rules of Order Newly Revised; however, no board action shall be invalidated by reason of failure to strictly comply with those rules.

§131.51. Order of Business.

(a) In conjunction with the chair of the board or committee chair as applicable, the executive director shall prepare a written agenda for each board and committee meeting and distribute a copy of the agenda to all board members and shall post notice of the meeting with the secretary of state in compliance with Chapter 551, Texas Government Code.

(b) At least 20 days prior to a meeting, any board member may request the chair or committee chair to place an item on the meeting agenda. It is within the chair's or committee chair's discretion to determine the items to be placed on the agenda; however, upon the request of at least three board members, the chair or committee chair shall place an item on the agenda.

§131.53. Minutes.

In addition to the distribution required by law, copies of the official minutes of each meeting of the board shall be distributed to such persons as the board may direct and to such private citizens as may make a formal written request. An official copy of all board minutes shall remain on file in the board office, available to any citizen desiring to examine them. The board may elect to make recordings of the board meetings and shall make such recordings available for review at the board headquarters.

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 February 9, 2004.

TRD-200400868

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER D. FISCAL MATTERS

22 TAC §131.61, §131.63

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration - Occupations Code §1001.202.

§131.61. Financial.

(a) The fiscal year of the board shall begin September 1 and close the following August 31. The fiscal year shall be designated to correspond with the calendar year in which it closes.

(b) The operating budget and fees schedule shall be prepared by the executive director and submitted to the board for approval.

(c) Pursuant to the requirements of Chapter 2161.003 of the Government Code, the board adopts the rules of the Texas Building and Procurement Commission (formerly the General Services Commission) relating to the Historically Underutilized Business (HUB) Program and stated at 1 Texas Administrative Code, Part V, Chapter 111, Subchapter B, §§111.11 - 111.16.

(d) The board adopts by reference the rules of the Office of the Attorney General in Title 1, Part 3, Texas Administrative Code, Chapter 68 relating to Negotiation and Mediation of Certain Contract Disputes to comply with the requirements of Texas Government Code, Chapter 2260, §2260.052(c). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of contract's complexity, subject matter, dollar amount, or method and time of performance.

§131.63. Self-Directed Semi-Independent Agency Project Act.

The Board shall adopt, monitor and update policies as required to comply with the Self-Directed Semi-Independent Agency Project Act (Texas Civil Statutes, Title 132, Article 8930).

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 February 9, 2004.

TRD-200400869
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: March 21, 2004
For further information, please call: (512) 440-7723



SUBCHAPTER E. COOPERATIVE AFFILIATIONS

22 TAC §131.71, §131.73

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration - Occupations Code §1001.202.

§131.71. National Council of Examiners for Engineering and Surveying.

(a) The board may affiliate with the National Council of Examiners for Engineering and Surveying (NCEES). Each board member may become a member of the council and the executive director and other staff members designated by the board may be associate members of the council.

(b) The board may select and contract with former board members to serve as emeritus members to NCEES meetings to participate in Council activities and represent board interests in national professional engineering issues. The emeritus members to NCEES may attend board and committee meetings to serve in an advisory capacity and shall present board actions to NCEES as directed by the board.

§131.73. Memoranda of Understanding

The board may enter into a memorandum of understanding with each state agency or governmental entities that licenses professions related to engineering to coordinate the jurisdictional requirements that may be in conflict or mirrored by that entity.

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 February 9, 2004.

TRD-200400870
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: March 21, 2004
For further information, please call: (512) 440-7723



SUBCHAPTER F. ADMINISTRATION

22 TAC §§131.81, 131.83, 131.85

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration - Occupations Code §1001.202.

§131.81. Definitions.

In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

(1) ABET--Accreditation Board for Engineering and Technology

(2) Act--The Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code.

(3) Advisory Opinion--A statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of Chapter 1001, Texas Occupations Code, referred to as the Texas Engineering Practice Act "Act" and/or board rules and that do not have the force and effect of law.

(4) Agency or Board--Texas Board of Professional Engineers.

(5) Applicant--A person applying for a license to practice professional engineering or a firm applying for a certificate of registration to offer or provide professional engineering services.

(6) Application--The forms, information, and fees necessary to obtain a license as a professional engineer or a certificate of registration for a firm.

(7) Certificate of Registration--The annual certificate issued by the board to a firm offering or providing professional engineering services to the public in Texas.

(8) Complainant--Any party who has filed a complaint with the board against a person or entity subject to the jurisdiction of the board.

(9) Contested case--A proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing pursuant to the Administrative Procedure Act, Chapter 2001, Texas Government Code.

(10) Direct supervision--Critical watching, evaluating, and directing of engineering activities with the authority to review, enforce, and control compliance with all engineering design criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the engineering work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons. Engineers providing direct supervision of engineering under the Act, §1001.405(f), shall be personally present during such work.

(11) EAC/ABET--Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology

(12) EAOR number--An engineering advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter

(13) Engineering--The profession in which a knowledge of the mathematical, physical, engineering, and natural sciences gained by education, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.

(14) Firm--Any entity that engages or offers to engage in the practice of professional engineering in this state. This includes sole proprietorships, firms, co-partnerships, corporations, partnerships, or joint stock associations.

(15) Gross negligence--Any willful or knowing conduct, or pattern of conduct, which includes but is not limited to conduct that demonstrates a disregard or indifference to the rights, health, safety, welfare, and property of the public or clients. Gross negligence may result in financial loss, injury or damage to life or property, but such results need not occur for the establishment of such conduct.

(16) Incompetence--An act or omission of malpractice which may include but is not limited to recklessness or excessive errors, omissions or failures in the license holder's record of professional practice; or an act or omission in connection with a disability which includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in the provision of professional services.

(17) License--The legal authority granting the holder to actively practice engineering upon the payment of the annual renewal fee. Also, a certificate issued by the board showing such authority.

(18) License Holder--Any person whose license to practice engineering is current.

(19) Licensure--The granting of an original certificate and license to an individual.

(20) Misconduct--The violation of any provision of the Texas Engineering Practice Act and board rules. A conviction of a felony or misdemeanor that falls under the provisions of Texas Occupations Code, Chapter 53, will also be misconduct under the Texas Engineering Practice Act.

(21) NCEES--National Council of Examiners for Engineering and Surveying.

(22) Party--Each person or agency named or admitted as a party to a proceeding under the Administrative Procedure Act.

(23) Person--Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(24) Petitioner--Any party requesting the adoption of a rule by the board.

(25) Pleading--Written allegations filed by parties concerning their respective claims.

(26) Professional engineering--Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

(27) Professional engineering services--Services which must be performed by or under the direct supervision of a licensed engineer and which meet the definition of the practice of engineering as defined in the Act, §1001.003. A service shall be conclusively considered a professional engineering service if it is delineated in that section; other services requiring a professional engineer by contract, or services where the adequate performance of that service requires an engineering education, training, or experience in the application of special knowledge or judgment of the mathematical, physical or engineering sciences to that service shall also be conclusively considered a professional engineering service.

(28) Protestant--Any party opposing an application or petition filed with the board.

(29) Recognized institution of higher education--an institution of higher education as defined in Section 61.003, Education Code; or in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the North Central Association Commission on Accreditation and School Improvement, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country.

(30) Respondent--Any party against whom any complaint has been filed with the board.

(31) Responsible charge--An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(32) Responsible supervision--An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(33) TAC/ABET--Technology Accreditation Commission of the Accreditation Board for Engineering and Technology

§131.83. Requests for Information.

The executive director shall be the official custodian of all board records and shall process and respond to all requests for information in the manner prescribed by Chapter 552, Texas Government Code.

§131.85. Board Rules Procedures.

(a) Amendments, Deletions, and Additions of Rules. Proposed amendments, deletions, or additions to the board rules of practice and procedure may be submitted by the staff or any board member. Board action to accept or amend the proposal shall require a majority vote when a quorum is present at a meeting. A proposal or amended proposal, as accepted by the board, can be promulgated as an amendment, deletion, or addition to board rules by following the procedures set out in §§2001 and 2002, Government Code.

(b) Petition for Adoption of Rules. Any interested person can request the board to adopt, delete, or amend a rule by filing a petition with the executive director, accompanied by any fee required by statute or board rules. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition will include, but need not be limited to, the following.

(1) Identity information. Full name and complete mailing address and telephone number of the petitioner on whose behalf the petition is filed.

(2) Reference. Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified and

prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.

(3) A suggested effective date. The desired effective date should be stated.

(4) Justification. Justification for the proposed action in narrative form with sufficient particularity to fully inform the board and any interested party of the facts upon which the petitioner relies, including the statutory authority for the promulgation of the proposed rule.

(5) Desired effect of proposal. Include a brief statement detailing the desired effect to be achieved by the proposed rule, change, or amendment or deletion.

(6) Summary. A concise summary of the proposed rule, change, or amendment.

(7) Signatures. Signatures on the petition of the petitioner and/or the attorney or representative of the petitioner.

(c) Petition Decision by Board. Within 60 days after submission of a petition requesting the adoption of a rule the board either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule making proceedings in accordance with §131.32 of this title (relating to Amendments, Deletions, and Addition of Rules) and by law.

(d) Suspension of Rules. In any case in which a public emergency or imperative public necessity so requires, the board may suspend the operation of these sections to the extent authorized by law.

(e) Invalid Portions and Saving Provisions.

(1) If any subcategory, rule, section, subsection, sentence, clause, or phrase of these rules is for any reason held invalid, such decision shall not affect the validity of the remaining portions of these sections. The board hereby declares that it would have adopted these sections and such subcategories, rules, sections, subsections, sentences, clauses, or phrases thereof irrespective of the fact that any one or more of the subcategories, rules, sections, subsections, sentences, clauses, or phrases be declared invalid.

(2) Since individual board rules are adopted, changed, or deleted periodically, each rule herein will apply only to acts occurring on or after the effective date of the rule. An act occurring before the effective date of one or more of these rules will be governed by the rules existing before the effective date, which rules are continued in effect for this purpose as if these rules were not in force. Any proceeding pending before the board on the effective date of one or more of these rules is governed by the rules existing before the effective date of these rules, which rules are continued in effect for this purpose as if these rules were not in force.

(3) If there is any conflict between the agency's rules and statutory provisions, and the rules cannot be harmonized with the statute in a timely manner, the statutory provisions shall control. The board shall issue a statement describing the irregularity, expected schedule for correction, and necessary action by an effected party.

(f) Effective Date. The effective date of each rule or subdivision of each rule shall be that date published as the effective date of the rule or subdivision of the rule in the Texas Register as a result of the rule making procedures set out in Chapters 2001 and 2002, Texas Government Code.

(g) Rules Identification and Format. The board reserves the right to revise the format of these rules of practice and procedure to

comply with statutory requirements, and such required revision shall not invalidate any portion or change the effective date of the rules of practice and procedure as adopted by the board.

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 February 9, 2004.

TRD-200400871

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER G. ADVISORY OPINIONS

22 TAC §§131.101, 131.103, 131.105, 131.107, 131.109, 131.111

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 131: Organization and Administration - Occupations Code §1001.202.

§131.101. Subject of an Advisory Opinion.

The board will issue a written advisory opinion at the request of any interested person or at its own initiative regarding an interpretation or application of the Act and/or board rules that advises how the law applies to a specified existing or hypothetical factual situation.

§131.103. Request for an Advisory Opinion.

(a) A request for an advisory opinion shall describe a specified factual situation. The facts specified may be real or hypothetical. To permit the board to provide a complete response to the request, the requestor must provide the following, as applicable:

- (1) requestor contact information,
- (2) affected section(s) of the Act and/or board rules,
- (3) description of the situation,
- (4) reason engineering advisory opinion is requested,
- (5) parties or stakeholders that will be affected by the opinion, if known, and
- (6) any known, pending litigation involving the situation

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, sent via electronic mail, hand-delivered, or faxed to the board at the agency office.

§131.105. Board Initiated Opinion.

When a majority of the board determines that an opinion would be in the public interest or in the interest of any person or persons within

the jurisdiction of the board, the board may on its own motion issue an advisory opinion.

§131.107. Receipt, Review, and Processing of a Request.

(a) The board, through the policy advisory opinion committee, shall review all requests for advisory opinions.

(b) Upon receipt of a request for an engineering advisory opinion, executive director will date stamp the request, issue an EAOR tracking number, and make a preliminary determination on the board's jurisdiction regarding the request.

(c) The executive director will review the request to determine if the request can be answered by reference to the plain language of a statute or a board rule, or if the request has already been answered by the board.

(d) If the executive director determines the board has no jurisdiction or the request can be answered by reference to a statute, board rule, or previous opinion, the executive director shall prepare a written response for the policy advisory opinion committee addressed to the person making the request that cites the jurisdictional authority, the language of the statute or rule, or the prior determination.

(e) The policy advisory opinion committee shall review all requests for advisory opinions and may:

(1) approve jurisdiction and reference responses, as applicable, and report a summary of these actions to the full board for ratification; or

(2) determine the request warrants an advisory opinion and to proceed with developing an advisory opinion.

(f) If a request warrants an advisory opinion, the policy advisory opinion committee shall determine if further information is needed to draft an advisory opinion. If additional information is needed, the committee shall determine what information is needed and instruct the executive director to obtain expert resources, hold stakeholder meetings, or perform other research and investigation as necessary to provide the information required to draft an advisory opinion and report back to the committee.

(g) If during the process, the committee determines that the request is one the board cannot answer, then the committee shall have the executive director provide written notification to the person making the request of the reason the request will not be answered and this response shall be ratified by the full board.

(h) When sufficient information exists, the policy advisory opinion committee shall draft an engineering advisory opinion and post the request and draft opinion on the agency website and in the Texas Register for comments.

(i) Draft opinions shall be posted for at least 30 days and any interested person may submit written comments concerning an advisory opinion request. Comments submitted should reference the EAOR number.

(j) Upon completion of the comment period, the policy advisory opinion committee shall consider any comments made and draft a final opinion recommendation to be presented for review and adoption by the full board.

(k) The full board shall review and adopt the engineering policy advisory opinion or determine if further revisions are required and refer the request back to the policy advisory opinion committee with guidance on proceeding with completing the request.

(l) Each final engineering advisory opinion adopted by the full board shall be published in summary form in the Texas Register.

(m) To reconsider or revise an issued advisory opinion, the board shall process the reconsideration or revision as a new request and follow the process as set forth in this section.

§131.109. Compilation of Advisory Opinions.

The board shall number and classify each final engineering advisory opinion issued and shall annually compile a summary of advisory opinions in a single reference document made available on the Internet. The executive director may also publish and provide copies of advisory opinions in other formats as may be in the public interest.

§131.111. Time Period.

The board shall respond to requests for an engineering advisory opinion within 180 days after the date the board receives the written request or affirmatively state the board's reason for not responding to the request.

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 February 9, 2004.

TRD-200400872

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

The Texas Board of Professional Engineers proposes new rules in Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing. The proposed new rules are: Subchapter A, Engineer-in-Training, §§133.1, 133.3, Subchapter B, Professional Engineer Licenses, §§133.11, 133.13, Subchapter C, Application Requirements, §§133.21, 133.23, 133.25, 133.27, Subchapter D, Education, §§133.31, 133.33, 133.35, 133.37, Subchapter E, Experience, §§133.41, 133.43, Subchapter F, Reference Documentation, §§133.51, 133.53, 133.55, Subchapter G, Examinations, §§133.61, 133.63, 133.65, 133.67, 133.69, 133.71, 133.73, 133.75, Subchapter H, Review Process of Applications and License Issuance, §§133.81, 133.83, 133.85, 133.87, 133.89, 133.91, 133.93, 133.95, 133.97. The Board proposes this action in conjunction with repeal of the existing Chapter 131: Practice and Procedure. Also, the board proposes this action in conjunction with proposing five new chapters to better organize the agency rules and procedures.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. Since the statutory references in the Board Rules must be changed to reflect the new designations in the re-codified Act, nearly every rule must be re-proposed and adopted with the new references. The Board has chosen this time to re-organize the existing rules, incorporate new legislative requirements, and develop a framework to aid in future rule expansion.

Since most of the content of the proposed rules are a repeat of the existing rules with few changes, the board will highlight substantive changes by subchapter. The rules proposed are not number consecutively and reserves numbers for future expansion.

In the proposed Subchapter A: Engineer-in-Training, the board re-establishes rules relating to engineer-in-training in one subsection prior to the rules relating to professional engineer licensure. The board clarifies that transcripts submitted since January 1, 2002 to qualify for this certification may be used toward licensure requirements.

In the proposed Subchapter B: Profession Engineer Licenses, the board re-organizes the existing rules related to types of licenses and includes new provisions as allowed by statute for reciprocal licenses. The board summarizes and updates the list of recognized disciplines of engineering and lists the disciplines in which a national examination is supplied by the National Council of Examiners of Engineering and Surveying.

In the proposed Subchapter C: Application Requirements, the board summarizes the necessary elements of a license application and sets forth the licensure procedures for a former license holder with an expired license, for an engineering educator, and for a reciprocal license for a person holding a license from a jurisdiction the board has determined to have substantially equivalent licensure requirements.

In the proposed Subchapter D: Education, the board re-proposes the existing rules related to acceptable educational credentials for licensure. The board proposes to clarify and strengthen the board rules to not allow distance learning degrees unless those degrees are obtained from a recognized institution of higher education as defined in the board rules. In addition, the board proposes to make allowances for those graduating from programs, such as those in Europe and Canada, with sufficient technical content to gain licensure through the examination process only.

In the proposed Subchapter E: Experience, the board re-proposes the existing rules in a more organized arrangement.

In the proposed Subchapter F: Reference Documentation, the board re-proposed the existing rules but reduces the number of references to three as allowed by the new statutory requirements. In addition, the board proposes a new rule to post a list of applicants for licensure on the website to allow for public comment.

In the proposed Subchapter G: Examinations, the board re-proposes the existing rules related to examinations requirements.

In the proposed Subchapter H: Review Process of Applications and License Issuance, the board re-organizes the existing rules related to accepting and reviewing applications. In the new rules, the board clarifies that by submitting an application and fee, an applicant attests that he or she has reviewed the requirements and is eligible for licensure and that no refunds will be granted. The board further breaks down the existing rules into staff duties and board duties. The new rules clarify the executive director's authority to deny licensure without further board action for those who do not meet the minimum requirements for licensure. Those applicants who are denied on this basis may follow the rule procedures to appeal such a decision. The board also proposes to initiate a one year waiting period between an applicant not passing the examination in the allotted period or increased educational instruction before such an applicant can re-apply. And, in this subchapter, the board proposes a formal procedure for a license holder to add up to two additional branches to the public board records.

In this rule restructuring process, the board has removed the existing rules in the licensing division relating to renewal and firm

registration to new chapters on Compliance and Firms and Sole Proprietorships.

Victoria J. L. Hsu, P.E., Executive Director for the board, has determined that for the first five-year period the new rules are in effect, there will be minimal fiscal implications for state or local government as a result of enforcing or administering the new rules since the substance of the proposed rules comes from the current rules.

Ms. Hsu has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing and administering the proposed rules will be that the general public and license holders of Texas will be able to follow more organized rules and streamlined processes and procedures in the new rules. For those applicants who have previously applied but failed to pass the examination in the allotted period, these individuals will have a delay in the opportunity to re-apply for licensure or may incur expense for additional formal classes in their discipline. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Comments may be submitted, no later than 30 days after publication, to Victoria J. L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741 or faxed to her attention at (512) 442-1414.

SUBCHAPTER A. ENGINEER-IN-TRAINING

22 TAC §133.1, §133.3

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.1. Engineer-in-Training Designation.

Individuals who meet the educational requirements of §1001.302(a)(1) of the Act and have successfully passed the examination on the fundamentals of engineering are eligible to apply for engineer-in-training certification. This certification does not entitle an individual to practice as a professional engineer.

§133.3. Engineer-in-Training Application and Certification.

(a) To become enrolled as an Engineer-in-Training (EIT), an individual must:

- (1) submit an EIT application,
- (2) submit an official transcript in accordance with §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications), and
- (3) pay the fee as established by the board.

(b) A certificate as an engineer-in-training expires eight years from the date of issuance. Although the certificate has an expiration date, the records of the board will indicate that an individual has passed the Fundamentals of Engineering examination and these records will be maintained in the file indefinitely and will be made available as requested by the individual or another licensing jurisdiction.

(c) The certificate may be renewed upon payment of the EIT certification fee established by the board.

(d) Effective January 1, 2002, official transcripts will be kept on file and an EIT may request its use when filing the professional engineer application.

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 February 9, 2004.

TRD-200400873

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11, §133.13

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.11. Types of Licenses.

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any applicant found not to have met all requirements of the Act and board rules.

(1) Standard. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses. Standard licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal.

(2) Reciprocal or Comity. Pursuant to §1001.311 of the Act, the board has reviewed the licensing requirements of the jurisdictions listed in this paragraph and has found them to be substantially equivalent to the requirements in Texas. The board shall waive the application requirements of §133.21 for an applicant who is licensed in good standing with at least one of the jurisdictions listed in this paragraph and submits the documentation as required in §133.27 (relating to Application for a Reciprocal or Comity License) of this chapter. A reciprocal or comity license has full status of and shall be issued as a standard license. The board reviewed and approved jurisdictions for a reciprocal or comity license are:

(A) Mexico, and

(B) Provinces and Territories of Canada

(3) Temporary. If the license holder requests that the license be temporary, the holder's regular license shall be converted to temporary status and may only be renewed twice. A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a regular license is subject. The executive director shall be authorized to convert a regular license to a temporary license at the time the regular license is issued provided a request for such has been received.

(4) Provisional. The board does not issue provisional licenses at this time.

§133.13. Branches of Engineering.

Applicants shall indicate a primary branch of engineering under which experience has been gained. The board recognizes the following list of disciplines to assist in determining an applicant's competency although license holders are not designated as a specific discipline engineer nor are restricted to practice only in the branch designated. The board recognized branches are listed below. Those branches in which a National Council of Examiners for Engineering and Surveying (NCEES) examination is offered are followed by the acronym (NCEES).

- (1) (AGR) agricultural (NCEES);
- (2) (BAR) architectural (NCEES);
- (3) (CHE) chemical (NCEES);
- (4) (CIV) civil (NCEES);
- (5) (CSE) control systems (NCEES);
- (6) (ELE) electrical, electronic, computer, communications (NCEES);
- (7) (ENV) environmental (NCEES);
- (8) (FIR) fire protection (NCEES);
- (9) (IND) industrial (NCEES);
- (10) (MEC) mechanical (NCEES);
- (11) (MIN) mining/mineral (NCEES);
- (12) (MET) metallurgical (NCEES);
- (13) (MAN) manufacturing;
- (14) (NUC) nuclear (NCEES);
- (15) (PET) petroleum (NCEES);
- (16) (SDE) naval architecture/marine engineering (NCEES);
- (17) (STR) structural (NCEES);
- (18) (A/A) aeronautical/aerospace;
- (19) (BIO) biomedical;
- (20) (CRM) ceramic;
- (21) (ESG) engineering sciences/general;
- (22) (GEO) geological;
- (23) (OCE) ocean;
- (24) (TEX) textile;
- (25) (SAN) sanitary;
- (26) (SWE) software;
- (27) (OTH) other.

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 February 9, 2004.

TRD-200400874

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER C. APPLICATION REQUIREMENTS

22 TAC §§133.21, 133.23, 133.25, 133.27

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.21. Application.

(a) To be eligible for licensure as a professional engineer, one must submit a completed application.

(b) All persons must have passed the examination on the fundamentals of engineering or be eligible for a waiver from the examination on the fundamentals of engineering before submitting an application.

(c) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited bachelor of science degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550 or a computer score of at least 200 and passage of the Test of Spoken English (TSE) with a score of at least 45, or other evidence such as significant academic or work experience in English acceptable to the executive director.

(d) Applicants for a license shall submit:

(1) an application form as prescribed by the board and shall:

(A) list his or her full, legal and complete name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, court documents, or nationalization documents to substantiate other documentation submitted in the application. And,

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

(2) current application fee as established by the board;

(3) proof of educational credentials pursuant to §133.33 or §133.35 (relating to Proof of Educational Qualifications) including:

(A) official transcript(s) of qualifying degree(s), and

(B) commercial evaluation(s) of a non-accredited or non-approved degree(s), as applicable;

(4) supplementary experience record as required under §133.41 (relating to Supplementary Experience Records);

(5) reference statements as required under §133.51 of this chapter (relating to Reference Providers);

(6) verification of passage of examination(s) from other jurisdictions as required under §133.61(g) (relating to Engineering Examinations);

(7) verification of a current license, if applicable;

(8) a completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 (relating to Professional Conduct and Ethics Examination);

(9) scores of TOEFL and TSE, if applicable;

(10) a statement describing criminal convictions, if any, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and

(11) if applicable, written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, the TOEFL, the TSE, or a commercial evaluation of non-accredited degrees and a statement supporting the request(s).

(e) At the time the application is filed, an applicant may request in writing that any transcripts, reference statements, evaluations, experience records or other similar documentation previously submitted to the board be included in a current application; however, such documentation may not meet the requirements of the board at the time of the subsequent application and new or updated information may be required.

(f) The National Council of Examiners for Engineering and Surveying certifications may be accepted as verification of experience, an original transcript, licenses held, and/or examinations taken. Other uses of the certification may be granted by the executive director on a case-by-case basis.

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

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

§133.23. Applications from Former Texas License Holders.

(a) A former license holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new license.

(b) A former license holder applying for a license under the current law and rules must have the documentation requested in §133.21 (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other

similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

- (1) submit a new application form;
- (2) pay the application fee established by the board;
- (3) submit a completed Texas Engineering Professional Conduct and Ethics examination;
- (4) submit a supplementary experience record that includes at least the last four years of engineering experience, which may include experience before the previous license expired; and
- (5) submit also at least one reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which a professional engineer shall verify at least four years of the updated supplementary experience record.

(c) Once an application from a former license holder is received, the board will follow the procedures in §133.85 of this chapter (relating to Board Review of and Action on Applications) to review and approve or deny the application.

(d) Any license issued to a former Texas license holder shall be assigned a new serial number.

§133.25. Applications from Engineering Educators.

(a) Persons who are engineering educators instructing engineering courses in an institution of higher education or a private or independent institution of higher education, as defined in the Education Code §61.003, and who began teaching engineering prior to September 1, 2001, are permitted to seek licensure utilizing an alternate application. The minimum qualifications are as follows:

(1) Earned doctoral degree in:

(A) engineering from a college or university that offers an undergraduate or master's degree program in a related branch of engineering that is approved by the EAC/ABET as published in the 2002 ABET Accreditation Yearbook and the 2002 ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(B) engineering or another related field of science or mathematics assessed and approved by the board;

(2) To request waiver of the examination(s), must have at least six years of:

(A) teaching experience in an EAC/ABET-approved program, or

(B) other acceptable, creditable engineering experience, including, but not limited to, scholarly activity such as publishing papers in technical and professional journals; making technical and professional presentations; publishing books and monographs; performing sponsored research; reporting on research conducted for sponsors; supervising research of undergraduate and graduate students, postdoctoral fellows, or other employees; providing counseling, guidance, and advisement for engineering students; and performing certain other types of formal or informal functions in higher education; or

(C) a combination of teaching and acceptable, creditable engineering experience.

(b) An engineering educator , applying under the alternate process, shall submit:

- (1) an alternate application form;
- (2) a supplementary experience record:

(A) For the faculty approved for promotion or tenure through the Dean of Engineering office level, submit a dossier (comprehensive resume or curriculum vitae) prepared for tenure and/or promotion consideration, OR, for tenured faculty, current resume containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the supplementary experience record;

(B) For non-tenured faculty, a standard supplementary experience record with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) college/ university transcripts;

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board; and

(7) written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

(c) Once an alternative application from an engineering educator is received, the board will follow the procedures in §133.85 of this chapter (relating to Board Review of and Action on Applications) to review and approve or deny the application.

(d) This section does not prohibit any engineering educator from applying for licensure under the standard application process.

§133.27. Application for Reciprocal or Comity License.

(a) The applicant applying for a reciprocal or comity license shall:

(1) submit a reciprocal or comity application form,

(2) pay the application fee established by the board,

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination, and

(4) submit a verification of a license in good standing from one of the jurisdictions listed in §133.11(2) of this chapter (relating to Types of Licenses).

(b) Upon receipt of the application and verification of a license in good standing, the board may issue a standard license to the applicant, unless the application requires further review under §133.83 of this chapter (relating to Staff Review, Evaluation and Processing of Applications) or §133.85 of this chapter (relating to Board Review of and Action on Applications). For those applications requiring further board review, the board may request additional information to clarify an application, as needed. Pursuant to §1001.453 of the Act, the board may review the license holders status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

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 February 9, 2004.

TRD-200400875

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER D. EDUCATION

22 TAC §§133.31, 133.33, 133.35, 133.37

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.31. Educational Requirement for Applicants.

(a) Applicants for a license shall have graduated from at least one of the following degree programs or degree program combinations listed in this section:

(1) Approved engineering curriculums under §1001.302(a)(1)(A) of the Act. The following degrees are acceptable to the board for meeting the educational requirements of §1001.302(a)(1)(A) of the Act:

(A) a degree from an engineering program accredited or otherwise approved by the:

(i) Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, United States (EAC/ABET) as published in the 2002 ABET Accreditation Yearbook and the 2002 ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(ii) Consejo de Acreditacion de la Enseñanza de la Ingeniería, Mexico (Council of Accreditation for Engineering Education, C.A.).

(B) A bachelor's degree in engineering or one of the mathematical, physical, or engineering sciences, plus a graduate degree in engineering, provided that:

(i) the graduate degree is obtained from a college having an engineering program approved by one of the organizations listed in subparagraph (A) of this paragraph where either the graduate or undergraduate degree in the same discipline is accredited; and

(ii) the combination of the degrees is acceptable to the Board as equivalent in EAC/ABET approved curricula content, and the combination of degrees contain sufficient design curricula to provide minimal competency in the use of engineering algorithms and procedures.

(C) a completed degree that has not been accredited or approved by either of the organizations identified in subparagraph (A)

of this section but has been evaluated in accordance with §133.33 of this chapter, (relating to Proof of Educational Qualifications-Non-Accredited/Non-Approved Programs), and determined to meet the ABET general and program criteria requirements for an EAC/ABET-accredited or -approved program.

(2) Other programs under §1001.302(a)(1)(B) of the Act. The following degrees are acceptable to the board for meeting the educational requirements of §1001.302(a)(1)(B) of the Act:

(A) a bachelor degree from an engineering technology program that is accredited by the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology (TAC/ABET) as published in the 2002 ABET Accreditation Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated;

(B) A bachelors or graduate degree in engineering, mathematical, physical, or related science that has not been accredited or approved by any of the organizations identified in paragraphs (1)(A) or (2)(A) of this subsection but has been obtained from a recognized institution of higher education as defined in Chapter 131 of this title. Such degree programs must include, as a minimum, the courses listed in clauses (i) and (ii) of this subparagraph or these courses must be taken in addition to the bachelor or graduate degree program:

(i) eight semester hours (12 quarter hours) of mathematics beyond trigonometry, including differential and integral calculus; and

(ii) 20 semester hours (30 quarter hours) of related engineering sciences including subjects such as mechanics, thermodynamics, electrical and electronic circuits, and others selected from material sciences, transport phenomena, computer science and comparable subjects depending on the discipline or branch of engineering. Course work should incorporate hands-on laboratory work as described in the EAC/ABET criteria, and shall contain a sufficient design program to provide minimal competency in the use of engineering algorithms and procedures.

(3) Other degree programs submitted to the board by the conferring institutions and determined by the board as meeting or exceeding the criteria of either of the accrediting organizations referred to in this section.

(A) The programs at the University of Texas at Tyler have been reviewed by the board and determined to be eligible for licensure under §1001.302(a)(1)(A) of the Act, effective for those who graduated in 1999.

(B) The following programs have been reviewed by the board and determined to be eligible for licensure under §1001.302(a)(1)(B) of the Act and eligible for taking the examination on the fundamentals of engineering, effective the date listed:

(i) Tarleton State University, Accepted Programs: Hydrology(1992) and Engineering Physics(2001),

(ii) West Texas State A&M, Accepted Program: Mechanical Engineering (2003)

(b) Degree programs that have not been accredited or approved by any of the organizations identified in subsection (a)(1)(A) or (2)(A) of this section are not acceptable for fulfilling the educational requirements of the Act if they do not meet the definition of a recognized institution of higher learning as defined in Chapter 131 of this title and:

(1) give credit for life experience; or

(2) consist primarily of engineering, mathematical, physical, or engineering sciences courses that are correspondence courses that are self-taught outside a formal classroom setting.

(c) Applicants who have graduated from a degree program that is accredited by the jurisdictional authority in the Canadian or European community that have been evaluated pursuant to §133.33 of this chapter (relating to Proof of Educational Qualifications/Non-Accredited/Non-Approved Programs) and contain sufficient course hours to meet the requirements of §133.31(a)(2)(B) of this chapter but not found to have sufficient course hours to be deemed equivalent or comparable to a Bachelor of Science degree as would be issued by a recognize institution of higher education in the United States may apply for licensure solely through the examination process.

§133.33. Proof of Educational Qualifications-Non-Accredited/Non-Approved Programs.

(a) An applicant for licensure who has graduated from a program other than one in which the undergraduate or graduate degree in the same discipline has been accredited or approved by any of the organizations identified in §133.31(a)(1)(A) or (a)(2)(A) of this chapter (relating to Educational Requirements for Applicants) shall furnish both an official transcript and an evaluation for each degree to be relied upon to meet the educational requirements of licensure as a professional engineer or certification as an engineer-in-training. Official transcripts shall include either grades or mark sheets and proof that the degree was conferred. In addition to providing a transcript reflecting the degree(s) earned by an applicant, the applicant shall also provide an official transcript from each school from which more than 15 semester hours were earned towards the degree.

(1) The applicant shall ensure that the required transcript(s) are forwarded from the officially recognized and approved institutional authority of records (e.g., registrar or other authority) of the institution from which the applicant graduated directly to a commercial degree evaluation service approved by the board. The applicant is responsible for ordering and paying for all such transcripts and evaluations. Additional academic information, including but not limited to grades and transfer credit, shall be submitted to the board at the request of the executive director.

(2) The degree evaluation must:

(A) validate the authenticity of the transcript, diploma, and any other supporting documentation;

(B) include a detailed, course-by-course evaluation of courses, including semester hours and grades;

(C) a comparison of the applicant's degree program to criteria of the Accreditation Board for Engineering and Technology applicable to the applicant's year of graduation; and a determination whether the curriculum of the degree program being evaluated meets the applicable criteria;

(D) establish that the applicant has received a conferred degree as determined by the placement recommendations approved by the National Council for the Evaluation of Foreign Educational Credentials; and

(E) be sent by the commercial evaluation service directly to the board, accompanied by the applicant's official transcript or a copy of the transcript verified by the commercial evaluation service.

(b) Upon written request by an applicant provided at the time of application, a commercial degree evaluation of a program other than one accredited or approved by the EAC/ABET or the TAC/ABET may be waived by the executive director if:

(1) sufficient resources are available for the board to evaluate it; or

(2) the degree program contains curricula that are deemed by the executive director to not be an integral part of the applicant's engineering education.

(c) Upon receipt or waiver of a commercial degree evaluation, the executive director shall evaluate, under the standards of §133.31(a)(1)(C) or (a)(2)(B) of this chapter (relating to Educational Requirements for Applicants), the curricula of a degree program that has not been accredited or approved by any of the organizations identified in §133.31 (a)(1)(A) or (a)(2)(A) of this chapter.

(d) If a transcript cannot be transmitted directly to the evaluation service from the issuing institution, the executive director may, at his or her discretion, approve an alternative method of evaluating the applicant's educational qualifications, upon written request from the applicant explaining why the transcript cannot be directly transmitted from the issuing institution. An alternative method approved by the executive director may include validation of transcript(s) in the applicant's possession through a commercial evaluation service approved by the board. In the event the executive director approves an alternative method such as validation of a transcript in the applicant's possession by an evaluation service, the evaluation service shall forward to the board the evaluation and all documentation provided by the applicant.

(e) The board will not accept a commercial evaluation of a degree in lieu of an official transcript or a validated transcript that was in the applicant's possession. An official transcript or validated transcript must be submitted to complete the application.

(f) An applicant seeking an educational credential evaluation under this section but wishing to qualify for licensure only under §133.31(a)(2)(B) of this section is exempt from the evaluation requirement in subsection (a)(2)(C) of this section.

§133.35. Proof of Educational Qualifications-Accredited/Approved Programs.

An applicant for licensure who has graduated from a degree program in which the undergraduate or graduate degree in the same discipline has been accredited or approved by any of the organizations identified in §133.31(a)(1)(A) or (a)(2)(A) of this chapter (relating to Educational Requirements for Applicants) shall provide to the board an official transcript for each degree to be relied upon to meet the educational requirements for certification or licensure. Such transcript(s) shall include either grades or mark sheets and proof that the degree was conferred and must be forwarded directly to the board by the registrar of the institution from which the applicant graduated. In addition, copies of transcripts of all other engineering or mathematical, physical, or engineering science degrees shall be submitted to the board; these transcripts can be copies of the original transcript and can be forwarded to the board by the applicant. The applicant is responsible for ordering and paying for all such transcripts. Additional academic information, including but not limited to grades and transfer credit, shall be submitted to the board at the request of the executive director.

§133.37. English Translation.

All documents supporting the application written in language other than English shall be accompanied by a certified English translation.

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 February 9, 2004.

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SUBCHAPTER E. EXPERIENCE

22 TAC §133.41, §133.43

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.41. Supplementary Experience Record.

Applicants shall submit a supplementary experience record to the board as a part of the application. The supplementary experience record is a written summary documenting all of the applicant's engineering experience used to meet the requirements for licensure.

(1) The supplementary experience record shall be written by the applicant and shall:

(A) provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the engineering work;

(B) clearly describe the engineering work that the applicant personally performed; and

(C) delineate the role of the applicant in any group engineering activity.

(2) The supplementary experience record shall be divided into employment engagements that correspond to those listed in the application and shall be written in sufficient detail to allow a board reviewer to document the minimum amount of experience required and to allow a reference provider to recognize and verify the quality and quantity of the experience claimed.

(3) Experience that is unsupported by references may not be considered. All experience claimed to meet the minimum requirements for licensure shall be verified by one or more currently licensed professional engineer(s) pursuant to §133.51 of this chapter (relating to Reference Providers).

(4) The supplementary experience record must cover at least the minimum amount of time needed by the applicant for issuance of a license.

(A) Applicants applying under §1001.302(a)(1)(A) of the Act shall provide supplementary experience records for at least four years of engineering experience.

(B) Applicants applying under §1001.302(a)(1)(B) of the Act shall provide supplementary experience records for at least eight years of engineering experience.

(C) Applicants seeking a waiver from the examination on the fundamentals of engineering and/or the examination on the principles and practices of engineering requirements shall provide a supplementary experience record for at least an additional eight years of experience beyond that required in this subsection.

§133.43. Experience Evaluation.

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

(1) Engineering work shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

(E) engineering for program management and for development of operating and maintenance manuals;

(F) engineering for construction, or review of construction;

(G) performance of engineering surveys, studies, or mapping;

(H) engineering for materials testing and evaluation;

(I) expert engineering testimony;

(J) any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance; and

(K) the teaching of engineering subjects by a person who began teaching prior to September 1, 2001.

(2) In the review of engineering experience, the board shall consider additional elements unique to the history of the applicant. Such elements should include, at a minimum:

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

(B) whether the quality of the engineering work shows minimum technical competency;

(C) whether the submitted materials indicate good character and reputation;

(D) whether the experience was gained in accordance with the provisions of the Act;

(E) whether the experience was gained in one dominant branch;

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

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

(H) experience gained in relation to or concurrent with the applicant's education. Experience claimed prior to an applicant's receiving a conferred degree must:

(i) be substantiated in the supplementary experience record;

(ii) be accounted for proportionally to a standard 40-hour work week, if it was part-time employment; and

(iii) reflect that, at the time the experience was gained, the applicant:

(I) had successfully passed junior and senior level engineering courses and applied that engineering and knowledge in the claimed experience; or

(II) received sufficient education and training under the supervision of an engineer.

(3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:

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

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

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

(D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice;

(E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed.

(b) One year of experience credit may be granted for each post-baccalaureate engineering degree earned by an applicant, provided:

(1) the applicant has a baccalaureate degree in engineering; and

(2) the post-baccalaureate degree is from an engineering program where either the graduate or undergraduate degree in the same discipline is accredited or approved by one of the organizations listed in §133.31(a)(1) of this chapter (concerning Educational Requirements for Applicants). Experience credit for all post-baccalaureate degrees is limited to a total of two years.

(c) Experience gained in conjunction with or in relation to earning a post-baccalaureate degree, such as research or teaching assistant work, will not be credited in addition to experience credited pursuant to subsection (b) of 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 February 9, 2004.

TRD-200400877

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §§133.51, 133.53, 133.55

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.51. Reference Providers.

(a) Applicants for licensure shall provide references to verify character suitability for licensure and all engineering experience claimed to meet the minimum years of experience required. Reference statements will be used to verify the applicant's character and the factual presentation of the applicant's experience and to determine to the extent the experience is creditable engineering experience.

(1) Standard Licensure Procedure. Applicants applying under §1001.302(a)(1)(A) or (B) of the Act, including those applicants licensed in another jurisdiction or previously licensed in Texas, shall provide at least three references. These reference providers shall be from currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all or the applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(2) Waiver of Examinations Procedure. Applicants requesting a waiver from the examinations on the fundamentals of engineering or principles and practice of engineering shall provide five references. These reference providers shall be from currently licensed professional engineers who have personal knowledge of the applicant's character, reputation, suitability for licensure, and engineering experience and shall review all or the applicable portions of the applicant's supplementary experience record and complete the reference statement in full.

(b) Professional engineers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a licensed engineer reference; such review shall be noted on the reference statement.

(c) All reference providers shall be provided by individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. If possible, reference providers

should be provided by individuals who directly supervised the applicants.

(d) Professional engineers who provide reference statements and who are licensed in a jurisdiction other than Texas shall include a copy of their pocket card or other verification to indicate that their license is current and valid.

(e) Professional engineers who provide references shall not be compensated.

(f) References on file with the board from previous applications may be used upon written request of the applicant and with the approval of the executive director.

(g) The board members and staff may, at their discretion, rely on any, all, or none of the references provided in connection with an application for licensure.

§133.53. Reference Statements.

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

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

(1) review and evaluate all applicable portions of the supplementary experience record(s); and

(2) accurately complete the reference statement certifying agreement or disagreement with the information written by the applicant.

(c) The reference provider shall submit to the board both the reference statement and the supplemental experience record. If the reference provider is in disagreement with or has comments or clarification to the information provided by the applicant, the reference provider may submit comments or concerns to the board with the completed reference statement.

(d) For any reference statement to meet the requirements of the board, the reference statement must be secured. For a reference statement to be considered secure, the reference provider shall:

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

(2) seal the flap of the envelope;

(3) after sealing the envelope, the reference provider shall sign across the sealing edge of the flap of the envelope and cover the signature with transparent tape; and

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

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

§133.55. Reference Communication.

(a) Additional references may be required of the applicant when the executive director finds it necessary to adequately verify the applicant's experience or character. The board and/or staff may at their discretion communicate with any reference or seek additional information.

(b) The board may post the names of applicants on the board website and receive information regarding an applicant from the regulated community and general public. The board members and staff may, at their discretion, rely on any, all, or none of the public comments received in connection with an application for licensure.

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 February 9, 2004.

TRD-200400878

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §§133.61, 133.63, 133.65, 133.67, 133.69, 133.71, 133.73, 133.75

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.61. Engineering Examinations Required for a License to Practice as a Professional Engineer.

(a) Applicants are required to take two written experience and knowledge examinations, furnished and graded by the NCEES or by the board, or request a waiver of such examinations pursuant to §133.69 of this chapter (relating to Waiver of Examinations), and the Texas Engineering Professional Conduct and Ethics examination, furnished and graded by the board.

(b) All examinations shall be in the English language.

(c) Experience and knowledge examinations may be an eight-hour Fundamentals of Engineering examination and an eight-hour Principles and Practice of Engineering examination prepared by the NCEES or equivalent as determined by the board.

(d) The board shall adopt an examination schedule at least once a year, which shall include at least the following information:

(1) the places where the examinations shall be held;

(2) the dates of the examinations and the deadline date for an examinee to schedule an examination;

(3) fees for each examination; and

(4) types of examinations offered.

(e) Examinations may be scheduled by obtaining the necessary form from the board office and timely submission to the board with the appropriate examination fee.

(f) Individuals who plan to take an examination must have their completed examination scheduling form and the appropriate fee in the board office by the close of regular business on the date established by the applicable examination schedule adopted by the board.

(g) Applicants providing an official verification from an NCEES member board certifying that they have passed the eight-hour examination(s) in that state shall not be required to take the examination(s) again.

(h) Examination fees shall not be refunded, but may be applicable to future examination administrations if an examinee makes a timely request seven weeks prior to the examination and if approved by the executive director.

(i) Examination candidates who have been called into active U.S. military duty or who are re-assigned military personnel and will not be available to sit for an examination may request the examination cycle be postponed and any paid examination fees incurred toward a future examination date. Such candidates shall submit adequate documentation, including copies of orders, and a request to postpone the examination cycle to the board. The candidate shall notify the board of their availability to resume the examination cycle within 60 days of release from active duty or when they are deployed to a location that provides a board approved examination.

(j) All examinations shall be administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and its subsequent amendments. Special accommodations can be provided for examinees with physical or mental impairments that substantially limit life activities.

(1) Any individual with a disability who wishes to request special accommodations must submit a Disability Assessment Form that has been completed and signed by the examinee and an appropriate licensed health care professional.

(2) The Disability Assessment Form must be submitted at least sixty (60) days prior to the examination to assure ample time to process the request. Requests for special accommodations submitted less than sixty (60) days prior to the date of the examination may not leave sufficient time for approval with the testing service.

(3) The board may request additional documentation to substantiate a request for special accommodations.

(4) The board will accept, review, and submit requests for special accommodations to the testing service for approval and an examinee will be notified of approval of the request or reason for denial of the request.

(k) Pursuant to Texas Occupations Code §54.002, if an examination candidate's religious beliefs prevent the candidate from taking an examination on a religious holy day that conflicts with the normally scheduled examination date, the candidate shall, at the time of examination scheduling, submit a written request to board to take the examination on an alternate date.

(l) Upon successful passage of the experience and knowledge examinations, or being granted a waiver of one or both examinations pursuant to §133.69 of this chapter (relating to Waiver of Examinations), an applicant shall be considered to have met the examination requirements for licensure as a professional engineer in Texas.

§133.63. *Texas Engineering Professional Conduct and Ethics Examination.*

(a) The Texas Engineering Professional Conduct and Ethics Examination shall be open book and shall be prepared and administered by the board. Each applicant must submit this examination with the application and must pass with a score of at least 70 percent.

(b) No fees or advanced scheduling forms are required for the Texas Engineering Professional Conduct and Ethics Examination.

§133.65. *Examination on the Fundamentals of Engineering.*

(a) An undergraduate student who is within two full-time regular semesters (not including summer sessions) of graduating and who is enrolled in an engineering program accredited or approved by the EAC/ABET, a four year baccalaureate technical program accredited or approved by the TAC/ABET, or an engineering-related science program of four years or more that has been approved by the board, may take the examination on the fundamentals of engineering at the student's school provided the school administers the examination as prescribed by the board.

(b) A graduate student may take the examination on the fundamentals of engineering at the student's school provided that the school administers the examination as prescribed by the board and the student is enrolled in an EAC/ABET-accredited graduate degree program or in a graduate program at an institution which has an EAC/ABET-accredited undergraduate degree program in that discipline, and the student has:

(1) a baccalaureate degree that is EAC/ABET-accredited;

(2) an engineering or engineering-related science program degree that has been approved by the board; or

(3) a non-engineering related curriculum or other degree in which the student has provided evidence acceptable to the executive director as meeting the minimum requirements of §1001.302(a)(1)(A) or (B) of the Act.

(c) Engineering students may schedule the examination on the fundamentals of engineering at their participating school through the engineering dean, department head, or other program administrator.

(d) Persons who demonstrate that they meet the educational requirements for a license and who have not passed the examination on the fundamentals of engineering while in college may apply to the board to take the examination in accordance with the applicable examination schedule adopted by the board.

(e) Persons who do not meet the criteria of subsection (a) of this section, but who need only to complete the examination on the fundamentals of engineering to fulfill the graduation requirements of a degree program that would meet the educational requirements for a license, may apply to the board to take the examinations in accordance with the applicable examination schedule adopted by the board.

§133.67. *Examination on the Principles and Practice of Engineering.*

(a) The examination on the principles and practice of engineering is open only to licensed engineers who wish to take the examination for record purposes and to applicants who have received board approval to take it.

(b) Applicants approved to take the examination on the principles and practice of engineering shall:

(1) be advised of the first examination date for which they are eligible;

(2) schedule to test in an area of competency as demonstrated by their experience and education;

(3) be solely responsible for timely scheduling for the examination and any payment of examination fees; and

(4) have no more than four consecutive examination opportunities, including the examination given on the date of the first available examination, to pass the examination. Except as provided for in §133.61(i) of this chapter, no extensions shall be granted under any circumstances.

(A) Once an applicant has scheduled for an examination that is offered once per year, the consecutive opportunities shall be

counted as one annually as long as the applicant does not schedule to sit for an examination that is offered twice per year.

(B) Once an applicant has scheduled for an examination that is offered twice per year, either for the first time or after scheduling for an examination that is offered once per year, the remaining consecutive opportunities shall be counted as two annually from that examination forward until the four consecutive opportunities expire.

(c) Applications for applicants who do not pass the examination within the allotted time shall be denied pursuant to §133.87 of this chapter (relating to Final Action on Applications).

(d) The examination on the principles and practice of engineering shall be offered according to the schedule determined by the National Council of Examiners for Engineering and Surveying or by the board.

§133.69. Waiver of Examinations.

(a) Examinations are considered an integral part of the licensing process; all applicants are expected to have passed the examinations or to offer sufficient evidence of their qualifications in the absence of passage of the examinations. The board may waive one or both of the examination on the fundamentals of engineering or examination on the principles and practice of engineering for applicants who:

- (1) do not pose a threat to the public health, safety, or welfare;
- (2) request a waiver in writing at the time the application is filed; and
- (3) meet one of the following requirements:

(A) persons who have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(A) of the Act; or

(B) persons who have 16 years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(B) of the Act; or

(C) persons who have a Ph.D. degree in engineering from a college or university having an undergraduate or master's degree program in a related branch of engineering that is accredited or approved by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, United States (EAC/ABET), and who began teaching engineering prior to September 1, 2001, and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least four years, or have at least four years of experience consisting of a combination of EAC/ABET teaching experience and other creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), to request waiver of the examination on the fundamentals of engineering ; or

(ii) taught in an EAC/ABET-accredited or -approved program for at least six years, or have at least six years of experience consisting of a combination of EAC/ABET teaching experience and other creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), to request waiver of both the examination on the fundamentals of engineering and the examination on the principles and practice of engineering ;

(D) persons who have a Ph.D. degree in engineering not qualifying under Paragraph C of this section or other related field of science or mathematics that is individually assessed and approved by the board during the evaluation process, and who began teaching engineering prior to September 1, 2001, and have taught in an EAC/ABET-accredited or -approved program for at least eight years, or have at least eight years of experience consisting of a combination of EAC/ABET teaching experience and other creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), to request waiver of either or both the examination on the fundamentals of engineering and/or the examination on the principles and practice of engineering .

(b) An applicant is not eligible to request a waiver of the examination on the principles and practice of engineering if the applicant has taken and failed any examination on the principles and practice of engineering within the previous four years.

(c) Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application, as provided in §133.51 of this chapter (relating to Reference Providers), and §133.52 of this chapter (relating to Reference Statements). The board shall review all elements of the application to evaluate waiver request(s) and may grant a waiver(s) to qualified applicants.

§133.71. Examination for Record Purposes.

A licensed engineer may, upon written request to the board and submittal of the appropriate forms and fees, take an examination for record purposes only. An individual may only take the examination on the principles and practice of engineering if the individual is licensed in Texas as a professional engineer or has been given permission by the board to do so.

§133.73. Examination Analysis.

(a) In accordance with §1001.306(c) of the Act, the board will provide a written analysis furnished by the NCEES or by the board to anyone who has failed either the examination on the fundamentals of engineering or the examination on the principles and practice of engineering.

(b) Once the board has provided a written analysis of an examination, no further review or re-grading shall be available for the examination except as provided in subsection (c) of this section. However, the executive director may, at his or her discretion, review the administrative portions of an examination answer sheet to resolve administrative uncertainties and/or determine the manner in which an examination should be scored.

(c) An examinee may view the examination on the principles and practice of engineering results or request regrading of such examination only as permitted by the uniform examination procedures set out by NCEES or by the board:

(1) only at the date(s) and time(s) specified by the board in its letter notifying the examinee of his or her failure of the examination; and

(2) provided that any costs associated with regrading by NCEES or by the board will be paid by the examinee.

§133.75. Examination Irregularities.

(a) The examinations will be administered in accordance with the NCEES or the board policies and procedures. An examinee who does not abide by the NCEES or the board policies and procedures will be subject to dismissal from the remainder of the examination. Cheating on examinations will not be tolerated. Examination proctors who observe that an examinee is giving assistance to or receiving assistance from another person, compromising the integrity of the examination,

or participating in any other form of cheating during an examination shall require the examinee to surrender all examination materials. The examinee involved shall leave the room and shall not be permitted to return. Evidence of cheating found after the examination shall also be a cause for action. The executive director shall be informed of such instances of suspected cheating at the earliest possible opportunity and will determine appropriate action. When the executive director has determined that cheating occurred during an examination, the examination results of the persons who are determined to have cheated shall be invalidated.

(b) If the executive director determines that an examinee has knowingly violated NCEES or the board policies and procedures or cheated, the examinee will be barred from taking any examination in Texas for a period of two years. Any application for licensure pending or approved for examination will be automatically proposed for denial and will be evaluated or re-evaluated on that basis. Any examination taken and passed in another state during the two-year period will not be acceptable for licensure purposes in Texas. Any subsequent examinations administered to the examinee will be given at the site and time determined by the executive director.

(c) A licensed professional engineer suspected of cheating may be charged with violating §1001.452 of the Act and applicable board rules.

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 February 9, 2004.

TRD-200400879

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §§133.81, 133.83, 133.85, 133.87, 133.89, 133.91, 133.93, 133.95, 133.97

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules.

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing - Occupations Code §1001.202.

§133.81. Receipt and Process.

(a) Upon receipt of applications at the board office in Austin, Texas, the board shall initiate a review of the credentials submitted. Applicants who meet the licensure requirements shall be issued a license upon successful passage of the examination on the principles and practices of engineering, having met all examination requirements, or been

approved by waiver of examination(s). Applicants who fail to meet one or more of the licensure requirements shall be denied a license.

(b) Once an application is received by the board, no refunds will be granted. By submitting an application and fee, the applicant attests that he or she has reviewed the education, experience, reference, and examination requirements for licensure as prescribed in this chapter and that he or she is qualified for a license based on these requirements.

(c) Once an application has been reviewed and the board has approved an applicant for licensure subject to passage of an examination, and before a license has been issued or denied, the board will not accept a new or amended application from the applicant. This does not prohibit the executive director, a board member, or the board from requesting, when they deem necessary, additional information from an applicant regarding his or her application.

(d) In the event that information bearing on the suitability of an applicant is discovered after submission of an application but prior to issuance of a license, the board may rescind or alter any previous decision, or hold the application in abeyance, or may deny an application until the suitability of the applicant is adequately established.

§133.83. Staff Review, Evaluation and Processing of Applications.

All references to the executive director in this section shall allow for the delegation of authority by the executive director to other staff members. An application for licensure shall be handled in the following manner and order:

(1) The application is received at the board office in Austin, Texas.

(2) The executive director shall review the application for completeness.

(3) The executive director shall:
(A) accept the application as complete for processing and evaluating; or

(B) accept the application and notify the applicant at the earliest possible time of deficient information and give the applicant 45 days to complete the application. Upon receipt of an applicant's written request, the executive director may grant the applicant one additional 30 day period to submit any information identified by the executive director as necessary to complete the application. If the applicant does not submit all documents required in the time allowed for such submittals, the application shall be administratively withdrawn and further processing performed in accordance with §133.89 of this chapter (relating to Processing of Administratively Withdrawn Applications).

(4) Once an application is complete, the executive director shall review and evaluate the qualifications found in the application and determine whether the applicant should interview with the licensing committee or whether the application should be:

(A) approved,
(B) denied, or
(C) reviewed by the professional engineer members of the board.

(5) The executive director may approve the application without further board review unless the application is accompanied by:

(A) an unfavorable recommendation by one or more reference providers; or

(B) a request for waiver of examination(s), except when:

(i) the applicant has successfully passed the examination on the principles and practice of engineering, is solely requesting a waiver of the examination on the fundamentals of engineering, and has not been disciplined or otherwise sanctioned by this board or a board of another state having jurisdiction over the practice of engineering, or

(ii) the applicant is solely requesting waiver of the examination on the fundamentals of engineering and requesting approval to take the examination on the principles and practice of engineering.

(6) The executive director may deny an application for licensure without further board review if the applicant does not :

(A) have sufficient years of experience to qualify for licensure,

(B) have an education acceptable to the board as prescribed in §133.31 of this chapter (relating to Educational Requirement for Applicants),

(C) pass an examination within the time allotted, or

(D) complete the application and it becomes administratively withdrawn for more than six months.

(7) An application for licensure that cannot be approved or denied by the executive director pursuant to paragraphs (5) and (6) of this section shall be circulated among the professional engineer board members.

§133.85. Board Review of and Action on Applications.

The application shall be circulated randomly among the professional engineer board members if any of the conditions listed in paragraph (5)(A) or (B) of §133.83 of this chapter apply or if the executive director requests that an application be reviewed by the board members and shall be processed as follows:

(1) The application is approved if the first reviewing board member agrees with an executive director recommendation of approval.

(2) If the executive director or the first reviewing board member determines that the application or a request for waiver of examinations should be denied or requests that the applicant appear before the licensing committee, then circulation shall continue until the application receives at least three votes for either approval or denial of the waiver request(s) or application or personal interview of the applicant. If, after circulation among all the professional engineer board members, an application does not receive three like votes, the application shall then be referred to the licensing committee for a determination whether the application should be approved or denied or that additional information or a personal appearance of the applicant before the committee is necessary.

(3) If there are three like votes among the professional engineer board members in favor of the application or if, after circulation among the board members and referral to the licensing committee, the licensing committee determines that an application should be approved, the executive director shall approve the application without further action by the board.

(4) If there are three like votes among the professional engineer board members to deny the application, the licensing committee determines that an application should be denied, or the licensing committee is unable to reach a decision, the application and any such determination shall be presented to the full board at its next regularly scheduled meeting.

§133.87. Final Action on Applications.

(a) Upon approval of an application by the executive director, the licensing committee, or the board in a manner provided in this subchapter, the executive director shall:

(1) approve an application subject to the applicant's taking and passing the examination on the principles and practice of engineering; or

(2) issue a license to an applicant who has passed the examination on the principles and practice of engineering or who has had that examination waived.

(b) The board shall deny an application if any of the following occurs:

(1) the application has been administratively withdrawn for a period of six months;

(2) three of the professional engineer board members or majority of the full board voted to deny an application on the basis that the applicant does not meet the requirements of §1001.302 of the Act; or

(3) the applicant did not pass the examination on the principles and practice of engineering in the prescribed time.

(c) An applicant who has been denied a license for failure to pass the examination on the principles and practice of engineering with prescribed time may not re-apply for a license until one (1) year has passed from the date on the notification of failure to pass the examination or until the applicant has completed at least six (6) additional hours of formal classroom courses relevant to the applicant's dominant branch or discipline of experience.

(d) The board by vote shall confirm the action taken on a license at its next regularly scheduled meeting.

(e) The executive director shall advise the applicant in writing of any decision of the executive director, the licensing committee, or the board, as applicable.

§133.89. Processing of Administratively Withdrawn Applications.

(a) To reactivate an administratively withdrawn application, the applicant must submit:

(1) a reactivation fee as established by the board;

(2) a new application form complete with signatures; and

(3) updated supplementary experience records for the time period since the application was first submitted.

(b) If the application has been administratively withdrawn for a period of six months, the application shall be denied.

§133.91. Reconsideration of Denied Applications or Requests for Examination Waivers.

(a) Reconsideration is not available to persons whose application is denied because of the failure to pass the examination on the principles and practice of engineering.

(b) If the application is denied because of the merits of the application, the completeness or incompleteness of the application, the failure to demonstrate an acceptable education, the failure to claim the required creditable experience, or if the board did not grant a request to waive one or more examinations, then the applicant may initiate a request that the application be reconsidered provided:

(1) the request is in writing;

(2) the request includes additional information bearing on the deficiency of the original application;

(3) the request is received at the board office by the close of business on or before the 60th calendar day from the date of the letter notifying the applicant of denial; and

(4) no previous reconsideration has been given during this application.

(c) If a valid request for reconsideration is received, the application shall repeat the process of application review. Applicants whose applications or requests for an examination waiver are denied under reconsideration may request a personal interview.

§133.93. Personal Interviews of Applicants.

(a) A personal interview with the Licensing Committee of the board or the board's designated representative may be scheduled by the executive director to:

(1) obtain additional information or clarify submitted information as requested by the board, or to;

(2) reconsider a denied application or a denial of an examination waiver request resulting from §133.91 of this chapter (relating to Reconsideration of Denied Applications or Examination Waivers) at the applicant's request, provided that:

(A) a written request has been submitted and received at the board's office by the close of business on or before the 60th calendar day from the date of the notification of denial;

(B) the personal interview is not to be construed as a hearing, but is held to obtain additional information in support of an application; and

(C) the executive director may excuse and reschedule an applicant for a personal interview for cause. The executive director may also withdraw an invitation or permission for a personal interview for any reason including a previous failure to appear.

(b) The Licensing Committee or the board's designated representative shall make recommendations to the full board at the next available board meeting.

(c) Another personal interview with the full board may be scheduled with a written request in accordance with subsection (a)(2)(A)-(C) of this section. This interview with the full board shall constitute the last administrative appeal available to the applicant.

§133.95. Application Files.

(a) Images of applications that have been through the complete administrative process for approval or denial shall be stored digitally and/or microfilmed.

(b) One copy of the records shall be kept in the board office file and one copy shall be kept in the permanent State Archive file.

(c) All documents incidental to the complete application may be retained at the discretion of the board.

§133.97. Issuance of License.

(a) A license as a professional engineer shall be issued upon the approval of the application pursuant to §133.87(a) of this chapter (relating to Final Action on Applications).

(b) The fee which accompanied the application is applied toward the required licensing fee for the first partial year of licensure.

(c) The new license holder shall be assigned a serial number issued consecutively in the order of approval.

(d) The executive director shall notify the new license holder in writing of:

(1) the license issuance;

(2) the license serial number;

(3) the instructions to obtain a seal; and

(4) the instructions to return a seal imprint and a recent, wallet-size, portrait photograph.

(e) Within 60 days from the written notice from the executive director of license issuance, the new license holder shall:

(1) obtain a seal(s);

(2) place the seal imprint(s) on the form provided by the board and return it to the board office; and

(3) furnish a wallet-size portrait photograph for the board's files.

(f) Failure to comply with paragraph (e) of this section is a violation of board rules and shall be subject to sanctions.

(g) The printed license shall bear the signature of the chair and the secretary of the board, bear the seal of the board, and bear the full name and license number of the license holder.

(h) The printed license shall be uniform and of a design approved by the board. Any new designs for a printed license shall be made available to all license holders upon request and payment of a replacement certificate fee.

(i) A license issued by the board is as a professional engineer, regardless of branch designations or specialty practices. Practice is restricted only by the license holder's professional judgment and applicable board rules regarding professional practice and ethics.

(j) The records of the board shall indicate a branch considered by the board or license holder to be dominant.

(k) A license holder may request the board to indicate up to two additional branches of expertise by providing:

(1) a transcript showing an additional degree in the additional branch;

(2) a supplementary experience record documenting at least 4 years of experience in the additional branch verified by at least one PE reference provider that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or

(3) verification of successful passage of the examination on the principles and practice of engineering in the additional branch.

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 February 9, 2004.

TRD-200400880

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



CHAPTER 135. FIRMS AND SOLE PROPRIETORSHIPS REGISTRATIONS

22 TAC §§135.1, 135.3, 135.5

The Texas Board of Professional Engineers proposes new rules in Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 135: Firms and Sole Proprietorships. The proposed new rules are §§135.1, 131.3, and 131.5. The Board proposes this action in conjunction with repeal of the existing Chapter 131: Practice and Procedure. Also, the board proposes this action in conjunction proposing five new chapters to better organize the agency rules and procedures.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. Since the statutory references in the Board Rules must be changed to reflect the new designations in the re-codified Act, nearly every rule must be re-proposed and adopted with the new references. The Board has chosen this time to re-organize the existing rules, incorporate new legislative requirements, and develop a framework to aid in future rule expansion.

Since most of the content of the proposed rules are a repeat of the existing rules with few changes, the board will highlight substantive changes. The rules proposed are not number consecutively and reserves numbers for future expansion.

In this new Chapter, the board re-proposes the existing rules regarding firm and sole proprietorship registration. The registration compliance and renewal requirements are being proposed as a subchapter in the new chapter on Compliance.

Victoria J. L. Hsu, P.E., Executive Director for the board, has determined that for the first five-year period the new rules are in effect, there will be minimal fiscal implications for state or local government as a result of enforcing or administering the new rules since the substance of the proposed rules comes from the current rules.

Ms. Hsu has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing and administering the proposed rules will be that the general public and license holders of Texas will be able to follow more organized rules and streamlined processes and procedures in the new rules. For the same period, there is no anticipated adverse economic effect on individuals, small or micro-businesses.

Comments may be submitted, no later than 30 days after publication, to Victoria J. L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741 or faxed to her attention at (512) 442-1414.

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 135: Firms and Sole Proprietorships- Occupations Code §§1001.202.

§135.1. Authority.

The Texas Board of Professional Engineers shall receive, evaluate, and process all applications for a certificate of registration issued under the authority of the Texas Engineering Practice Act (Act). Applications for

the certificate of registration shall be accepted from all firms offering to engage or engaging in the practice of professional engineering for the public in Texas. For the purposes of this section, the term "public" includes but is not limited to political subdivisions of the state, business entities, and individuals. The board has the authority under the Act to issue an annual certificate of registration to applicants that, subsequent to review and evaluation, are found to have met all requirements of the Act and board rules. The board has the authority under the Act to deny a certificate of registration to any applicant found not to have met all requirements of the Act and board rules.

§135.3. Application for a Certificate of Registration.

(a) The board may issue a certificate of registration only to applicant firms having submitted sufficient information to meet the requirements set forth in §1001.405 of the Act and this section.

(b) The authorized official of the firm shall complete the form furnished by the board including but not limited to the following information listed in paragraphs (1)-(6) of this subsection:

(1) the name, address, and communication number of the firm offering to engage or engaging in the practice of professional engineering for the public in Texas;

(2) the name, position, address, and communication numbers of each officer or director;

(3) the name, address, current Texas professional engineer license number of each regular, full-time engineer employee performing engineering for the public in Texas on behalf of the firm;

(4) the name, location, and communication numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional engineering for the public in Texas, if any;

(5) a signed statement attesting to the correctness and completeness of the application; and

(6) a registration fee as established by the board.

(c) For a firm that offers or performs services only on a part-time basis, the professional engineer who has physical presence, is an employee of the firm, and offers or performs the engineering work or who directly supervises the engineering work while the firm is in operation shall satisfy the requirement of the regular, full-time employee.

(d) The application fee will not be refunded.

§135.5. Renewal and Good Standing.

To maintain a certificate of registration in good standing, a firm shall abide by the compliance rules as prescribed in Chapter 137, Subchapter D: Firm, Sole Proprietorship and Governmental Entity Compliance of this title.

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 February 9, 2004.

TRD-200400881

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

The Texas Board of Professional Engineers proposes new rules in Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 137: Compliance and Professionalism. The proposed new rules are: Subchapter A, Individual and Engineer Compliance, §§137.1, 137.3, 137.5, 137.7, 137.9, 137.11, 137.13, 137.15, 137.17, Subchapter B, Sealing Requirements, §§137.31, 137.33, 137.35, 137.37, Subchapter C, Professional Conduct and Ethics, §§137.51, 137.53, 137.55, 137.57, 137.59, 137.61, 137.63, 137.65, Subchapter D, Firm Sole Proprietorship and Governmental Entity Compliance, §§137.71, 137.73, 137.75, 137.77, and 137.79. The Board proposes this action in conjunction with repeal of the existing Chapter 131: Practice and Procedure. Also, the board proposes this action in conjunction with proposing five new chapters to better organize the agency rules and procedures.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Professional Engineers is publishing additional comment information relating to the recent adoption of §131.139, concerning Continuing Education Program, in the February 5, 2004, issue of the *Texas Register* (29 TexReg 958). Section 131.139 is being repealed and replaced as new §137.17 in this proposal package.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. Since the statutory references in the Board Rules must be changed to reflect the new designations in the re-codified Act, nearly every rule must be re-proposed and adopted with the new references. The Board has chosen this time to re-organize the existing rules, incorporate new legislative requirements, and develop a framework to aid in future rule expansion.

Since most of the content of the proposed rules are a repeat of the existing rules with few changes, the board will highlight substantive changes by subchapter. The proposed rules are not numbered consecutively and reserves numbers for future expansion.

In the proposed Subchapter A: Individual and Engineer Compliance, the board proposes new rules to describe titles a license holder and non-license holder may use based on new statutory provisions. In addition, the board includes in this subchapter, the activities a license holder must perform to maintain a license in good standing including address/employment change notification, renewal, and continuing education. The new rules also change the existing board requirement for renewing an expired license as mandated in the statute. The board also re-proposed recently adopted rules describing the procedures for claiming inactive status and for returning to active status.

In the proposed Subchapter B: Sealing Requirements, the board re-organizes the existing rules into a more logical fashion and addresses electronic sealing requirements. A new rule is proposed to summarize acts of misconduct relating to sealing and signing engineering work.

In the proposed Subchapter C: Professional Conduct and Ethics, the board re-proposes the existing rules. In addition, the board creates a new rule from an existing rule paragraph regarding an engineer's compliance the Professional Services Procurement Act.

In the proposed Subchapter D: Firm, Sole Proprietorship, and Governmental Entity Compliance, the board re-organizes the existing rules from the previous chapter that relate to activities

firms, sole proprietorships, and governmental entities must perform to maintain compliance with the Act. The new rules clarify that it is a violation of the Act to obtain a registration using fraudulent or misleading information including circumventing the statutory requirement to employ a full-time professional engineer on staff. In addition, the board proposes a new rule setting standards for compliance with the Professional Services Procurement Act for governmental entities or the board will report the entity to the appropriate jurisdictional authority.

Victoria J. L. Hsu, P.E., Executive Director for the board, has determined that for the first five-year period the proposed new rules are in effect, there will be minimal fiscal implications for state or local government as a result of enforcing or administering the new rules since the substance of the proposed rules comes from the current rules.

Ms. Hsu has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing and administering the proposed rules will be that the general public and license holders of Texas will be able to follow more organized rules and streamlined processes and procedures in the new rules. For the same period, there is no anticipated adverse economic effect on individuals, small or micro-businesses.

Comments may be submitted, no later than 30 days after publication, to Victoria J. L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741 or faxed to her attention at (512) 442-1414.

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §§137.1, 137.3, 137.5, 137.7, 137.9, 137.11, 137.13, 137.15, 137.17

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeal:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 137: Compliance and Professionalism- Occupations Code §1001.202

§137.1. License Holder Designations.

(a) Pursuant to §1001.301 of the Act, a license holder may use the following terms when representing himself or herself to public:

- (1) "engineer",
- (2) "professional engineer",
- (3) "licensed engineer",
- (4) "registered engineer",
- (5) "licensed professional engineer",
- (6) "registered professional engineer", or
- (7) any combination of words with or variation of the terms listed in (1)-(6).

(b) Certificates, seals, and other official documentation showing earlier terminology shall be considered valid for all purposes.

(c) License holders who have placed their license in an inactive status pursuant to §37.13 of this chapter (relating to Inactive Status) may use the terms in §137.1(a) of this section but must include the term "inactive" in conjunction with the designation.

§137.3. Other Use of Term "Engineer".

A person may not use the name, title, or words that convey to the public that a person is offering to perform engineering services to the public unless licensed under the requirements of the Act. The Act allows for the use or variation of the term "engineer" in a limited manner as summarized in this section.

(1) Pursuant to §1001.004(e)(1) of the Act, a person may use the term "engineer" or variation of the term to identify the name and trade in affiliation with an engineers' labor organization.

(2) Pursuant to §1001.055(b)(2) of the Act, a person who installs, operates, repairs or services any equipment or apparatus as listed in the statute may not use the term "engineer" unless authorized by another provision in the Act.

(3) Pursuant to §1001.061(b)(2) of the Act, a person employed by an operating telephone company or an affiliate of an operating telephone company engaged strictly in the art and science of telephony may use the term "engineer" in the person's job title or personnel classification if the person does not offer engineering services to the public and if the designation does not imply that the person is licensed under the Act.

(4) Pursuant to §1001.062(b) of the Act, a person who is a regular full-time employee of a private business entity that implements the design or specification sealed by an engineer licensed under the Act may use the term "engineer" in the person's job title or personnel classification if the person does not use the designation in conjunction with an offer to perform engineering services for the public.

(5) Pursuant to §1001.066(2) of the Act, a person employed by a business entity whose products and service consist of space vehicles, services or technology required by the National Aeronautical and Space Administration (NASA) may use the terms "engineer" or "engineering" in the person's job title or personnel classification if the person only uses the designation in association with the products and services related to NASA.

(6) Pursuant to §1001.301 (f) of the Act, a person who is a regular employee of a business entity that is engaged in engineering activities but exempt from the licensure requirements under §§1001.057 or 1001.058 of the Act may use the term "engineer" on business cards and forms of correspondence made available to the public providing the person does not:

(A) offer to perform engineering services to the public;

(B) use the designation outside the scope of §1001.057 or §1001.058 to convey the ability or willingness to perform engineering services or make an engineering judgment requiring a licensed professional engineer.

(7) Pursuant to §1001.406(a)(2) of the Act, a person who has an undergraduate or graduated degree from an engineering program accredited by ABET may use the term "graduate engineer" on the person's business cards and in any forms of correspondence or personal communication.

(8) Pursuant to §1001.406(b) of the Act, a person who has an undergraduate or graduated degree from an engineering program accredited by ABET and who is employed by a firm registered pursuant to Chapter 135 of this title and under the direct supervision of a

licensed professional engineer may use the term "engineer" on the person's business cards and in any forms of correspondence or personal communication.

§137.5. Notification of Address and Employer Changes.

(a) Each license holder shall notify the board in writing not later than 30 days after of a change in the person's personal mailing address or employment status.

(b) A notice informing the board of a change in employment status shall include, as applicable, the:

(1) full legal trade or business name of the association or employment,

(2) physical location and mailing address of the business,

(3) telephone number of the business office,

(4) type of business (corporation, assumed name, partnership, or self-employment through use of own name),

(5) legal relationship and position of responsibility within the business,

(6) effective date of this change; and

(7) reason for this notification (changed employment or retired; firm went out of business or changed its name or location, etc.).

§137.7. License Expiration and Renewal.

(a) Pursuant to §1001.352 of the Act, the license holder must renew the license annually to continue to practice engineering under the provisions of the Act. If the license renewal requirements are not met by the expiration date of the license, the license shall expire and the license holder may not engage in engineering activities that require a license until the renewal requirements have been met.

(b) Pursuant to §1001.352 of the Act, the board will mail a renewal notice to the last recorded address of each license holder at least 30 days prior to the date a person's license is to expire. Regardless of whether the renewal notice is received, the license holder has the sole responsibility to pay the required renewal fee together with any applicable increase in fees or late fees at the time of payment.

(c) A license holder may renew a license by submitting the required annual renewal fee, including applicable increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license. Payment may be made by personal, company, or other checks drawn on a United States bank (money order or cashier's check) payable in United States currency.

(d) Pursuant to authority in §1001.205(b) and §1001.206(c) of the Act, the board has established the renewal fee for the following categories of licenses to not require the increase in professional fees:

(1) a license holder who is 65 years of age or older,

(2) a license holder who is disabled with a mental or physical impairment that substantially limits the ability of the person to earn a living as an engineer excluding an impairment caused by an addiction to the use of alcohol, illegal drugs, or controlled substance;

(3) a license holder who meets the exemption from licensure requirement of §1001.057 or §1001.058 of the Act but does not claim that exemption;

(4) a license holder who is not practicing engineering and has claimed inactive status with the board in accordance with the requirements of §137.13 of this chapter (relating to Inactive Status).

(e) Licenses will expire according to the following schedule.

(1) Licenses originally approved in the first quarter of a calendar year will expire on December 31.

(2) Licenses originally approved in the second quarter of a calendar year will expire on March 31.

(3) Licenses originally approved in the third quarter of a calendar year will expire on June 30.

(4) Licenses originally approved in the fourth quarter of a calendar year will expire on September 30.

§137.9. Renewal for Expired License.

(a) A license holder may renew a license that has expired for 90 days or less by submitting a renewal fee to the board that is 1 and 1/2 times the normal renewal fee, any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter.

(b) A license holder may renew a license that has expired for more than 90 days but less than one year by submitting to the board a renewal fee that is 2 times the normal renewal fee, any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program).

(c) A license holder may renew a license that has expired for more than one year but less than two years by submitting to the board a renewal fee that is 2 times the normal renewal fee, any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter for each delinquent year or part of a year.

(d) A license which has been expired for two years may not be renewed, but the former license holder may apply for a new license as provided in the current Act and applicable board rules.

(e) In strict accordance with the provisions of the Texas Education Code §57.491, pertaining to the loan default proceedings of the Texas Guaranteed Student Loan Corporation (TGS LC), if a license holder's name has been provided by the TGS LC as being in default of a loan, the board shall not renew the license of the license holder on the second renewal date following such notification, unless the TGS LC certifies that the individual has entered into a repayment agreement with TGS LC, or is not in default on a loan. Such license holder shall be provided an opportunity for an informal hearing, similar to that provided by §139.33 of this title (relating to Informal Proceedings), before any action concerning the denial of a renewal of a license is taken under this paragraph. A defaulted loan shall not bar the board's issuance of an initial license if the applicant is otherwise qualified for licensure; however, the board shall not renew said license unless the TGS LC certifies the individual has satisfied the requirements of the Texas Education Code §57.491.

(f) Pursuant to Texas Occupations Code §55.002, a license holder is exempt from any increased fee or other penalty imposed in this section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the board that the license holder failed to renew in timely manner because of the license holder was serving on active duty in the United States armed forces outside Texas.

§137.11. Expiration and Licensed in Another Jurisdiction.

(a) A person who was licensed in Texas and moved to another state and, for the two years preceding the date of application for an

out-of-state renewal, who is currently licensed and has been practicing engineering in the other state may apply for a new license pursuant to this section.

(b) A person meeting the criteria in subsection (a) of this section is exempt from examination requirements.

(c) To apply for renewal, the former license holder meeting the criteria in subsection (a) of this section, must fill out an out-of-state renewal application form, submit documentation demonstrating licensure in the other state, pay a renewal fee that is equal to two times the normally required renewal fee for the license, pay any increase in fees as required by §1001.206 of the Act as applicable, and submit documentation demonstrating compliance with the continuing education program requirements for an expired license as prescribed in §137.17 of this chapter (relating to Continuing Education Program).

(d) Any license issued to a former Texas license holder under this section shall be assigned a new serial number.

§137.13. Inactive Status.

(a) A license holder in good standing may request in writing to change the status of the license to "inactive" at any time prior to license expiration date. A license holder whose license is inactive may not practice engineering. A license holder who has requested inactive status shall not receive any refunds for licensing fees previously paid to the board.

(b) A license holder whose license is inactive must pay an annual fee as established by the board at the time of the license renewal. If the inactive fee is not paid by the date a person's license is to expire, the inactive renewal fee for the expired license shall be increased in the same manner as for an active license renewal fee.

(c) A license holder whose license is inactive is not required to:

(1) comply with the continuing education requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder whose license is inactive must:

(1) submit a request in writing for reinstatement to active status,

(2) pay the fee for annual renewal and the fee increase required by §1001.206 of the Act, as applicable, and

(3) comply with the continuing education program requirements for inactive license holders returning to practice as prescribed in §137.17(o).

(e) A license holder may claim inactive status and return to active only once during the year period determined by the renewal schedule of the license. If a license holder claims inactive status and returns to active status during the same annual renewal period, the license holder shall comply with the full continuing education program requirements for that year.

(f) A license holder claiming inactive status may use any term allowed for an active license holder followed by the term "Inactive" on business cards, stationary and other forms of correspondence. Failure to note inactive status in this manner is a violation of the Act and board rules and is subject to disciplinary action by the board.

(g) A license holder on inactive status may provide a reference statement for an applicant for licensure.

(h) Offering or performing engineering services while the license is inactive is a violation of the inactive status and is subject to disciplinary action by the board.

§137.15. Replacement or New Design Certificates.

(a) Each license holder will be issued only one license certificate. A license holder may obtain a new license certificate to replace any license certificate lost, destroyed, or mutilated on payment of the established fee and verification of the status of the original license. A license holder requesting a replacement license under this section will, if possible, surrender any remaining portions of the original license to the board and shall file a written statement with original signature explaining the reasons for the request for a new certificate so that the board records will document the reason for issuance of a new license. Replacement licenses will reflect the original serial number of the license holder.

(b) In the event the license design for professional engineers is changed by the board, a license holder may obtain a license of the new design upon payment of a fee to be established by the board and surrender of the original license certificate.

§137.17. Continuing Education Program.

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH) - A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU) - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour - Credit for course in ABET-approved program or other related college course.

(4) Course/Activity - Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional engineering, or review of the Texas Engineering Practice Act and Board Rules.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) through (4) above.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization;

(C) Serving in other official positions.

(8) Patents Issued.

(9) Engaging in self-directed study.

(g) All activities described in §137.17(f) of this title shall be relevant to the practice of a technical profession and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows:

(1) 1 College or unit semester hour - 15 PDH

(2) 1 College or unit quarter hour - 10 PDH

(3) 1 Continuing Education Unit - 10 PDH

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences - 1 PDH

(5) 1 Hour of professional development through self-directed study (Not to exceed 5 PDH) - 1 PDH

(6) Each published paper, article, or book - 10 PDH

(7) Active participation in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per organization) - 1 PDH

(8) Each patent issued - 15 PDH

(9) Other activities shall be credited at 1 PDH for each hour of participation in the activity.

(i) Determination of Credit

(1) The Board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The Board shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to assure that all PDH credits claimed meet CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed study will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed study is the responsibility of the license holder and subject to review as required by the board.

(6) Credit determination for activities described in subsection (h)(4) of this section is the responsibility of the license holder and subject to review as required by the board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(k) The license holder must submit CEP certification and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year with the renewal application and fee.

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the Board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the Board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of engineering; the board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1)-(4) of this subsection:

(1) New license holders by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) License holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) License holders who list their status as "Retired" or "Inactive" and who further certify that they are no longer receiving any remuneration from providing professional engineering services shall be exempt from the professional development hours required.

(o) A license holder may bring an inactive license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

(p) Noncompliance:

(1) If an license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

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 February 9, 2004.

TRD-200400882

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §§137.31, 137.33, 137.35, 137.37

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeal:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 137: Compliance and Professionalism- Occupations Code §1001.202

§137.31. Seal Specifications.

(a) Upon issuance of a license, each license holder is required to obtain a seal under the requirements of §133.97 of this title (relating to Issuance of License) and submit an impression of the seal and an original signature to the board for board records.

(b) All seals obtained and used by license holders shall be capable of leaving a permanent ink or impression representation on the engineering work, shall be of the design as illustrated in this paragraph, and may be of two different sizes:

(1) a pocket seal (the size commercially designated as 1-5/8-inch seal), or

(2) desk seal (commercially designated as a two-inch seal). Figure: 22 TAC §137.31(b)(2)

(c) Computer-generated seals may be of a reduced size provided that the engineer's name and number are clearly legible.

(d) All seals obtained and used by license holders shall contain any given name or initial combination with the surname as currently

listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination.

(e) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited.

(f) When signing an engineering work, the engineer shall utilize the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). Signature reproductions, including but not limited to rubber stamps or computer-generated signatures (i.e., scanned images of original signatures), shall not be used in lieu of the engineer's actual signature on the original documents. This section does not prevent the reproduction of final, sealed and signed, original works for distribution.

§137.33. Sealing Procedures.

(a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.

(b) License holders shall only seal work done by them, performed under their direct supervision as defined in §131.81 of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work.

(c) When a license holder reviews and elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(1) individually sealed by the license holder; or

(2) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.

(d) License holders shall take reasonable steps to ensure the security of their physical or computer-generated seals at all times. In the event of loss of a seal, the engineer will immediately give written notification of the facts concerning the loss to board.

(e) Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(f) License holders shall affix an unobscured seal and original signature with date or electronic signature as prescribed in §137.35 of this chapter to the originals of all documents containing the final version of any engineering work before such work is released from their control, including the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding. All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). A seal may be added on such work if required or at the engineer's discretion. Electronic correspondence of this type shall be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations).

(g) Work performed by more than one license holder shall be sealed in a manner such that all engineering can be clearly attributed to the responsible license holder or license holders. When sealing plans or documents on which two or more license holders have worked, the seal and signature of each license holder shall be placed on the plan or document with a notation describing the work done under each license holder's responsible charge.

(h) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(i) A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

(1) the client furnishes the documentation of such work submitted to the client by the first license holder;

(2) the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

(3) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder's design.

(j) A local authority may require an original seal and/or signature on reproduced documents.

§137.35. Electronic Seals and Sealing Requirements.

(a) Engineering work transmitted in an electronic format that contains a computer generated seal shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.E. 0112) on (date)." unless accompanied by an electronic signature as described in this section. A license holder may use a computer-generated representation of his or her seal on electronically conveyed work; however, the final hard copy documents of such engineering work must contain an original signature of the license holder(s) and date or the documents must be accompanied by an electronic signature as described in this section. A scanned image of an original signature shall not be used in lieu of an original signature or electronic signature.

(b) An electronic signature is a digital authentication process attached to or logically associated with an electronic document and shall carry the same weight, authority, and effects as an original signature. The electronic signature, which can be generated by using either public key infrastructure or signature dynamics technology, must be as follows:

(1) unique to the person using it.

(2) capable of verification.

(3) under the sole control of the person using it.

(4) linked to a document in such a manner that the electronic signature is invalidated if any data in the document are changed.

§137.37. Sealing Misconduct.

A license holder shall be guilty of misconduct and subject to disciplinary action if the license holder:

(1) knowingly signs or seals any engineering document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(2) signs or affixes a seal on any document or product when the license is inactive or has been revoked, suspended, or has expired.

(3) alters a sealed document without proper notification to the responsible license holder.

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 February 9, 2004.

TRD-200400883

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §§137.51, 137.53, 137.55, 137.57, 137.59, 137.61, 137.63, 137.65

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeal:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 137: Compliance and Professionalism- Occupations Code §1001.202

§137.51. General Practice.

(a) In order to safeguard, life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the rules relating to professional conduct in this title shall be binding on every person holding a license and on all firms authorized to offer or perform engineering services in this Texas.

(b) License holders having knowledge of any alleged violation of the Act and/or board rules shall cooperate with the board in furnishing such information or assistance as may be required.

(c) A license holder shall promptly answer all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct subject to any of the penalties provided under §1001.502 of the Act.

(d) Any license holder who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §137.77 of this title (relating to Firm Registration Compliance) shall be subject to legal and disciplinary actions available to the board. Professional engineers shall perform or

directly supervise the engineering work of any subordinates as characterized in §131.81(10) of this title (relating to Definitions). Under no circumstances shall engineers work in a part-time arrangement with a firm not otherwise in full compliance with §137.77 of this chapter (relating to Firm Registration Compliance) in a manner that could enable such firm to offer or perform professional engineering services.

(e) A licensed professional engineer may offer or perform engineering services on a full or part-time basis as a firm, sole-proprietor, or other business entity if registered pursuant to the requirements of Chapter 135 of this title (Relating to Firms and Sole Proprietorships).

§137.53. Engineer Standards of Compliance with Professional Procurement Services Act.

(a) A licensed engineer shall not submit or request, orally or in writing, a competitive bid to perform professional engineering services for a governmental entity unless specifically authorized by state law and shall report to the board any requests from governmental entities and/or their representatives that request a bid or cost and/or pricing information or any other information from which pricing or cost can be derived prior to selection based on demonstrated competence and qualifications to perform the services.

(b) For the purposes of this section, competitive bidding to perform engineering services includes, but is not limited to, the submission of any monetary cost information in the initial step of selecting qualified engineers. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract at a fair and reasonable cost.

(c) This section does not prohibit competitive bidding in the private sector.

§137.55. Engineers Shall Protect the Public.

(a) Engineers shall be entrusted to protect the health, safety, property, and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work of the license holder.

(b) Engineers shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the board.

(c) Engineers shall first notify involved parties of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.

(d) Engineers should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.

§137.57. Engineers Shall be Objective and Truthful.

(a) Engineers shall issue statements only in an objective and truthful manner. Engineers should strive to make affected parties aware of the engineers' professional concerns regarding particular actions or projects, and of the consequences of engineering decisions or judgments that are overruled or disregarded.

(b) The issuance of oral or written assertions in the practice of engineering which are fraudulent, deceitful, or misleading or on which in any manner whatsoever tend to create a misleading impression constitutes misconduct.

(c) The engineer shall disclose a possible conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.

§137.59. Engineers' Actions Shall Be Competent.

(a) Engineers shall practice only in their areas of competence, in a careful and diligent manner, and in conformance with standards, laws, codes, and rules and regulations applicable to engineering practice.

(b) The engineer shall not perform any engineering assignment for which the engineer is not qualified by education or experience to perform adequately and competently. However, an engineer may accept an assignment which includes phases outside of the engineer's area of competence if those other phases are performed by legally qualified consultants, associates, or employees.

(c) The engineer shall not express an engineering opinion in deposition or before a court, administrative agency, or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion. Engineering opinions which are rendered as expert testimony and contain quantitative values shall be supported by adequate modeling or analysis of the phenomena described.

§137.61. Engineers Shall Maintain Confidentiality of Clients.

(a) Engineers shall act as faithful agents for their employers or clients.

(b) The engineer may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public.

(c) The engineer shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.

(d) The engineer shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the engineer's employees and associates.

§137.63. Engineers' Responsibility to the Profession.

(a) Engineers shall engage in professional and business activities in an honest and ethical manner. Engineers should strive to promote responsibility, commitment, and ethics both in the education and practice phases of engineering. They should attempt to enhance society's awareness of engineers' responsibilities to the public and encourage the communication of these principles of ethical conduct among engineers.

(b) The engineer shall:

(1) endeavor to meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services;

(2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services; and

(3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules.

(4) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party.

(c) The engineer shall not:

(1) aid or abet, directly or indirectly, any unlicensed person or business entity in the unlawful practice of engineering;

(2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;

(3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;

(4) give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;

(5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment;

(6) solicit professional employment in any false or misleading advertising;

§137.65. Action in Another Jurisdiction.

(a) The engineer shall not practice or offer to practice engineering in any other jurisdiction in violation of the laws regulating the practice of professional engineering in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the engineer to disciplinary action in Texas.

(b) Any disciplinary actions taken by another jurisdiction on a matter which would constitute a violation of the Texas Engineering Practice Act or board rules shall be sufficient cause for disciplinary action by this board. A certified copy of the board Order or Final Action from another jurisdiction shall be sufficient evidence to take disciplinary action in this state.

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 February 9, 2004.

TRD-200400884

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER D. FIRM, SOLE PROPRIETORSHIP AND GOVERNMENTAL ENTITY COMPLIANCE

22 TAC §§137.71, 137.73, 137.75, 137.77, 137.79

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed repeal:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 137: Compliance and Professionalism- Occupations Code §1001.202

§137.71. Firm Names.

Pursuant to §1001.405(e), a business entity that is not registered with the board may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the practice of engineering by using the terms:

- (1) "engineer,"
- (2) "engineering,"
- (3) "engineering services,"
- (4) "engineering company,"
- (5) "engineering, inc.,"
- (6) "professional engineers,"
- (7) "licensed engineer,"
- (8) "registered engineer,"
- (9) "licensed professional engineer,"
- (10) "registered professional engineer," or
- (11) "engineered," or

(12) any abbreviation or variation of those terms listed in paragraphs (1)-(11) of this section, or directly or indirectly use or cause to be used any of those terms in combination with other words.

§137.73. Firm Record Modifications.

(a) Each registered firm shall notify the board in writing not later than 30 days after of a change in the business entity's:

- (1) physical or mailing address, electronic mail address, telephone or facsimile number or other contact information;
- (2) officers or directors;

(3) employment status of the professional engineers of the firm; or

(4) operation including dissolution of the firm or that the firm no longer offers to provide or is not providing engineering services to the public in Texas.

(b) Notice shall include, as applicable, the :

- (1) full legal trade or business name entity,
- (2) the firm registration number,
- (3) telephone number of the business office,
- (4) name and license number of the license holder employed or leaving the entity,
- (5) description of the change, and
- (6) effective date of this change.

§137.75. Registration Renewal and Expiration.

(a) The certificate of registration shall be valid until the last day of the twelfth month following the date of issuance of the certificate of registration. At least one month in advance of the date of the expiration, the board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. The renewal notice shall be mailed to the last address provided by the firm to the board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(b) A certificate of registration which has been expired for less than one year may be renewed by completing the renewal statement sent by the board and payment of two (2) times the normal renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written a statement of whether engineering services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.

(c) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration serial number if the new application is approved.

(d) The renewal fee will not be refunded.

§137.77. Firm Registration Compliance.

(a) Any firm, sole-proprietorship, partnership, association, corporation, or other business entity shall not offer or perform engineering services to the public unless registered with the board pursuant to the requirements of Chapter 135 (Relating to Firms and Sole Proprietorships) of this title.

(b) Any firm, sole-proprietorship, partnership, association, corporation, or other business entity shall provide that at least one full-time license holder is employed with the entity and that the license holder performs or directly supervises all engineering work and activities that require a license that is performed in the primary, branch, remote, or project office(s).

(c) No engineering services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.

(d) Pursuant to §1001.405(g) of the Act, a business entity that offers or is engaged in the practice of engineering in Texas and is found

to not be registered with the board shall register with the board pursuant to the requirements of Chapter 135 of this title within 30 days of written notice from the board.

(e) A business entity that offers or is engaged in the practice of engineering in Texas and that fails to comply with paragraph (d) of this section or that has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §§1001.501-508 of the Act and §139.35 of this title (relating to Penalties and Sanctions).

(f) The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional engineer for the firm.

(g) If a firm has notified the board that it is no longer offering or performing engineer services to the public, including the absence of a regular, full-time employee who is a professional engineer licensed in Texas, the certificate of registration record will be placed in inactive status until the board is notified of resumed offering and services. If firm certificate of registration is inactive, the certificate of registration will expire under the same requirements of subsections (d) and (e) of this section unless renewed.

§137.79. Standards for Compliance with Professional Services Procurement Act.

(a) When procuring professional engineering services, a governmental entity and/or its representative(s) shall comply with the requirements of Subchapter A, Chapter 2254, Texas Government Code and shall select and award on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price and shall not select services or award contracts on the basis of competitive bidding.

(b) A governmental entity and/or its representative(s) shall follow the process and procedures as prescribed in Chapter 2254, Texas Government Code, or the board shall report the governmental entity to the appropriate jurisdictional authority.

(c) A governmental entity and/or its representative(s) is responsible for determining if professional engineering services are required based on if the services, contract or activity is included in the practice of engineering as defined in §1001.003 of the Act. A governmental entity may refer to or request an advisory opinion from the board to assist in this decision.

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 February 9, 2004.

TRD-200400885

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT

The Texas Board of Professional Engineers proposes new rules in Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 139: Enforcement. The proposed new rules are: Subchapter A, §139.1, Subchapter B, §§139.11, 139.13, 139.15, 139.17, 139.19, 139.21, 139.23, Subchapter C, §§139.31, 139.33, 139.35, Subchapter D, §§139.41, 139.43, 139.45, 139.47, and Subchapter E, §139.61. The Board proposes this action in conjunction with repeal of the existing Chapter 131: Practice and Procedure. Also, the board proposes this action in conjunction with proposing five new chapters to better organize the agency rules and procedures.

As a part of the rule review required by Chapter 2001, Texas Government Code, the Board must review and update the existing rules. Since the statutory references in the Board Rules must be changed to reflect the new designations in the re-codified Act, nearly every rule must be re-proposed and adopted with the new references. The Board has chosen this time to re-organize the existing rules, incorporate new legislative requirements, and develop a framework to aid in future rule expansion.

Since most of the content of the proposed rules are a repeat of the existing rules with few changes, the board will highlight substantive changes by subchapter. The rules proposed are not number consecutively and reserves numbers for future expansion.

In the proposed Subchapter A: Enforcement Authority, the board re-proposes existing rule language related to the enforcement authority of the board.

In the proposed Subchapter B: Complaint Process and Procedure, the board re-proposed the recently adopted rule language regarding the receipt, prioritizing, investigating, and reporting of complaints.

In the proposed Subchapter C: Enforcement Proceedings, the board proposes new rules to better organize and present the enforcement actions of the board. In the new rules, the board includes enforcement actions that can apply to both license holders and other individuals and entities. The board also updates and re-poses the existing sanction considerations and recommended sanction tables. The proposed tables now include sanctions and penalties for practicing while the license is in inactive status and for failure to meet the continuing education program requirements.

In the proposed Subchapter D: Special Disciplinary Provisions for License Holders, the board re-proposed the recently adopted rules relating to the board's authority to order restitution in some instances and to set conditions of probation for those with probated license suspensions. In addition, the board proposes rules to clarify the board authority relating to license holders with a felony conviction, violation of felony probation or parole, or revocation of mandatory supervision in accordance with Chapter 53, Texas Occupations Code.

In the proposed Subchapter E: Hearings, the board proposes to adopt the rules of the State Office of the Administrative Hearings by reference to facilitate accurate hearing procedures.

Victoria J. L. Hsu, P.E., Executive Director for the board, has determined that for the first five-year period the proposed rules are in effect, there will be minimal fiscal implications for state or local government as a result of enforcing or administering the new rules since the substance of the proposed rules comes from the current rules.

Ms. Hsu has also determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing and administering the proposed rules will be that the general public and license holders of Texas will be able to follow more organized rules and streamlined processes and procedures in the new rules. For the same period, there is no anticipated adverse economic effect on small or micro-businesses.

Comments may be submitted, no later than 30 days after publication, to Victoria J. L. Hsu, P.E., Executive Director, Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741 or faxed to her attention at (512) 442-1414.

SUBCHAPTER A. ENFORCEMENT AUTHORITY

22 TAC §139.1

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 139: Enforcement- Occupations Code §§1001.202

§139.1. General.

The board will conduct inquiries into situations which allegedly violate the requirements of the Texas Engineering Practice Act (Act) and board rules concerning the practice of engineering, representations which imply the legal capacity to offer or perform engineering services for the public, and situations which are considered by the board to pose or have caused harm to the public. Situations that represent a repeat offense, a danger or nuisance to the public or cannot be reasonably resolved through voluntary compliance, will be disposed of by administrative, civil, or criminal proceedings as authorized by law.

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 February 9, 2004.

TRD-200400886

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §§139.11, 139.13, 139.15, 139.17, 139.19, 139.21, 139.23

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes

the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 139: Enforcement- Occupations Code §§1001.202

§139.11. Complaints-General.

(a) The board shall initiate or receive and investigate a complaint against a license holder or other person who may have violated the Act or board rules.

(b) The board shall maintain the confidentiality of the complaint from receipt through the investigation of the complaint. The complaint information will no longer be confidential after formal charges are filed or after the investigation is closed.

(c) The provisions of the Act and the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code, shall apply to the conduct of all investigations and administrative actions in the board's processing of a complaint. In addition, the board may promulgate other procedural rules consistent with the Act or Chapter 2001, Texas Government Code.

§139.13. Filing a Complaint.

(a) A person who wishes to make a complaint with the board may obtain assistance, filing information, or contact the board by:

- (1) visiting the board website at www.tbpe.state.tx.us;
- (2) sending electronic mail to peboard@tbpe.state.tx.us;
- (3) sending written correspondence to: 1917 IH 35 South, Austin, Texas 78741;
- (4) sending fax to (512) 442-1414;
- (5) telephoning the board office at (512) 440-7723; or
- (6) visiting the board office located at 1917 IH 35 South, Austin, Texas.

(b) A person may submit the complaint in writing through mail, electronic mail or facsimile. An oral or verbal complaint may be made by telephone or in person.

(c) A complaint submitted orally or verbally containing sufficient information to determine jurisdiction shall be logged and assigned a case number; however, a written and signed complaint must be submitted within 30 days of the initial oral or verbal complaint or the board may dismiss the complaint as frivolous if applicable as defined in §139.21(c).

(d) A complaint shall be on the forms provided by the board or in written format and contain the following information as applicable:

- (1) complainant's name and contact information;
- (2) description of the alleged violation ;
- (3) name and contact information of the subject or parties of the complaint, if known;
- (4) sections of the Act and board rules alleged violated, if known;
- (5) name and contact information of witnesses, if known;
- (6) sources of other pertinent information, if known.

(e) Contact information may include, but is not limited to, name, address, telephone number, email address, business name, business address, business telephone number, and websites.

(f) A complaint shall contain sufficient information for the board to determine whether it has authority to resolve the complaint.

(g) Anonymous complaints will be received but will not be investigated unless sufficient information and evidence exists to demonstrate harm or potential harm to the public or violation of Act or board rules. Anonymous complaints that do not contain sufficient evidence and information to initiate an investigation will be logged and filed for information purposes only.

§139.15. Processing a Complaint.

(a) Upon receipt of a complaint, the board staff shall assign the complaint a complaint number.

(b) The board staff shall review the complaint. If the complaint does not contain sufficient information to determine whether the board has jurisdiction or is determined to be outside the board's authority, the board staff may interview the complainant to develop additional information. If the board staff determines that a potential violation exists, the board staff will proceed with the investigation. If board staff concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the board staff will recommend to the executive director that the investigation be closed and that the complaint be dismissed. If the executive director concurs with the recommendation, the complainant will be so notified and the investigation will be closed. The board staff shall write a dismissal explanation for the dismissed complaint and close the file.

(c) If a potential violation exists and the board has jurisdiction over and authority to resolve the complaint, the board staff shall set a priority for the complaint and initiate disciplinary proceedings against the subject of the complaint. In setting the priority for complaints, a complaint from the public or initiated by the board or board staff that alleges action that could potentially harm the public shall be rated highest priority and investigation for this type complaint takes precedence over all other complaints. Complaints rating highest priority may include, but are not limited to, those complaints involving incompetence, gross negligence, plan stamping, or practicing without a license. The board staff shall report status of the investigation and preliminary determination to the executive director and complainant within 45 days of receiving complaint that rates a high priority.

§139.17. Investigating a Complaint.

(a) The board staff shall be responsible for investigating the complaint including determining the need for and obtaining any additional evidence that may be required to proceed with disciplinary action.

(b) Board staff and persons acting in the official capacity of the board have authority to:

- (1) informally or formally request information and documentation from the involved parties,
- (2) perform site visits or inspections to investigate the complaint,
- (3) contract technical consultants and other services to investigate and evaluate aspects of the complaint or evidence,
- (4) subpoena information,
- (5) seek the assistance of local and state law enforcement authorities, and/or
- (6) seek out any other investigative action needed to assist in the resolution of the complaint.

(c) The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act or board rules.

(d) At any time before a complaint is resolved, board staff may conduct further investigation including, but not limited to, obtaining second or third opinions, obtaining supporting documents, or interviewing other witnesses depending on the case at hand.

(e) If the board staff will likely dismiss the complaint because the investigation of the complaint does not produce sufficient evidence to substantiate a violation of the Act or board rules, the board staff will inform the complainant of the rationale for the determination prior to reporting the dismissal to the board.

(f) Withdrawal of a complaint shall not be a reason to terminate or disrupt an ongoing investigation.

(g) At least quarterly during the investigation of the complaint, the board shall notify the parties of the complaint of the complaint status unless the notice would jeopardize an undercover investigation and such notation shall be included in the complaint file.

§139.19. Final Resolution of Complaint.

(a) Upon the completion of an investigation, the board staff shall present to the executive director a report of investigation and recommendation of final resolution of the complaint. If sufficient evidence and documentation exists to substantiate one or more violations of the Act or board rules has occurred, the board shall proceed as prescribed in §139.31 of this chapter (relating to Enforcement Actions for Violations of the Act). These actions may include, but are not limited to, one or more of the following:

- (1) enter into an agreement of voluntary compliance;
- (2) agree to informal consent order or agreed board order with administrative penalty and compliance requirement;
- (3) referral of injunctive or criminal actions to the proper authorities;
- (4) referral of a final order to the State Office of Administrative Hearings; or
- (5) other action as provided by law.

(b) If sufficient evidence and documentation does not exist to substantiate one or more violations of the Act or board rules has occurred and disciplinary action is not warranted, the board staff shall recommend to dismiss the complaint and report the dismissal to the board.

§139.21. Reporting Complaint Status to the Board.

(a) The executive director shall provide a summary report on the status of all complaints at the regularly scheduled board meetings. The report shall include:

- (1) number of complaints filed;
- (2) number of complaints received in each category;
- (3) number of complaints initiated by the board;
- (4) number of complaints filed by persons other than the board;
- (5) the average length of time to resolve a complaint by totaling all the days accumulated for all resolved complaints and dividing by the total number of resolved complaints during the reporting period;
- (6) number of complaints that are unresolved, including:
 - (A) by those filed by the board , or

(B) by those filed by persons other than the board, and
(C) including the average length of time the unresolved complaints have been on file obtained by summing the days accumulated for all unresolved complaints and dividing by the total number of unresolved complaints;

(7) number of dismissed cases; and

(8) number of complaints resulting in disciplinary action including the disciplinary action taken and whether the action was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing.

(b) The executive director shall report dismissed complaints to the board and shall include in the report the following information:

(1) name of the complainant,

(2) name of the person who is subject of the complaint,

(3) the basis of the complaint, and

(4) the reason for the dismissal of the complaint.

(c) If the executive director determines that the complaint filed is frivolous in nature and was made for the purpose of harassment and does not demonstrate harm to the public, the executive director shall redact the license holder's name and other personal information from the report to the board and any subsequent requests for information regarding the case. The board shall approve this action upon acceptance of the report.

§139.23. Technical Consultants.

(a) The executive director may employ or contract with or gain technical advice from technical consultants, including, but not limited to, advisors, consultants, engineers and other persons to provide technical assistance in investigations and disciplinary proceedings. In the course of performing the person's official duties for the board, technical consultants are immune from civil liability and may not be subject to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken, except for when an action involves fraud, conspiracy, or malice.

(b) The executive director may select technical consultants on the basis of their qualifications and may maintain a list of experts as technical consultants. The selection process may require documentation of a technical consultants qualifications including transcripts; verifiable experience records; references statements; texts, articles, and other published works; and compliance history and records. The board may interview prospective technical consultants. The board shall review a potential technical consultant's documentation to determine if the person's records demonstrate expert status and competency in a technical area. A technical consultant must inform the board and decline an assignment if the resource has personal knowledge of the complaint, parties involved in the complaint, or other conflict of interest.

(c) During the course of an investigation, the executive director may dismiss a technical consultant that does not possess the technical knowledge to assist in the investigation or for any other reason relevant to the investigation.

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 February 9, 2004.

TRD-200400887

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723

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SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §§139.31, 139.33, 139.35

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 139: Enforcement- Occupations Code §§1001.202

§139.31. Enforcement Actions for Violations of the Act.

(a) Under the authority and provisions of §1001.201, 1001.202, and Subchapters J, K, and L of the Texas Engineering Practice Act (Act), the board shall take action against a person or entity for a violation of the Act and/or board rules. An action may be composed of one or more of the following:

(1) revocation of a license;

(2) suspension of a license;

(3) probation of a suspended license pursuant to subsection (m) of this section;

(4) refusal to renew a license;

(5) issuance of a formal or informal reprimand;

(6) notice to cease and desist;

(7) voluntary compliance agreement; or

(8) assessment of an administrative penalty under Subchapter K the Act.

(b) All actions issued by the board will take the form of a board order and shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all enforcement actions shall be published in the board newsletter and on the board website, may be released in a press release, and shall be transmitted to the National Council of Examiners for Engineering and Surveying.

(c) Upon determination that sufficient probable cause exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the person or entity, hereafter referred to in this section as "respondent," by personal service or by certified or registered mail of the alleged violation. The respondent shall be afforded an opportunity to present rebuttals, arguments and evidence to the board prior to the initiation of disciplinary proceedings. If a respondent does not respond, the board may proceed with a contested case hearing.

§139.33. Informal Proceedings.

If, after evaluation of the respondent's response a violation appears evident, the executive director shall initiate enforcement action. Before

proceeding with the formal contested case hearing process, the respondent shall have an opportunity to resolve the allegations informally.

(1) The executive director may also offer the respondent a consent order that will be presented to the board for acceptance or rejection. If the respondent declines such an offer, or if the board rejects it, the procedures in paragraphs (2) or (3) of this subsection will be followed.

(2) The respondent may request an informal conference to present additional evidence and discuss details of the allegation. Upon receipt of such a request the executive director shall schedule a conference at the board office or other location, and shall appoint an informal conference committee composed of one board member or board representative, the executive director or executive director's designee, and legal counsel; the committee may meet and act provided that no more than one committee member is absent. Other persons designated by the respondent or the executive director may be present as resources or as legal counsel to respondent. The informal conference committee shall hear the details of the allegations and shall recommend:

(A) dismissal;

(B) a proposal for an agreed board order for disciplinary actions that will be presented to the board for acceptance or rejection; or

(C) scheduling of a formal hearing.

(3) Any board action under this subsection which is not informally disposed by agreed or consent order, will be considered a contested case and will be handled in accordance with applicable law and board rules.

§139.35. Sanctions and Penalties.

(a) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. The maximum administrative penalty shall be \$3000 per violation. Pursuant to §1001.502(a) of the Act, each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of prior violations of the respondent;

(3) the severity of penalty necessary to deter future violations;

(4) efforts or resistance to efforts to correct the violations;

(5) the economic harm to property or the environment caused by the violation; and

(6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules:

Figure: 22 TAC §139.35(b)

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules:

Figure: 22 TAC §139.35(c)

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm/sole proprietorship registration:

Figure: 22 TAC §139.35(d)

(e) The following is a table of suggested sanctions that may be imposed against a governmental entity and/or its representative for violations of the Act or board rules:

Figure: 22 TAC §139.35(e)

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 February 9, 2004.

TRD-200400888

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §§139.41, 139.43, 139.45, 139.47

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 139: Enforcement- Occupations Code §§1001.202

§139.41. License Holder with Renewable, Expired License.

A license holder whose license has expired for nonpayment of renewal fees continues to be subject to all provisions of the Act and board rules governing license holders until the license is revoked by the board or becomes non-renewable under §1001.353(d) of the Act.

§139.43. License Holder with Criminal Convictions.

(a) The board shall follow the requirements of Chapter 53, Texas Occupations Code, and shall revoke the license of any license holder incarcerated as a result of:

(1) a felony conviction,

(2) violation of felony probation or parole, or

(3) revocation of mandatory supervision after licensure as a professional engineer.

(b) The board may take any of the actions set out in §139.31 of this chapter when a license holder is convicted of a misdemeanor or a

felony without incarceration if the crime directly relates to the license holder's duties and responsibilities as a professional engineer.

(c) Any license holder whose license has been revoked under the provisions of this subsection may apply for a new license upon release from incarceration, but the application shall be subject to additional scrutiny relating to the incarceration. Such scrutiny shall be in accordance with Chapter 53, Texas Occupations Code.

§139.45. Restitution.

In addition to or in lieu of an administrative penalty, the board may order a license holder to pay restitution to a consumer as a result of an agreement resulting from an informal settlement conference. The amount of the restitution may not exceed the amount paid by the consumer to the person for a service regulated by the Act.

§139.47. Probation.

As part of a disciplinary action for violating the Act and board rules including, but not limited to, negligence, incompetence, or endangerment to the public, the board may prescribe conditions of probation for each probated suspension on a case-by-case basis depending on the severity of the violation that will include reporting requirements, restrictions on practice, and/or continuing education requirements as applicable as described in this subsection.

(1) The board will determine the reporting requirements for each probated suspension and will include a list of board probation requirements and schedule for completion of those requirements in which the board may require the license holder to submit documentation including, but not limited to, client lists, job assignments, designs, proof of continuing education participation, restricted practice reports, and other documents concerning the practice of engineering to demonstrate compliance with the conditions of probation. As a condition of probation, the license holder shall accept that schedule deadlines are final and no extensions or revision shall be granted.

(2) Board will receive and date stamp documentation on the day received and track compliance with probation requirements for each probated suspension. The board shall honor postmarks for date of submittal; however, if not received by the required deadline, the license holder shall have the burden of proof to demonstrate documentation was submitted by the schedule deadline.

(3) As a condition of probation, the board may restrict the area of practice of the license holder. The board may require the license holder to practice under the supervision and mentorship of another professional engineer when performing engineering in prescribed areas.

(4) As a condition of probation, the board may require the license holder to obtain additional continuing education in addition to the minimum requirements of §137.17 and may prescribe formal classroom study, workshops, seminars, and other specific forms of continuing education.

(5) Failure to comply with probation requirements shall result in lifting of probation and suspending of the engineering license for the remainder of the suspension period.

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 February 9, 2004.

TRD-200400889

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



SUBCHAPTER E. HEARINGS

22 TAC §139.61

The new rules are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

The following are the statutes, articles, or codes affected by the proposed new rules:

Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 139: Enforcement- Occupations Code §§1001.202

§139.61. Contested Case Hearings.

The State Office of Administrative Hearings shall conduct all formal hearings and contested cases in accordance with the Administrative Procedures Act, Chapter 2001, Texas Government Code and Title 1, Chapter 155, Texas Administrative 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 February 9, 2004.

TRD-200400890

Victoria J.L. Hsu, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 440-7723



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The General Land Office (GLO) proposes an amendment to §3.31, relating to Fees. The amendment will delete §3.31(b)(7)(C) and (D). The proposed amendment will remove the fees currently required for the filing of an affidavit and the filing of each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of peoples' good faith claimant's status whose title to current property interests are challenged under a vacancy application filed in accordance with §51.176 of the Texas Natural Resources Code.

In accordance with §51.178, a person who avers that they have occupied, or used, or previously occupied or used or whose predecessors in interest have occupied or uses the land identified in a vacancy application filed under §51.176 of the Texas Natural Resources Code, for purposes other than exploring for or removing oil, gas, sulphur, or other minerals and geothermal resources and has, had or whose predecessors in interest have had the land in question enclosed or within definite boundaries recognized in the community and in possession for a period of at least ten years with a good faith belief that the vacancy was included with the boundaries of a survey or surveys that were previously titled awarded or sold under circumstances that would have vested title in the property identified may file an application for good faith claimant status with the GLO. An application consists of a good faith claimant affidavit and required documents that support that claim. Current §3.31(b)(7)(C) assesses a \$25.00 filing fee for each filed affidavit. Current §3.31(b)(7)(D) assesses a \$25.00 filing fee for each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of the person's good faith claimant status. The GLO has identified these fees as an undue financial burden on people whose title to current property interests are challenged under a vacancy application filed in accordance with §51.176 of the Texas Natural Resources Code. The proposed amendment to §3.31(b)(7)(C) and (D) will remove these filing fees.

Larry Laine, Chief Clerk, has determined that during the first five-year period the proposed amendment is in effect there will be no negative fiscal implications for state or local government or small businesses.

Mr. Laine has also determined that, during the first five-year period the amendment is in effect, the public will benefit as these fees are no longer required and an undue financial burden is removed from the filing of good faith claimant applications. Individuals will benefit from the amendment, as they will no longer be required to pay the fees associated with good faith applications.

Comments may be submitted to Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873; facsimile (512) 463-6311; e-mail address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 days after publication.

The amendment is proposed under Texas Natural Resources Code §51.174, which provides the GLO with the authority to adopt rules necessary and convenient to administer Subchapter E §§51.171 - 51.192, Texas Natural Resources Code.

Texas Natural Resources Code Subchapter E §§51.171 - 51.192 are affected by this proposed amendment.

§3.31. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

(1) - (6) (No change.)

(7) Vacancies:

(A) - (B) (No change.)

~~{(C) Affidavit filing fee: \$25. }~~

~~{(D) Each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of claimant's status, other than those filed in a contested case administrative proceeding: \$25. }~~

(8) - (16) (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 February 2, 2004.

TRD-200400653

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 305-9129



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4011

The Comptroller of Public Accounts proposes an amendment to §9.4011, concerning appraisal of timberlands.

The amendment provides the methods and procedures for qualifying and appraising timberland. In addition, the manual addresses the application process, discusses the methods for determining if a change of use has occurred on timberland and the calculation of the rollback tax. It establishes the procedures and methods for the productivity appraisal of timberland and restricted use timberland.

Chapter I of this manual tells what the manual is, its purpose, why it is required and where to find copies of the manual.

Chapter II of the manual deals with qualifying timberland for productivity appraisal. To implement the requirements of Senate Bill 977, 76th Legislature, the Comptroller is amending the definition of "farm products" to include timber that is exempt from taxation and amending the definition of "in the hands of the producer" to include standing timber or timber that has been harvested and on January 1 is located on the real property on which it was produced and is under the ownership of the person who owned the timber when it was standing.

Also in Chapter II, to implement the requirements of House Bill 1723, 75th Legislature, the Comptroller is adding information to address timber in transition - giving the landowner the option for the land to continue to be appraised under the same agricultural category for 15 years from the date of the conversion to timberland. The Comptroller is adding information to implement Senate Bill 841, 75th Legislature, to require the chief appraiser to send notices denying an application for special appraisal by certified mail.

To implement the requirements of House Bill 1358, 74th Legislature, the Comptroller is removing language requiring open-space qualification on January 1, 1992 before land could qualify for

wildlife management purposes and requiring that land be "actively" used for at least three of the wildlife management purposes listed in the Tax Code.

In Chapter III, House Bill 958, 76th Legislature, is the basis for the changes to provide that the rollback tax for the change of use for open space land does not apply to a change of use occurring as a result of a transfer of land to the state or a political subdivision of the state to be used for a public purpose. Also, the Comptroller is adding language to implement the requirements of Senate Bill 977, 76th Legislature, to provide that rollback taxes for a change of use to timberland qualifying under the new Subchapter H (timber at restricted use) are not imposed if the land qualified under Subchapter C (agricultural appraisal) or Subchapter D (timber appraisal).

The Comptroller is deleting the portion of this chapter providing for rollback of taxes for the year the timber use changes because it is not consistent with Tax Code, §23.76(a). The portion on the penalty for failure to notify of a change use was deleted as it is duplicating what is discussed in the application section in Chapter II.

In Chapter IV of this manual, the Comptroller is amending the definition of "net-to-land" to implement the requirements of Senate Bill 1646, 78th Legislature. The new definition provides that, in addition to pine and hardwood sawtimber and pulpwood, small pine sawtimber (chip-n-saw) and other significant timber products are to be considered when determining value and that cutting contracts and gatewood sales are to be included in determining stumpage prices. Calculations for timber values will be made from information for the timber region as a whole, rather than two regions previously used. The management costs used to determine net-to-land are those of a prudent manager seeking to maximize return. This bill also amended the method for determining the capitalization (cap) rate to be used in calculating timberland value. The cap rate will be the greater of the interest rate specified by the Farm Credit Bank of Texas on December 31 of the previous year plus 2 1/2 percent or the cap rate used the previous year (Method A). In the first year the cap rate determined by Method A is 10 percent or greater, the cap rate will be determined by adding 2 1/2 percent to the interest rate specified by the Farm Credit Bank of Texas on December 31 of the previous year (Method B). In all subsequent years, the cap rate will be determined by averaging the current year's cap rate from Method B and the cap rates used for the preceding four years. The years included in this average cannot be years prior to the first year the cap rate, determined by Method A, was 10 percent or greater.

A new Chapter V was added to implement the provisions of Senate Bill 977, 76th Legislature, which added a new Subchapter H to Chapter 23 (§23.9801 through 23.9807, Tax Code) providing for special appraisal of Restricted Use Timber Land. New appraisal methods would apply where timber harvesting is restricted: (1) for aesthetic or conservation purposes, including maintenance of standing timber adjacent to highways and roads and to preserve forests designated by the Texas Forest Service as special and unique (aesthetic management zones); (2) to provide benefits or protections for plant or animal wildlife designated as endangered or threatened under the federal Endangered Species Act or the Parks and Wildlife Code (critical wildlife habitat zones); or (3) to protect water quality or preserve a waterway, including a lake, river, stream, or creek (streamside management zones). Land would also qualify for appraisal under

this new subchapter if it is regenerated for timber production following a harvest occurring in a year for which the land was appraised under Subchapter E appraisal provisions for timberland. Land would cease to qualify for appraisal under the new subchapter on the tenth anniversary of the date the timber is harvested. Restricted-use timberland will be appraised at one-half of the appraised value as determined under current appraisal methodology for timberland and the appraised value can not exceed the lesser of the market value of the land determined by other methods or the appraised value of the land for the year preceding the first year of appraisal under the new subchapter. The owner of land appraised under the new subchapter will be required to notify the chief appraiser if the land's eligibility ends, subject to a penalty equal to 10 percent of the difference in appraised value under the new subchapter and the appraised value under Subchapter E. The chief appraiser will be allowed to impose the penalty to any year in which the land was ineligible but received appraisal under the new subchapter.

Through out the manual changes were to correct grammatical and typographical errors; to update references to reflect program changes, terminology, federal law, and tables and examples to reflect current data; and to clarify common practices.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing updated information to taxpayers regarding their tax responsibilities. The proposed amendment would have no significant fiscal impact on small businesses.

Comments on the amendment may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §23.73(b), which requires the comptroller to set forth the method of qualifying and appraising for productivity appraisal land used to produce timber.

The amendment implements Tax Code, Chapter 23, Subchapter E and Subchapter H.

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

{(a) Adoption of the Manual for the Appraisal of Timberland. The Comptroller of Public Accounts adopts Manual for the Appraisal of Timberland. This document is published in booklet format by and

is available from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.]

[(b) Introductory comments concerning the timber manual.]

[(1) In 1978, voters approved a constitutional amendment, Article VIII, §1-d-1, permitting appraisal based on the productive capacity or "productivity value" of timberland. The new constitutional amendment took effect in 1979. In enacting the Property Tax Code that year, the 66th Legislature, 1979, adopted Property Tax Code, §§23.71-79, implementing §1-d-1 for land qualified for timber productivity appraisal.]

[(2) The Property Tax Code assigns most qualified timber appraisal responsibilities to the chief appraiser. However, the Property Tax Code, §23.73 and §23.75, direct the comptroller to develop a manual for appraising qualified timber and an application form and distribute them to appraisal districts. Property Tax Code, §23.73, also directs the comptroller to develop procedures for verifying that land qualifies for timber use appraisal.]

[(3) This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual.]

[(c) The qualification of timberland for productivity appraisal.]

[(1) In this manual, the word "timber" refers to standing trees that are grown to produce commercial wood products, such as sawtimber, pulpwood, poles, and chips. "Timberland" refers to forest land that is capable of producing commercial wood crops.]

[(2) Timberland in Texas varies in many ways. A pine plantation may have trees just over a year old, while another pine plantation may have much older and taller trees. Hardwoods may be the only timber on one tract, while other tracts may have pine trees or a mixture of hardwoods and pine. In addition, soil productivity—a key determinant of timber growth—often varies dramatically from one timber tract to another, even within the same county.]

[(3) The degree of intensity with which timber producers manage the land also differs. Some owners practice custodial care, which means the owner does nothing to manage the land, while other owners manage their land intensively. Timber plantations are usually managed intensively. However, some plantation land may require little management for a few years, then need sophisticated, intensive management for several years. For example, a timber plantation that is between thinning activities and prescribed burning may need little management, but final harvest and preparation for replanting require intensive management.]

[(4) These variations among timber tracts and timber growing operations make determining eligibility for timber productivity appraisal a challenge for a chief appraiser. The chief appraiser must be familiar with timber activities in the immediate area and the forest region of which the appraisal district is a part.]

[(5) A valuable source of information about timber activity and timberland use in the area is the "agricultural appraisal advisory board." The Property Tax Code, §6.12, requires the chief appraiser to appoint, with the advice and consent of the appraisal district's board of directors, an agricultural appraisal advisory board consisting of three or more members as determined by the board of directors. The law requires that one of the members must be a representative of the county agricultural stabilization and conservation service. The other members must own land in the district that qualifies for productivity appraisal

and must have been residents of the district for at least five years. The function of this board is to advise the chief appraiser on the valuation and use of land qualified for productivity appraisal, including agricultural land and timberland.]

[(6) If chief appraisers plan to seek the advisory board's advice on timber characteristics and timber management activities within their respective appraisal districts, they should appoint individuals who are knowledgeable about the area's timber.]

[(7) The Texas Constitution permits timber productivity appraisal only if the property and its owner meet specific requirements defining timber use. Land will not qualify simply because it has timber standing on it. In addition, timberland that is used principally for aesthetic or recreational purposes will not qualify.]

[(8) The Property Tax Code, §23.72, sets the standards for determining whether land qualifies: "Land qualifies for appraisal . . . if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products or to agricultural use that would qualify the land for appraisal . . . for five of the preceding seven years."]

[(9) To qualify land for timber productivity appraisal, a property owner must show the chief appraiser that the land meets the Property Tax Code, §23.72, standard. To do so, the property owner must apply for the appraisal and give the chief appraiser the information necessary to determine if the land qualifies. The owner also must notify the chief appraiser of any changes in the land's status.]

[(10) To qualify for timber productivity appraisal, landowners must meet each of the following six eligibility requirements:]

[(A) The land must be currently and actively devoted to timber production.]

[(B) The land must be used principally for timber production.]

[(C) The land must be devoted to timber production to the degree of intensity generally accepted for the area.]

[(D) The owner must have an intent to produce income.]

[(E) The land must have been dedicated principally to agriculture or timber production for any five of the preceding seven years.]

[(F) The property owner must file a timely and valid application form.]

[(11) Timber appraisal applies only to land and its potential for growing timber. It does not apply to improvements on land or to minerals. If the land is qualified for timber productivity appraisal, the timber standing on it may not be taxed separately.]

[(A) Improvements. Buildings and structures such as barns, sheds, or other outbuildings must be appraised separately at market value. Fences, however, are appurtenances and are not appraised separately. Land beneath out-buildings and other improvements related to timber use qualifies for the special appraisal because the owner uses it in the timber producing operation.]

[(B) Minerals. Oil, gas, or any hard mineral must be appraised separately at market value.]

[(C) Harvested timber. Harvested timber in the owner's hands on January 1 is personal property and taxed separately from the land.]

{(12) Some man-made alterations of, or additions to, timberland are appraised as part of the land. These appurtenances to the land—canals, water wells, roads, stock tanks, and other similar reshaping of the soil—are included in the value of the land and are not separately appraised.}

{(13) Under the Property Tax Code, §23.72, land must be "currently and actively devoted to timber use" to qualify for timber productivity appraisal. Unlike other types of property, the land may not have visible physical characteristics of qualification on January 1, but may still qualify. If timber use is not evident on January 1, the chief appraiser should investigate further to see if the owner can show that the land will be devoted to active timber production for the calendar year for which he or she is applying, by reason of other indications or evidence of current and active devotion. }

{(14) Determining if the owner is currently and actively devoting land to timber production is often a difficult and complicated task. Consider the following situations.}

{(A) The chief appraiser may not be able to see signs of activity when a timber operation is young, even though the owner may have spent a great deal of time, money, and effort to start the operation and is currently and actively devoting the land to timber use.}

{(B) A chief appraiser may not be able to see any management activity at the time of inspection if the owner has not harvested for some time.}

{(C) The chief appraiser may not be able to find evidence of active devotion if the size of the tract means that management activities take place away from the roads that give the chief appraiser access to the land.}

{(15) However, the absence of visible physical timber activities on the land does not mean that the land is not currently and actively devoted to timber production. The chief appraiser should look for other indications of current and active devotion. The following are some indications of current, active devotion.}

{(A) Timber activity records. Is the owner able to produce records showing timber management activity? Some records that show timber management activity are documents showing the timber has been harvested, canceled checks for services, contracts of sale, and land leases.}

{(B) Forest management plan. The owner operates under a current, written forest management plan. A forest management plan must be developed for the present time. An outdated plan is of no use as a management document. The plan also should be in writing and signed by the individual who prepared it. However, the existence of a current management plan does not always mean the owner is following the plan. The owner should be able to show that he or she is using or intends to use the plan for timber production. Knowledgeable timberland owners may prepare their own plans. If the owner of a marginal tract cannot afford a privately developed forest management plan, is on a waiting list to have a plan developed by a public agency, or lacks the expertise to develop his or her own plan, the chief appraiser should look for other evidence of current and active devotion.}

{(C) Timber cost-sharing programs. The owner receives Texas Reforestation Foundation (TRF), Forestry Incentive Program (FIP), Agricultural Conservation Program (ACP) or Stewardship Incentive Program (SIP) cost sharing funds for reforestation and timber stand improvement. The Texas Forest Service coordinates the federal FIP, ACP and SIP programs. TRF is a privately funded cost-sharing program.}

{(D) Efforts to sell timber. The owner has letters or other documents showing efforts to sell the timber.}

{(E) Salvage activity. The owner has documentation showing that he or she has attempted to salvage damaged or dead timber that continues to have value.}

{(F) Registered tree farm. A registered tree farm is privately owned, protected, and managed timberland. Timberland must meet several qualifications for certification as a registered tree farm: private ownership, management for growth and repeated timber crop harvests, adequate protection from fire, insects, disease, and destructive grazing. In addition, the owner's harvesting practices must assure prompt reforestation with desirable trees. A registered tree farm is inspected by professional foresters before it may qualify for the program. Each registered tree farm is reinspected periodically. Most registered tree farms are easily recognized by the green diamond-shaped "TREE FARM" marker placed in front of the property.}

{(G) Memberships in associations. The owner is a member of the Texas Forestry Association or a county or local timber growers association.}

{(H) Assistance programs. Does the owner participate in a forest industry landowner assistance program? Many firms in the forest products and the pulp and paper industry have entered into agreements with private timberland owners to manage their timber in exchange for first chance to buy the timber when it is ready to harvest.}

{(I) Participation in forestry extension activities. The Texas Agricultural Extension Service offers periodic programs for timberland owners. These programs cover timber management practices. The Service also offers a correspondence course to show timber owners how to prepare a timber management plan.}

{(J) Consulting foresters. Has the owner contracted with or hired a private consulting forester to help manage his or her timber? What were the results of this collaboration? Is the owner operating on the written advice of a consulting forester?}

{(16) Land that is currently and actively devoted to timber production will not qualify for productivity appraisal unless timber production is the land's primary use. If the owner uses the land for more than one purpose, the principal use must be growing timber. Although the distinction between "currently and active devotion" and "primary use" may be subtle, there is a difference between the two criteria.}

{(17) While timber production must be the primary use of the land, other compatible uses do not prevent land from qualifying if timber production remains the primary use. For example, an owner may use land principally to grow timber and lease it for hunting. However, if hunting activities are the primary use of the land, and the timber is used to create an environment for wildlife production, then the land would not qualify.}

{(18) The chief appraiser must determine all the uses to which the owner puts the land and decide which use is the primary one. If any use is incompatible with timber production, or if it replaces timber production as the primary use of land, the land is not principally devoted to timberland use and cannot qualify for productivity appraisal.}

{(19) There are situations where timber production may not be the land's primary use. The primary use test is particularly important for timberland because the kind of intensive management required to grow agricultural crops is not necessary to grow timber. This less visible management activity can make determining the land's primary use a difficult job.}

{(20) The following situations are intended to illustrate situations in which timber production may not be the land's primary use,

although the land appears to be currently and actively devoted to timber production. In these or comparable situations, the chief appraiser should use the situation as a trigger for further, careful investigation of the application.]

[(A) Presence of deer-proof fences on the property. Although this is not always the case, the existence of deer-proof fences around the property may indicate that the property is being used for wildlife production. The chief appraiser must then determine if the owner's principal use is timber production, hunting or wildlife production.]

[(B) Presence of stock or wildlife ponds on the property. Ponds are not normally necessary for the conduct of timber management activities or timber harvesting. The existence of ponds may trigger further investigation of the land's primary use.]

[(C) Land being readied or held for development. Some timber harvests may indicate that the land is being prepared for housing development rather than used principally to grow timber. (These are commonly referred to as "real estate cuts.") Another possible indication that land is being used principally for development is a sign offering the land for development or one indicating it is zoned for industrial or residential use.]

[(D) Presence of homes, vacation facilities, retreats, and recreational facilities on the property. The existence of dwellings and recreational facilities, such as retreats, camps, lodges, and similar facilities, may indicate that the timberland is being used to provide an aesthetic environment for these facilities. If this is indeed the case, timber production is not the land's primary use and the land would not qualify for productivity appraisal.]

[(21) A chief appraiser may establish a policy to follow reasonable and carefully developed guidelines for determining primary use. Establishing guidelines requires the chief appraiser to become familiar with timber activity in the area. The chief appraiser may also rely on the expertise of the agricultural appraisal advisory board in establishing primary use guidelines.]

[(22) Guidelines, however, should serve only as a trigger for more investigation—they should not be arbitrarily or automatically applied. For example, a chief appraiser whose guidelines require a management plan should not automatically deny timber appraisal to an owner who does not have a plan. A property owner with no forest management plan may actually be managing the land more actively and intensely than other owners who have management plans. This land should qualify for productivity appraisal if its use meets all other eligibility qualification requirements. Instead, the chief appraiser should use the lack of a plan as a trigger to investigate the application more closely.]

[(23) Guidelines that are applied arbitrarily or by rote can produce incorrect results. An application for timber productivity appraisal should not be denied outright because the chief appraiser discovers deer-proof fences, wildlife ponds, dwellings or recreational facilities on the property. The presence of these structures is an indication, not proof, that timber production may not be the land's primary use. In these situations, the chief appraiser should carefully investigate the land's primary use.]

[(24) To qualify for productivity appraisal, timberland must be used to the degree of intensity generally accepted for prudent timber growers in the area. The degree of intensity test is intended to exclude from productivity appraisal land on which token timber activity occurs simply to get tax relief.]

[(25) The law doesn't set degree of intensity standards. The chief appraiser must develop standards after carefully investigating the

area's typical timber operations performed by prudent landowners. After thoroughly studying the area, the chief appraiser should set minimum degree of intensity standards. The chief appraiser may also rely on the expertise of the agricultural appraisal advisory board in determining the typical degree of intensity for the prudent timber grower.]

[(26) To set degree of intensity standards, the chief appraiser should analyze the major types of timber operations in the area. This analysis should break down the typical steps in producing timber and attempt to specify how much time, labor, equipment, etc., is typical for each type of timber operation. The sources listed in subsection (f) of this section may help the chief appraiser determine how much of these items are typically used.]

[(27) Degree of intensity standards will vary from one timber growing area and operation to another. In general, there are three different levels of management intensity: custodial, minimal, and intensive.]

[(28) Custodial management is "hands-off" management. The only activities the owner conducts are payment of property taxes and occasional visits to the site. However, it is highly unlikely that a timber property that shows no indication of management activity for two or more decades is being actively devoted to timber production.]

[(29) Minimal management may fall anywhere between custodial management and intensive management. The owner may undertake some activities, such as periodic thinning, regular site visits, or maintenance of an access road.]

[(30) Intensive management can involve many activities, including careful soil preparation for replanting, regular thinning and/or prescribed burning to reduce competing vegetation, removal of undesirable trees, following a program to check for and control insects and disease, prompt actions to control insects and disease, and building and maintaining all-weather roads to the site.]

[(31) Large timber plantations owned by corporations may receive intensive management; small operations owned by individuals may receive custodial management. The chief appraiser's degree of intensity standards should recognize these different levels of management activity and differences among timber operations.]

[(32) In most cases, property owners must prove that they are following the common production steps for their type of operation and using typical amounts of labor, management, and investment. However, a timber growing operation is not disqualified simply because it differs from the typical operation in some respects. Appraisers should not, for example, disqualify a custodial timber operation because many comparably sized operations are more management intensive. Nor should an owner who is clearly meeting the degree of intensity test be disqualified because the operation has some element of the degree of intensity test missing. The total effort finally determines whether a given timber growing operation qualifies, not the level of each separate "input."]

[(33) The degree of intensity test applies to the year of the appraisal only—it does not apply to the historical use (time period) requirement. Land used principally for timber for five of the preceding seven years may qualify although it was not used to the typical degree of intensity during those years.]

[(34) The chief appraiser should not apply minimum degree of intensity standards arbitrarily—they are a trigger for a more careful review of the application. For example, if the minimum standards require regular thinning of competing vegetation, the application should not be denied simply because the land is not thinned regularly. The chief appraiser should instead carefully review the application and inspect the property to determine if the land qualifies.]

{(35) The owner must use the land with an intent to produce income. Like the degree of intensity test, this test excludes those owners who aren't producing timber and who are trying to use productivity appraisal to avoid paying property taxes on the land's market value. In Texas Attorney General Letter Opinion LO-88-89, the attorney general stated that land used solely for cutting wood to build fences for ranch operations does not qualify for timber appraisal. Whether the owner has an intent to produce income is a fact question for the chief appraiser to decide.}

{(36) To qualify, the owner is not required to prove that the land has produced income in the current year. Timberland does not produce income regularly because the time between harvests is long. At the time of qualification, however, the owner must show evidence of an intent to produce income.}

{(37) Land that does not produce income (in this context, income means net income) during the time in which a prudent manager would have produced income may not qualify. Further, an owner probably has no real intent to produce income if he or she has had no expenses directly related to the timber operation within the last two decades.}

{(38) The chief appraiser may use expense receipts, canceled checks, or current accounts of expenses, labor, and revenues to determine if the owner has expenses directly related to timber production. An owner seeking to produce income usually will keep these types of records.}

{(39) Some examples of evidence of intent to produce income are:}

{(A) receipt of revenues through sale of timber;}

{(B) letters or other documents showing that the owner has attempted to sell the timber;}

{(C) a contract of sale;}

{(D) receipts, canceled checks, and other evidence that the owner has had expenses or income related to the timberland's use;}

{(E) investments in improvements to enhance the value of the existing timber;}

{(F) purchase of easements to allow loggers access to land-locked tracts;}

{(G) investments in substantial amounts of reforestation or smaller amounts if other parts of the tract are already in commercial timber;}

{(H) attempts to salvage timber that has value but that is damaged or dead;}

{(I) using a consulting forester to help manage the land;}

{(J) hiring someone to conduct a timber sale; and}

{(K) seeking recommendations of a public forester before making a timber sale.}

{(40) Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify for timber productivity appraisal. A landowner may point to a history of agricultural use that would qualify the land for productivity appraisal in meeting this requirement.}

{(41) As long as either timber or agriculture was the principal use in the preceding years, the land qualifies although that use may not have met the degree of intensity requirement in all or some of those years. This historical use requirement attaches to the land. It is not a

requirement for the landowner to show a history of timber production activities.}

{(42) The Property Tax Code, §23.75(b), requires the comptroller to prescribe the application form for timber productivity appraisal. The comptroller's application form has been adopted by §9.402 of this title (relating to Special Use Application Forms) and is available from the comptroller's Property Tax Division.}

{(43) The appraisal district may copy the comptroller's form and offer it to local property owners. An appraisal district may use a form that substantially complies with the comptroller's form—that is it has the same language in the same order as the comptroller form if the district has written approval from the comptroller.}

{(44) The comptroller will not approve an appraisal district form unless the form has the same elements and asks for the same information as the comptroller form. The comptroller will not approve a form that asks for any information not required by the agency's form.}

{(45) These rules do not permit appraisal districts to add additional questions to the initial application. If, however, the initial application is valid but does not contain all the information the district needs to rule on an application, the chief appraiser may require the applicant to give additional information. This procedure is described later in this section.}

{(46) Where the district offers its own form, the applicant may choose between the comptroller application form and the district's form. An applicant may not be denied the appraisal because he or she chooses to use the comptroller form. The applicant must completely provide all information requested by the comptroller form—an incomplete application is not valid.}

{(47) Property owners must file applications with the chief appraiser in the appraisal district where the land is located. Taxpayers whose land is appraised by more than one appraisal district must file an application in each district.}

{(48) The law requires chief appraisers to share appraisal information on properties within overlapping areas. Chief appraisers are also required to coordinate appraisal records and appraisal activities relating to properties in overlapping areas by written agreement. Appraisal districts must send a comptroller prescribed advisory notice to affected property owners informing them that required reports and other documents must be filed with or sent to each appraisal district. This advisory notice must also inform affected property owners that they should consider sending any other document relating to the property to each appraisal district.}

{(49) A property owner may file a single application form covering all tracts within an appraisal district. Owners need not file a separate form for each tract as long as they provide sufficient information to show that all tracts qualify under the law.}

{(50) The chief appraiser should encourage owners to file a single form if they are managing several tracts as a unit. The chief appraiser must view the entire timber growing operation as a unit—not with respect to the activities on each individual parcel. The single application form notifies the appraisal district of the operation's unity.}

{(51) An application must be postmarked or filed no later than midnight, April 30. For good cause and only on the property owner's request, the chief appraiser may extend the filing deadline in individual cases for not more than 60 days. The property owner must request an extension before the filing deadline.}

{(52) The Property Tax Code does not define "good cause." However, it is commonly something the applicant cannot control. Illness or injury or an inability to transact normal business for a period

that effectively prevents filing on time is usually good cause. Travel out of town on business or vacation or simply forgetting about the filing deadline is not good cause.]

[(53) A property owner who misses the deadline may file a late application until the appraisal review board approves records for that year (usually about July 20). However, there is a penalty for late application. An application filed after April 30 is subject to a penalty equal to 10% of the difference between the tax if imposed at market value and the tax imposed at the timber productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.]

[(54) Chief appraisers must note imposition of the penalty in the appraisal records. They also must send the property owner written notice of the penalty and explain the reasons. The tax assessor adds the penalty amount to the tax bill and collects the penalty along with the annual tax payment.]

[(55) A lien attaches to the property until the penalty is paid. If the penalty remains unpaid on February 1 of the following year (or a later delinquency date if tax bills are mailed late), penalty and interest on the penalty amount accrue as if it were a delinquent tax.]

[(56) If a person does not file a valid application before the appraisal review board approves the appraisal roll, the land is ineligible for productivity appraisal in that tax year.]

[(57) Once the application is filed and approved, the land continues to receive productivity appraisal every year without a new application unless the ownership changes, the land's eligibility changes, or the chief appraiser requires a new application. The chief appraiser may require a new application if he or she has good cause to believe that the land's eligibility for productivity has ended. If the chief appraiser requires a new application, the property owner must meet the deadlines that apply to a new applicant. To better inform the taxpayer, the chief appraiser may wish to state in writing the reason for a new application.]

[(58) If the land's eligibility ends or its ownership changes, the property owner must notify the appraisal office in writing before the next May 1. New owners are not eligible for timberland productivity appraisal unless they apply. If the owner fails to do so, one or more penalties will apply.]

[(59) If the land remains under the same ownership and the owner fails to inform the appraisal district that the land is no longer eligible for productivity appraisal, either because the land is no longer in timber use or because the degree of intensity has fallen below that typical for the area, the property owner must pay a penalty equal to 10% of the difference between the taxes imposed under the timber use and the taxes that would have been imposed under the new use. This penalty applies for each year the property received the incorrect appraisal, but for no more than five years.]

[(60) If the property erroneously receives productivity appraisal because a new owner failed to file an application or because an owner's use of the land no longer qualifies, the chief appraiser must calculate the difference between the land's market value and its productivity value. The owner must pay taxes and penalties on the difference between these values for the time that the land erroneously received productivity appraisal, plus a 10% penalty on these taxes. This additional tax and penalty may not cover a time period exceeding five years. In the year the chief appraiser discovers the change, the chief appraiser should add this value to the appraisal roll as property omitted in a prior year.]

[(61) For example, if a timber producer reduces the scale of the operation and timber is no longer the land's principal use, the

land will not be eligible for productivity appraisal. If the landowner fails to notify the appraisal district and, therefore, receives productivity appraisal, the land is back assessed. For each year in question (not to exceed five years), the owner must pay the difference between the taxes based on productivity appraisal and the taxes based on market value, plus a 10% penalty on that difference. Because the land has not been taken completely out of timber use, it is not subject to rollback taxes. (Rollback procedures are discussed in detail in subsection (d) of this section.)]

[(62) When a penalty is imposed, the chief appraiser must notify the property owner. This notice must explain the procedures for protesting the penalty. The chief appraiser notes the imposition of the penalty in the appraisal records, and the tax assessor adds the amount of the penalty to the property's annual tax bill.]

[(63) The chief appraiser must review each application and decide whether to:]

- [(A) approve it and grant productivity appraisal;]
- [(B) disapprove it and ask for more information; or]
- [(C) deny the application.]

[(64) The chief appraiser must determine the validity of all timely filed applications before turning all appraisal records over to the district's appraisal review board. The deadline is May 15 or as soon afterward as is practicable.]

[(65) The chief appraiser usually gives the appraisal records to the appraisal review board (ARB) by May 15. Property owners who were denied productivity appraisal may file a protest with the ARB. In addition, taxing unit officials who believe productivity appraisal was erroneously granted to any property owner may seek to remove that grant by filing a challenge with the ARB.]

[(66) The chief appraiser must rule on all late-filed applications before the appraisal review board approves the records for the year. The chief appraiser must notify the applicant in writing within five days of an application's denial. This notice must explain the procedures for protest.]

[(67) The chief appraiser may request additional information. If the initial application form is valid but the chief appraiser does not have all the information needed to determine if the land qualifies, the chief appraiser may request additional information. The chief appraiser may request only additional information that is necessary to determine if the land qualifies for productivity appraisal.]

[(68) In determining whether an application is valid, the chief appraiser should take care to consider the application as a whole. If the chief appraiser determines that the omission of a piece of information on the original application was a mistake, the chief appraiser may, at his or her discretion, either:]

- [(A) extend the filing deadline for 60 days; or]
- [(B) send a form requesting additional information.]

[(69) Information contained in income statements and income tax returns, land lease rates, and lease agreements is not necessary to determine whether the land qualifies—other less invasive evidence of qualification exists. If the chief appraiser asks an owner for this type of information, the request should clearly state that the owner is not required to give the information to qualify for productivity appraisal.]

[(70) The applicant must provide additional information within 30 days after the date of the request or the application will be denied.]

{(71) If there is good cause, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.}

{(72) If a chief appraiser denies an application, a notice of the denial must be delivered to the applicant within five days. The notice must explain the procedures for protesting to the appraisal review board. To better inform the taxpayer, the chief appraiser may wish to explain the reasons for denying the application.}

{(73) Even if land meets all the preceding conditions, some situations may block approval of an application. Land within the boundaries of a city often will not qualify. Land located within an incorporated city or town must meet all the criteria for productivity appraisal and, in addition, must meet one of the following:}

{(A) the city must not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population; or}

{(B) the land must have been devoted principally to production of timber or forest products continuously for the preceding five years.}

{(74) Property Tax Code, §23.77(2) and (3), provide that some kinds of foreign ownership make the land ineligible for productivity appraisal. Under the law, if the property owner is a non-resident alien (a non-United States citizen who does not reside in the United States), the land can't qualify. Similarly, the law states that a corporation can't qualify its land if a non-resident alien, foreign government, or both control the corporation.}

{(75) The Texas Supreme Court has held, however, that Property Tax Code, §23.56(3), barring foreign corporate and governmental ownership from qualifying land for agricultural appraisal, unconstitutionally violates the Texas Constitution's guarantee of equal protection. Although the Court's opinion did not address the ineligibility of non-resident aliens (Property Tax Code, §23.56(2)), its reasons for holding subsection (3) of that statute unconstitutional also applies to the non-resident's eligibility for timber productivity appraisal. The HL Farms case did not address timber appraisal, but the law making productivity appraisal unavailable to foreign owners is identical to the agricultural appraisal law. Property Tax Code, §23.77(2) and (3), is identical to Property Tax Code, §23.56(2) and (3). Because of the similarity between the agricultural appraisal and the timber appraisal sections, a court is likely to hold that HL Farms applies to timberland. Therefore, a chief appraiser should seek the advice of an attorney if the appraiser is confronted with an application for timber appraisal submitted by a foreign owner.}

{(76) When the Texas Legislature adopted timber productivity appraisal, the law was written to create a minimum taxable value on timberland. Property Tax Code, §23.78, provides that the minimum taxable value of qualified timberland is the market value assigned to the land by the taxing unit in 1978. The purpose of this section was to ensure that a taxing unit with a large amount of timberland would not suffer a serious decrease in its tax base after implementation of productivity appraisal. This means that timberland qualified for productivity appraisal will not be taxed on its productivity value if that value is less than the 1978 value.}

{(77) The Tax Code requires a unit's tax assessor to compare the total productivity value for the parcel with the unit's 1978 value for the parcel. If the total productivity value is less than the total 1978 value, the unit's assessor must substitute the 1978 value for the entire parcel.}

{(78) If the nature of the parcel has changed, the assessor must use historical value to reconstruct what the entire parcel's value

would have been in 1978. For example, if a parcel includes more land in the current year than it did in 1978, the assessor may not substitute a 1978 per acre average for the new acreage. Instead, a unit's assessor must use historical data to determine what the 1978 value for the entire tract would have been for the unit.}

{(79) A unit that did not exist in 1978, or that did not levy an ad valorem tax in 1978, may not substitute a 1978 value for the land's productivity value. The law permits only substitution of the 1978 value "for the unit." A unit that did not exist or that had no property tax in 1978 has no market value to substitute for the productivity value.}

{(80) The tax assessor must determine or reconstruct a 1978 value for each unit for which the assessor collects taxes. Each unit's 1978 value must be applied separately from that of other units. The law does not provide for an average 1978 value that is applied for all units that had a 1978 value. Nor does it provide for a historical reconstruction that combines the taxing units having a value in 1978.}

{(81) An owner may waive his right to productivity appraisal. By barring the land from receiving productivity appraisal, the waiver insures that a taxing unit may depend on a certain level of tax revenue. This certainty may be critical to the survival of small taxing units or those that are in debt.}

{(82) A waiver is effective for 25 years. Land may not qualify for productivity appraisal for the duration of the waiver. A change in ownership does not revoke the waiver. An owner may file a waiver on land that does not qualify for productivity appraisal. A waiver may be filed with some or all the units that tax the property.}

{(83) A waiver filed before May 1 becomes effective when it is filed. For good cause, the chief appraiser may extend the May 1 deadline for 60 days. These waivers become effective the year following the filing year.}

{(84) To revoke a waiver, the owner must file an application for revocation with the governing body of each taxing unit where the waiver is effective. The unit's governing body must vote to approve the revocation and make a finding the unit's debt obligations will not be affected.}

{(d) Rollback procedures that relate to timberland.}

{(1) State law imposes an additional tax on qualified timberland each time it is taken out of timber use and is no longer eligible for productivity appraisal. For the purposes of this manual, this additional tax plus accrued interest is referred to as a "rollback."}

{(2) The rollback recaptures the taxes the owner would have paid if his or her property had been taxed at market value each year of the preceding five-year period plus accrued interest. The rollback has two parts:}

{(A) back taxes; and}

{(B) accrued interest on those back taxes. The tax portion of the rollback equals the difference between the total taxes the owner actually paid in the five years preceding the change in use and the total taxes the owner would have paid on the property's market value. The interest portion of the rollback is calculated from the dates on which the differences would have been due. A rollback is applicable only if the land was receiving productivity appraisal before its change of use.}

{(3) A property owner may take land out of timber use either by ending timber operations or by diverting the property to a non-timber use. This "change of use" is the only event that triggers a rollback on timberland. If the property owner diverts only part of a timber

property to a non-timber use, the rollback applies only to the changed portion.]

[(4) Technically, the tax is an additional tax imposed by law on the date the cessation of timber production or change of use occurs. The rollback tax bill has its own delinquency date different from the delinquency dates of other tax bills.]

[(5) A change of use is a physical change. The owner must stop using the land to produce timber. For example, a timber grower who has been receiving timber use appraisal may decide to stop timber operations entirely. The grower has the timber cut, does not plant new trees and shows no intention of replanting. Because the owner has stopped all timber activity, productivity appraisal will be lost and the land will incur a rollback tax.]

[(6) Reduced intensity of use at the owner's option will cause a loss of productivity appraisal. For example, if the owner decided to use the land primarily for recreational purposes and timber is no longer the land's principal use, the land would no longer be eligible for productivity appraisal. However, as long as the land is used for some kind of timber production, a rollback will not be triggered.]

[(7) Reduced intensity resulting from acts of nature and financial hardships also will not prompt a loss of timber productivity appraisal. For example, severe fires, droughts or freezes may extend the normal time land can remain out of timber production. In such cases, the land remains eligible for productivity appraisal until the owner clearly shows an intent to give up timber operations permanently.]

[(8) This principle also applies when damage is done to part of a tract. If a fire destroys 500 acres of a 3,000 acre forest—forcing the owner to temporarily cease timber operations on the 500 acres—the owner should continue to receive productivity appraisal on the destroyed part of the tract. In years of severe drought, many timber growing operations fail. Because the owner invested money in the failed operation, planting may be delayed because money to start a new operation may not be available. Here as well, the land should continue to qualify until the owner clearly shows that timber production will no longer take place on the land.]

[(9) Filing documents to plat land does not trigger imposition of a rollback. Only evidence that the actual use of the land has changed triggers the rollback. Plat documents provide some evidence of an intent to change use, but a physical change must occur, such as ceasing timber operations or installing utilities. Even in that case, the change of use may affect only part of the platted land. If the owner ceases timber operations on part of the platted land, only that part of the land is subject to rollback taxes.]

[(10) An owner who is required to reapply for productivity appraisal but who fails to do so may lose his or her eligibility, but will not suffer a rollback. Rollback requires an affirmative change of use. Failure to reapply alone does not signal an affirmative use change.]

[(11) Some changes to a different type of use do not trigger imposition of a rollback. Changing from timber use to an agricultural use that qualifies land for 1-d or 1-d-1 appraisal does not trigger a rollback. Property condemned or sold for right of way is not subject to a rollback even if its use changes. Filing a waiver of timber use appraisal with the appraisal district will not trigger a rollback if the use does not change.]

[(12) Chief appraisers must use great care in determining when a change of use triggers a rollback. The imposition of a rollback is a serious economic penalty that should not be imposed when circumstances beyond a property owner's control cause an abnormally long but temporary suspension of timber production. Chief appraisers

must keep in mind that change of use issues are often unclear and require a delicate balance between fair applications of the law and good decisions based on the facts of each situation.]

[(13) The chief appraiser determines if and when the change of use occurs and must send the owner written notice of the determination. The notice must explain the owner's right to protest the determination.]

[(14) The owner may protest the change of use decision by filing a protest with the appraisal review board within 30 days after the notice is mailed. The appraisal review board must hear a timely protest even if appraisal records have been approved for the year.]

[(15) There are a number of ways for a chief appraiser to determine if a change of use has occurred. He or she may learn of a change of use from the owner's written notification, other filed transactions (such as a sale, issuance of a building permit), field observations, or word of mouth.]

[(16) The rollback covers the five calendar years preceding the year in which the change in use occurred. For example, if the use changed in 1995, the rollback covers 1994, 1993, 1992, 1991, and 1990. The preceding years are based on the use from January through December and not on the tax collection periods.]

[(17) The tax portion of the rollback is the difference between the taxes paid under productivity appraisal and the taxes that would have been paid on the market value of the land each year. For example:]

[Figure 1: 34 TAC 9.4011 (d)(17)]

[(18) The assessor for each taxing unit must add 7.0% annual interest on these amounts from the date these taxes would have become due each year. The due date for each year is the date tax bills were mailed that year, which is normally October 1. Discounts for early payment do not apply to rollback taxes—discounts apply only to ordinary property taxes. The assessor must compute interest from the date the difference would have become due (normally October 1) to the date the change of use occurs.]

[(19) Assuming that the use changed November 1, 1995, and that the assessor mailed tax bills on October 1 each year, the interest is calculated as follows:]

[Figure 2: 34 TAC 9.4011 (d)(19)]

[(20) The five-year rollback period may cover one or more years when the property did not qualify for timber use appraisal. If the property used in the example in paragraph (19) of this subsection had been taxed on market value in 1993, the rollback tax would have been computed for 1994, 1992, 1991, and 1990.]

[(21) The rollback is due when the rollback tax bill is mailed. It becomes delinquent if not paid before the February 1 that is at least 20 days after the tax bill is mailed. For example, if the rollback tax bill is mailed on January 9, 1996, it becomes delinquent on the February 1, 1996, because there are 20 days between February 1 and January 9. However, if the bill is mailed January 30, 1996, it becomes delinquent February 1, 1997. On the delinquency date, the entire amount begins to draw penalty and interest at the same rate as other delinquent taxes.]

[(22) A tax lien attaches to the land on the date the use changes. The lien is imposed on behalf of all taxing units that levy taxes on the timberland. The lien covers payment of the additional tax, interest, and any penalties.]

[(23) The sale of timber property does not trigger a rollback tax. If land is sold and also changes use at the same time, the buyer and seller may dispute liability. Under the law, the person who has title to

the property on the date the use changes is personally liable for the rollback, but the lien may be foreclosed against the land regardless of who is liable for taxes. Tax certificates on land that receives productivity appraisal must note the appraisal and state that the land may be subject to additional taxes.}]

[(24) Organizations that are exempt from ordinary property taxes are not exempt from the rollback. If qualified timberland is sold to an exempt organization and the organization continues timber use on the land, it continues to be exempt from property taxes. However, if the organization takes the property out of timber use, the rollback is triggered. In most cases, the tax lien can be enforced against the property.}]

[(25) Where the state or a political subdivision buys the land and changes the use, the rollback will be triggered but the lien cannot be foreclosed. The rollback cannot be collected unless the governmental entity chooses to pay it. However, the lien against the land continues and could be enforced against a later buyer.}]

[(26) If land changes from a qualifying use to a non-qualifying use after the appraisal review board has approved the appraisal records, the land is assessed for the difference between the property's market value and its timber use value for the current year's taxes. This assessment is in addition to the rollback taxes and interest due.}]

[(27) The tax-assessor sends a supplemental bill for current taxes on the added value. This amount becomes delinquent on the same date as the original tax bill for the property. If those original taxes have been paid, the supplemental bill becomes delinquent on February 1 of the year following the date the bill is mailed or the first day of the next following month that allows the property owner 21 days to pay the tax, whichever is later.}]

[(28) A property owner who willingly ceases timber production on land that is receiving timber use appraisal or diverts his timberland to non-timber use must notify the appraisal district in writing of this change in use before May 1 after the change. If the property owner fails to notify the appraisal district of this change in use, the chief appraiser must impose a penalty on the property equal to 10% of the difference between the taxes levied on the property in each year it was erroneously allowed appraisal and the taxes that should have been levied. This penalty is in addition to the rollback and is similar to the penalty for property left off the roll (omitted property). The chief appraiser must notify the landowner in writing of the imposition of a penalty and explain the procedures for protesting the penalty.}]

[(29) The period for back assessing taxes for erroneously granted productivity appraisals is limited to five years. Landowners may incur other liabilities in addition to the penalty for failure to notify. For example, if qualified timberland was taken out of timber use in January, 1990, but the chief appraiser did not learn of this until 1995, the landowner would owe the following:}]

[(A) the rollback taxes and interest, computed on the five years covering the 1985-89 period;}]

[(B) regular delinquent penalty and interest under the Property Tax Code, §33.01, for the rollback tax bill that became delinquent February 1, 1991;}]

[(C) additional "omitted" taxes equal to the difference between the taxes actually paid (or assessed) and the taxes due for the tax years 1990-1994 as omitted property value, required by Property Tax Code, §23.75(j) and §25.21;}]

[(D) interest at 1.0% per month for each year of the 1990-1994 period on the additional "omitted" taxes as required by Property Tax Code, §26.09(d); and}]

[(E) a "no notice" penalty equal to 10% of the additional "omitted" taxes due for the 1990-1994 period as required by Property Tax Code, §23.75(h).}]

[(30) Therefore, taxpayers should take great care to notify their chief appraisers as soon as they permanently cease timber operations. Otherwise, they may face heavy liabilities for failure to notify.}]

[(e) The appraisal process for timberland.}]

[(1) The productivity value of an acre of timberland equals the average annual net income a prudent manager could earn from growing timber over the five-year period preceding the appraisal's effective year, divided by a statutory capitalization rate. Net income has two parts: gross income and production cost.}]

[(2) Gross income is calculated by computing potential average annual timber growth per acre and multiplying this amount by timber's average annual market price for that year. This computation is performed for each year of the five-year period.}]

[(3) The average annual cost of producing timber in each of the five years is subtracted from gross income to find net income for the year.}]

[(4) Average annual net income is computed by averaging net income for each year of the five-year period. This five-year average net income is then divided by the statutory capitalization rate to produce the productivity value of timberland. Timberland's productivity value is determined in ten basic steps:}]

[(A) classify timberland into three forest types;}]

[(B) classify timberland into four soil types;}]

[(C) estimate average annual timber growth;}]

[(D) convert timber growth into units for estimating gross income;}]

[(E) estimate average annual timber prices;}]

[(F) estimate average annual potential gross income of timber growth;}]

[(G) estimate average annual costs of producing timber;}]

[(H) estimate net income of timber growth;}]

[(I) capitalize net income by statutory rate to develop per acre timber values; and}]

[(J) apply timber values to timber acreage within the district.}]

[(5) The law requires chief appraisers to estimate timber productivity values for three forest types and four soil types, and apply these values to the different classes of timber within their respective districts. (At most, an appraisal district may have 12 classes of timber—four soil types for each of three forest types. Some districts may not have 12 classes of timber. For example, a district that contained only pine forest might have four classes of timber: pine soil class 1, pine soil class 2, pine soil class 3 and pine soil class 4.})

[(6) Figure 6: 34 TAC 9.4011(g) through Figure 36: 34 TAC 9.4011(g) illustrate this methodology, and the text frequently refers to these Figures.}]

[(7) The Property Tax Code, §23.71, requires chief appraisers to use "the land's potential average annual growth" in computing timber's gross income. In this context, the word "potential" does not mean actual—it means "possible." Consequently, the gross income of an acre of timberland is equal to the value of an average year's worth

of possible growth. Chief appraisers must apply the value of a year's worth of possible growth to all timber in each forest and soil type category, irrespective of the size of trees on any one tract.}]

[(8) The result of defining gross income as the value of potential growth often confuses many timber growers, because trees of dramatically different ages and sizes may have the same values. Assume, for example, two tracts of timber, both planted in loblolly pine and both having the same soil type and other characteristics. One tract has pine seedlings six inches high from a recent replanting; the other has pine trees 80 feet high and ready for harvest. If the chief appraiser is following the law's requirements on timber appraisal, both tracts should have the same appraised values per acre.}]

[(9) The law uses the land's potential income because the tax is a property tax. If individual tracts were appraised on their individual incomes, the tax would be an unconstitutional income tax.}]

[(10) The Property Tax Code, §23.71, requires chief appraisers to use information from five different sources to determine forest types, soil types, average growth and timber prices. These are:}]

[(A) United States Department of Agriculture (USDA) Forest Service;}]

[(B) United States Department of Interior Geological Survey;}]

[(C) United States Department of Agriculture (USDA) Natural Resources Conservation Service (formerly the Soil Conservation Service);}]

[(D) Texas Forest Service; and}]

[(E) Texas colleges and universities.}]

[(11) These sources are mandatory and are described in subsection (f) of this section. The one exception to this requirement is discussed below in paragraph (18) of this subsection.}]

[(12) As noted earlier in subsection (e) of this section, the Property Tax Code, §6.12, requires chief appraisers to appoint an "agricultural appraisal advisory board." The function of this advisory board is to advise the chief appraiser on the use and valuation of timberland and agricultural land within the district. However, the board's advice on the appraisal of timberland does not take precedence over the law's requirements on data sources or the appraisal methodology set out in this subsection.}]

[(13) Before using data from any of these mandatory sources, chief appraisers should check with the relevant agency for updates. For example, the USDA Forest Service may periodically revise its published Texas timber survey numbers. The agency makes these revisions available to the Texas Forest Service. Chief appraisers should check with the Texas Forest Service for revisions to the Texas timber survey numbers before they use the survey data. In addition, chief appraisers should not use data from any of these sources in any manner different from that shown in this manual without first checking with the relevant agency to be sure they are using the data properly.}]

[(14) Texas has two timber regions: northeast and southeast. Figure 6: 34 TAC 9.4011(g) contains a map of east Texas counties showing the boundaries of the northeast and southeast timber regions. Chief appraisers must use regional data that correspond to their county's location when using USDA Forest Service survey data and Texas Forest Service price data. Although the USDA Forest Service reports its Texas survey data at the county level, this agency cautions that the county data are not reliable because of large sampling errors.

In its 1992 survey of Texas timber, the USDA Forest Service used sampling methods designed to achieve reasonable sampling errors and reliable estimates at the state level. Future USDA Forest Service surveys of Texas timber may be designed to produce growth estimates that are reliable at the county level. If USDA Forest Service states that its data are reliable at the county level, the comptroller will work with appraisal districts and taxpayers to develop standards for use of county level growth data. The Texas Forest Service reports forest product price data at the region level but not at the county level.}]

[(15) The comptroller may revise this map if updated data become available. Chief appraisers will be notified if an updated map becomes available.}]

[(16) The Property Tax Code, §23.71, requires chief appraisers to estimate timber productivity values for three forest types and four soil types. Chief appraisers should begin the appraisal process by classifying the timberland within their districts according to forest type. There are three basic forest types in Texas: pine, hardwood and mixed. These are as follows:}]

[(A) Pine (and other softwood) timberland includes all forested areas in which the trees are predominately green throughout the year and do not lose their leaves. These trees are called evergreens. Forested areas where pine and other softwoods make up more than two-thirds of the trees free to grow are in this category.}]

[(B) Hardwood timberland includes all forested areas with a predominance of deciduous trees. These trees lose their leaves at the end of the frost-free season. Stands where hardwoods are more than two-thirds of the trees free to grow are in this category. Trees free to grow are those that are not covered by brush or other trees that prevent them from getting the sunlight necessary to grow.}]

[(C) Mixed timberland includes all forested areas where both evergreen and deciduous trees are growing and neither predominates. An area is classified as mixed when evergreen and deciduous trees each make up more than one-third of the trees.}]

[(17) The Texas Agricultural Experiment Station at Texas A&M University in College Station has developed maps of forest types for Texas timber counties. These maps are available upon request for a nominal fee to cover reproduction costs.}]

[(18) In addition, chief appraisers may use aerial photographs, forest type maps and soil class maps from any governmental source that is recognized as competent to determine soil type, soil capability, general topography, weather, location and any other pertinent factors necessary to classify commercial timberland by forest type and soil type. If the chief appraiser elects to use maps from a data source not listed in subsection (f) of this section, the chief appraiser should exercise great care to be certain that the maps are the most current and reliable maps available and that the data source of the maps is a competent governmental source.}]

[(19) The law requires chief appraisers to classify all timber-producing areas in their districts into four soil types. The chief appraiser should use data from the USDA Natural Resources Conservation Service (NRCS) soil surveys to develop soil type maps for his or her district. The NRCS does not publish soil type maps that the chief appraiser may use in appraising timberland. However, the Texas Agricultural Experiment Station at Texas A&M University has used the soil surveys to develop soil type maps for timberland within most timber-producing counties in Texas. These maps are available upon request for a nominal fee to cover reproduction costs. Before using soil type maps, chief appraisers should be certain that the data used to develop the maps are appropriate for classifying soil for timber appraisal purposes.}]

[(20) Where soil maps based on appropriate NRCS data are not available, or if the chief appraiser chooses to develop his or her own soil-type map, the chief appraiser may use NRCS detailed soil surveys, if available, to develop soil-type maps. These detailed soil surveys show the site index (discussed later in this section) for each specific soil. A soil-type map can be derived using this information.]

[(21) The NRCS's soil classification system is based on the concept of site index. Site index is a measure of the productive capacity of a forest site based on the average height of the tallest trees on the site at an arbitrarily chosen age. For example, if the average height of the five tallest loblolly pine trees in a fully stocked stand at the age of 50 years is 75 feet, the site index for loblolly pine trees on that forest site is 75. The NRCS publishes site index information in its soil surveys of Texas counties.]

[(22) The NRCS soil surveys provide site index information for all land capable of growing commercial trees within each county. The NRCS site index data must be grouped into types that are generally comparable to the USDA Forest Service site classes, and this information should then be used to generate soil type maps. This is necessary because the USDA Forest Service reports timber growth data by site class, which is also a measure of soil productivity. However, the USDA Forest Service growth data by site class cannot be mapped since they were derived from a sample of selected sites in Texas.]

[(23) The USDA Forest Service classifies all commercial timberland into five site classes based on the land's potential capacity to grow commercial wood crops. Site class is a measure of timber growth in cubic feet per year. The USDA Forest Service determines site class by measuring the height of the three tallest trees at a particular site, and then selecting the tree providing the highest estimate of site class. The USDA Forest Service has defined these five site classes as follows:]

[(A) land capable of producing more than 165 cubic feet per acre per year;]

[(B) land capable of producing 120-165 cubic feet per acre per year;]

[(C) land capable of producing 85-120 cubic feet per acre per year;]

[(D) land capable of producing 50-85 cubic feet per acre per year; and]

[(E) land capable of producing less than 50 cubic feet per acre year.]

[(24) To comply with the law's requirement to use four soil types, chief appraisers must reduce these five site classes to four. The over 165 cubic feet site class should be combined with the 120-165 cubic feet site class to produce the mandatory four soil types, because this produces a classification scheme that works well with NRCS site index data discussed below. The site index data compiled by the Natural Resources Conservation Service show virtually no trees with a site index of 110 and above, which is the equivalent of site class 165 and above. Consequently, if the top two USDA Forest Service site classes were kept separate and the two lower site classes were combined, there would be no NRCS data for the "over 165 site class" in most of Texas. As explained below, the NRCS data are necessary to develop soil type maps. In this manual, this combined site class is called the over 120 cubic feet site class.]

[(25) As noted earlier, the NRCS site index data must be grouped into ranges that are roughly comparable with USDA Forest Service's soil types. This grouping produces the following ranges: USDA Forest Service Site Classes: Over 120 cu. ft.; 85-120 cu. ft.;

50-84 cu. ft.; Under 50 cu. ft. USDA NRCS Site Index Range: Over 95 ft.; 80-95 ft.; 60-79 ft.; Under 60 ft.]

[(26) Chief appraisers must use growth data from private timberland that is the most current and reliable data available from one of the sources required by law. (See subsection (f) of this section for a discussion of these sources.) At the time this manual was written, the most current and reliable growth data available was the 1992 survey of Texas timber conducted by the USDA Forest Service. When the USDA Forest Service revises the published data, it makes the revisions available to the Texas Forest Service for distribution upon request. Before using any of the Texas survey data, chief appraisers should check with either the USDA Forest Service, Southern Forest Experiment Station, Forest Inventory and Analysis Unit in Starkville, Mississippi, or the Texas Forest Service in College Station for revisions. Figure 7: 34 TAC 9.4011(g) contains summary growth data for private timberland from the 1992 Texas survey. These data, which were prepared by the Texas Forest Service, show the average annual growth of Texas timber during the 1986-1992 period. The Texas Forest Service, located in College Station, maintains Texas Forest survey data collected by the USDA Forest Service. This growth is expressed in terms of four forest products for each of three forest types and four site classes for each Texas timber region. Chief appraisers should use the data in Figure 7: 34 TAC 9.4011(g) to calculate the average annual growth per acre for each forest type expressed in terms of forest products.]

[(27) The forest products are pine sawtimber, pine pulpwood, hardwood sawtimber and hardwood pulpwood, and the forest types are pine, mixed and hardwood. To avoid confusion, it is important to remember that pine forests—defined in subsection (e)(15)(A) of this section to be at least two-thirds evergreen trees—may produce both pine and hardwood forest products. Likewise, hardwood forests—defined to be at least two-thirds deciduous trees—may produce both pine and hardwood products.]

[(28) Figures 8-10: 34 TAC 9.4011(g) shows these calculations for northeast Texas region; Figures 11-13: 34 TAC 9.4011(g) shows comparable calculations for southeast Texas. All calculations are based on the data in Figure 7: 34 TAC 9.4011(g). Figures 8-10: 34 TAC 9.4011(g) shows the steps necessary to compute growth for an average acre of pine in northeast Texas. For pine sawtimber, for example (the forest product shown in the upper left-hand box), the chief appraiser should multiply the number of plots in each site class by the per acre growth for that site class. A "plot" is an area defined by the USDA Forest Service for its survey work. Multiplying 95 (number of plots) by 478.13 (average growth per acre in board feet) in site class "120+" produces 45,422.35, which is the estimated total growth for this site class. The result of each calculation for the four different site classes is added and this sum is divided by the total number of plots for all four site classes. The resulting number, 357.31 board feet, is the average annual amount of pine sawtimber grown on the average acre of pine in northeast Texas.]

[(29) The computations necessary to calculate the average annual growth of the other forest products—pine pulpwood, hardwood sawtimber and hardwood pulpwood—are identical to those for pine sawtimber. Figure 8: 34 TAC 9.4011(g) shows that the average acre of pine forest in northeast Texas grows annually 357.31 board feet of pine sawtimber, 20.37 board feet of hardwood sawtimber, 28.54 cubic feet of pine pulpwood and 4.86 cubic feet of hardwood pulpwood.]

[(30) The chief appraiser should use these same procedures to compute the average annual growth of an average acre of both mixed and hardwood forests in the rest of northeast Texas. Identical calculations should be used for all forest types in southeast Texas. Complete calculations for all forest types are shown in Figures 8-13: 34 TAC 9.4011(g) for northeast and southeast Texas. The results of the detailed

calculations illustrated in Figures 8-13: 34 TAC 9.4011(g) are summarized in Figure 14: 34 TAC 9.4011(g).]

[(31) As shown in Figures 7-14: 34 TAC 9.4011(g), the USDA Forest Service measures sawtimber growth estimates in the International 1/4 inch log rule and measures pulpwood growth estimates in cubic feet. (A "log rule" is a scale for measuring the amount of sawtimber that can be produced from a tree. There are dozens of recognized log rules in use in the United States, and each is based on various assumptions about tree taper, lumber shrinkage, cutting methods, and waste. The two log rules that are of interest to the chief appraiser are the International one-fourth inch—used by the USDA Forest Service—and the Doyle log rule, used by the Texas Forest Service.) The Texas Forest Service collects timber sales data bi-monthly from timber buyers and sellers; however, buyers and sellers report sawtimber transactions in the Doyle log rule and pulpwood transactions in cords. Consequently, the next step in the appraisal process is conversion of the growth estimates to the same scales in which forest product selling prices are reported.]

[(32) The chief appraiser must use a log rule conversion table to develop factors to convert sawtimber growth from one log rule to another. Figures 15 and 16: 34 TAC 9.4011(g) contain factors for converting board feet from the International 1/4 inch log rule to the Doyle log rule for northeast Texas and southeast Texas, respectively. The individual conversion factors shown in the fifth column of these tables are for Texas timber. Chief appraisers should use these log rule conversion factors until subsequent log rule conversion factors are developed based on reliable and scientific data from sources listed in subsection (f) of this section and the factors are approved by the comptroller.]

[(33) The first two columns in Figure 15: 34 TAC 9.4011(g) are from the 1992 USDA Forest Service survey and show timber volumes by tree diameter class in northeast Texas. The fourth column, titled percent of total volume, shows volume for each diameter class as a percent of total volume. At the top of Figure 15: 34 TAC 9.4011(g), for example, the reported volume for pine in diameter class 9-10.9 inches is 1,708.5 million board feet. The 1,708.5 million board feet is divided by total volume, 11,947.8 million board feet, to produce the percentage figure of 0.1430. The fifth column, titled conversion factor, is for Texas timber. The percentage and conversion factor for each diameter class are multiplied to produce the weighted contribution shown in the sixth column. Finally, these weighted contributions are added to produce the weighted conversion factor for pine in northeast Texas, which is 0.58817. The computations for the other conversion factors are identical. The timber volume data shown in both tables are for privately-owned timberland.]

[(34) After calculating the weighted conversion factors for sawtimber as illustrated in Figures 15 and 16: 34 TAC 9.4011(g), chief appraisers should apply these conversion factors to the sawtimber growth estimates summarized in Figures 14: 34 TAC 9.4011(g). The results of these computations are shown in Figures 17 and 18: 34 TAC 9.4011(g). In northeast Texas, for example (Figure 17: 34 TAC 9.4011(g)), the chief appraiser should multiply 357.31 board feet of pine sawtimber in the International 1/4 inch log rule (from Figure 14: 34 TAC 9.4011(g)) by the weighted conversion factor of 0.58817 to get 210.16 board feet of pine sawtimber in the Doyle log rule. To convert the 210.16 board feet to thousand board feet, the chief appraiser should divide 210.16 by 1,000 to get 0.210. The computations for hardwood sawtimber are identical.]

[(35) In addition, the pulpwood growth volumes shown in Figure 14: 34 TAC 9.4011(g) must be converted from cubic feet into cords because pulpwood prices are reported in cords. The chief appraiser should use the pulpwood conversion factors provided by the Texas Forest Service in its bi-monthly publication, Texas Timber Price Trends. In the September-October, 1994 edition of Texas Timber Price

Trends, the suggested conversion factors for pine pulpwood and hardwood pulpwood are 81 and 80, respectively. The results of these calculations also are presented in Figures 17 and 18: 34 TAC 9.4011(g).]

[(36) Figure 19: 34 TAC 9.4011(g) summarizes the annual average growth of an acre of timberland by forest type and forest product in both northeast and southeast Texas. Sawtimber growth is shown as thousand board feet (MBF) in the Doyle log rule, while pulpwood growth is shown as cords. As shown in this table, for example, the average annual growth of an acre of pine forest in northeast Texas is:]

- [(A) 0.210 MBF (thousand board feet) of pine sawtimber;]
- [(B) 0.013 MBF of hardwood sawtimber;]
- [(C) 0.35 cords of pine pulpwood; and]
- [(D) 0.06 cords of hardwood pulpwood.]

[(37) To determine the average annual gross income from an acre of timber, the chief appraiser should multiply timber growth by its average annual price, or stumpage price. Stumpage price is the terminology used to indicate the price of uncut, marketable timber. Before doing this, however, the chief appraiser must calculate the average annual stumpage price of each of the four forest products for each year of the five-year period preceding the year of appraisal.]

[(38) A readily available source of stumpage price data is the Texas Forest Service, located in College Station, Texas. The Texas Forest Service is also an official source of data for timber appraisal. This agency collects timber prices in its bi-monthly surveys of forest industries, consulting foresters, government agencies and large landowners and publishes selected summaries of price data in its publication Texas Timber Price Trends. The Texas Forest Service also provides summaries of average annual stumpage prices of various forest products by region for various years. It does not provide data at the county level. This publication reports selected price data for pine and hardwood sawtimber sales, pine and hardwood pulpwood sales and other miscellaneous sales. Unpublished annual summaries of price data at the regional level are available upon request.]

[(39) The Texas Forest Service reports both unweighted average annual prices and weighted average annual prices for various forest products for both northeast and southeast Texas. These price reports are available upon request from the Texas Forest Service. Chief appraisers should compute a simple average of these two reported prices and use this simple average in their timber appraisals.]

[(40) Figures 20 and 21: 34 TAC 9.4011(g) show how to calculate average annual stumpage prices for four forest products for each year of the 1990-1994 period. In northeast Texas, for example (Figure 20: 34 TAC 9.4011(g)), the average price for pine sawtimber in 1990 was \$169.53 per thousand board feet (MBF); in 1991, \$182.17 per MBF; in 1992, \$241.52 per MBF, etc.]

[(41) Chief appraisers should calculate the average annual potential gross income of timber growth using three steps. The steps in this calculation are:]

- [(A) compute average annual gross income;]
- [(B) calculate soil productivity multipliers; and]
- [(C) use soil productivity multipliers to adjust average annual gross income to potential gross income.]

[(42) First, the chief appraiser should multiply the growth of each of the four timber products (from Figure 19: 34 TAC 9.4011(g)) by its respective price (from Figures 20 and 21: 34 TAC 9.4011(g)) for each year of the five-year period. Figures 22 and 23: 34 TAC 9.4011(g),

show these calculations for northeast and southeast Texas, respectively. As shown in Figure 22: 34 TAC 9.4011(g), for example, the average annual gross income for an acre of pine forest in northeast Texas was \$44.11 in 1990 and \$91.93 in 1994. These numbers were computed by multiplying each forest product growth estimate by its respective price and then summing the products. Although the Property Tax Code, §23.51(4), allows the chief appraiser to include "any income received from hunting or recreational leases" in the computation of net income of qualified agricultural land, nothing in the Code's sections (23.71-23.79) governing timber appraisal allows inclusion of lease income in the computation of net income of qualified timberland.}]

[(43) Next, the chief appraiser must adjust these gross income estimates to reflect different soil productivities. To do this, the chief appraiser should develop productivity multipliers to adjust the average gross income. Productivity multipliers must be computed from statutory data sources that are current and reliable. (As noted earlier, subsection (f) of this section contains a listing of official data sources.) At the time this manual was written, USDA Forest Service data were the only current and reliable data available for developing soil productivity multipliers.}]

[(44) The USDA Forest Service data needed to compute productivity multipliers are:}]

[(A) the most recent forest survey data for Texas; and}]

[(B) data contained in the Boyce study, conducted by the USDA Forest Service.}]

[(45) The Boyce study, named after one of its authors, determined in 1975 the average annual maximum potential amount of timber that could be produced on an acre of loblolly pine east of the Mississippi River in each of four soil productivity classes. The soil productivity classes used in the Boyce study correspond to the soil classification scheme developed in paragraphs (19)-(25) of this subsection. Combining that soil classification scheme with the Boyce study productivity classes produces the following:}]
[Figure 3: 34 TAC 9.4011 (e)(45)]

[(46) The concepts of site quality class and site index range were discussed earlier. "Potential timber growth per acre per year" are the Boyce study estimates of the maximum potential growth of an acre of loblolly pine in each soil productivity class under ideal conditions.}]

[(47) Figures 24 and 25: 34 TAC 9.4011(g), show how to compute the average annual potential growth of an average acre. The top part of Figure 24: 34 TAC 9.4011(g) lists acres by site class for each county in northeast Texas. These data are from the 1992 USDA Forest Service survey of Texas. The bottom part of Figure 24: 34 TAC 9.4011(g) shows the results of multiplying the acreage in each site class in each county by the growth potentials developed in the Boyce study.}]

[(48) For example, the 15,300 acres in site class 165+ in Anderson County (Figure 24: 34 TAC 9.4011(g)) are multiplied by 163 (the growth potential for that site type). The result, shown in the lower half of the table, is 2,493,900 cubic feet. This calculation is carried out for all site classes in each county. The resulting products are added to produce 606,729,100 cubic feet, which is the estimated total potential growth of timberland in northeast Texas. This total estimated potential growth is divided by the total number of acres, 4,897,100, to generate an estimate of the average annual potential timber growth of an acre of timberland in northeast Texas of 123.9 cubic feet per acre per year. As noted earlier, "average annual potential growth" is not the same as "average annual actual growth."}]

[(49) Computations for southeast Texas are identical and are shown in Figure 25: 34 TAC 9.4011(g).}]

[(50) Figure 26: 34 TAC 9.4011(g), shows how to calculate soil productivity multipliers for the four productivity classes for northeast and southeast Texas. Chief appraisers should compute these productivity multipliers by dividing the growth potentials from the Boyce study by the growth potential for each region. To compute the productivity multiplier for productivity class II timberland in northeast Texas, for example, the chief appraiser should divide 123 by 123.9 to generate a productivity multiplier of 0.99. The chief appraiser should compute the productivity multiplier for class II timberland in southeast Texas by dividing 123 by 122.3, which yields a multiplier of 1.01.}]

[(51) Figures 27 and 28: 34 TAC 9.4011(g), show chief appraisers how to apply productivity multipliers to the average annual gross income estimates, which were developed in Figures 22 and 23: 34 TAC 9.4011(g). In northeast Texas in 1990, for example, the annual gross income of pine, \$44.11, is multiplied by the productivity multiplier for each productivity class. This produces estimates of the average annual potential gross income of each productivity class in 1990.}]

[(52) It is important to remember that this "potential gross income" measure is not an estimate of the actual income an individual timber grower could receive from the sale of timber in a particular year. It is a measure of the value of a year's worth of possible growth in each timber category (forest type and soil productivity class) in the region.}]

[(53) Texas law defines timber production costs as reasonable management costs and other reasonable expenses directly attributable to producing timber. The costs of producing timber are expenses related to establishing, owning, protecting, maintaining, and improving timber. These costs may vary by forest type, soil productivity, management intensity and other factors.}]

[(54) Timber production costs include professional services, site preparation, tree planting and seeding, timber improvement, protection against fire, insects and diseases, prescribed burning, maintenance of property boundaries, road construction and maintenance, measurements of standing timber, selling costs, property taxes, equipment use, mileage traveled to/from property for timber management, personnel supervision and administration. Since many foresters may include several activities under one general classification, chief appraisers should understand the components of a particular timber management activity to avoid duplicating or omitting costs.}]

[(55) The cost model in Figure 37: 34 TAC 9.4011(h) lists timber management activities and a typical frequency for each activity. The chief appraiser should use this general cost model as a basis for developing a district-specific cost model that reflects typical activities for a prudent manager in the district. Chief appraisers may add or delete activities to this model so that it reflects management activities that are typical for their respective counties districts.}]

[(56) After determining typical management activities and the frequency of each activity in the district, the chief appraiser should estimate the average annual cost of each activity. Sources of cost data are the Texas Forest Service, landowners within the district, private contractors, consulting foresters, and departments of forestry in Texas colleges and universities. The chief appraiser must develop costs that reflect typical management activities and typical frequencies for a prudent manager in the district.}]

[(57) Chief appraisers may develop an average, per acre cost for all timberland or an average, per acre cost for each type forest type. In either case, chief appraisers must adjust these costs to reflect different management costs for each category of timber. This is done because timber on more productive land is often managed more intensively, resulting in higher costs per acre. Adjusting average annual costs per acre for soil productivity classes is analogous to adjusting

average annual gross income per acre to soil productivity classes, as discussed in paragraphs (41)–(52) of this subsection.]

[(58) Chief appraisers who develop one average cost for all timberland must adjust this cost to reflect both forest type and soil productivities. To accomplish this, chief appraisers may use the following cost proration factors developed by the Texas Agricultural Experiment Station:]

[Figure 4: 34 TAC 9.4011 (e)(58)]

[(59) Figure 29: 34 TAC 9.4011(g) shows hypothetical costs for a hypothetical county in northeast Texas and in southeast Texas. The numbers in this table were created to illustrate the timber appraisal process, and chief appraisers should not use these numbers in their appraisals.]

[(60) Figures 30 and 31: 34 TAC 9.4011(g) show the results of applying these cost proration factors to the hypothetical costs shown in Figure 29: 34 TAC 9.4011(g). The chief appraiser should note that these cost proration factors are applied to an average cost for all timberland. The proration factors adjust costs for both forest type and soil productivity class.]

[(61) If chief appraisers develop an average cost for each forest type, they must adjust each of these costs to reflect the impact of different soil productivity classes. To accomplish that, chief appraisers may apply the relationships within soil classes above to make the adjustments. For example, assume that the chief appraiser determines that the average annual management cost of hardwood is \$8.00 and that most of the hardwood in the district is in soil class II. This \$8.00 figure becomes the management cost for hardwood soil class II. The management cost for hardwood soil class I would be $\$8.00 \times 1.25$, or \$10.00. The 1.25 factor is derived by taking the relationship from the factors for hardwood in Figure 5 of paragraph (58) of this subsection, which is $0.75/0.60 = 1.25$.]

[(62) The management cost for hardwood soil class III would be $\$8.00 \times 0.75$, or \$6.00. The 0.75 is the quotient of 0.45 divided by 0.60. The proration factor for hardwood soil class IV would be $0.30/0.60 = 0.50$ and the management cost would be $\$8.00 \times 0.50 = \4.00 .]

[(63) To calculate the average annual net income per acre for each timber type and soil productivity class, the chief appraiser must subtract the average annual cost per acre from the average annual potential gross income per acre. This calculation must be performed for each forest type and soil productivity class. The results are the average annual net income per acre by forest type and soil productivity class. Figures 32 and 33: 34 TAC 9.4011(g) show these computations for hypothetical counties in northeast and southeast Texas, respectively.]

[(64) To complete the timber appraisal process, chief appraisers must develop an average net income for each forest type and soil productivity class for the prior five years of average annual net incomes, capitalize this average net income and apply these productivity values to the timber acreage in their appraisal districts. Figure 34: 34 TAC 9.4011(g) shows how to perform these calculations for hypothetical appraisal districts in both northeast and southeast Texas.]

[(65) The productivity value of an acre of timberland is determined by dividing the average net income per acre for each forest type and productivity class by the capitalization rate mandated by the Property Tax Code, §23.74. The law sets the capitalization rate at the interest rate specified by the Farm Credit Bank of Texas or its successor on December 31 of the preceding year, plus 2-1/2 percentage points. Chief appraisers also may contact the comptroller's property tax division to find out the current year's capitalization rate.]

[(66) Figure 34: 34 TAC 9.4011(g) shows the results of dividing the net income per acre by a capitalization rate of 10.75%. For example, in northeast Texas, pine forest, soil productivity class I, the chief appraiser would divide \$66.30, the net income per acre, by 0.1075, the capitalization rate, to get \$616.74, the productivity value of the average acre of pine forest in soil productivity class I in northeast Texas. In southeast Texas, the chief appraiser would divide \$53.38 per acre by 0.1075 to get \$496.56, the productivity value of the average acre of pine in soil productivity class I. The chief appraiser should perform these calculations for each forest type and each soil productivity class in the appraisal district.]

[(67) The chief appraiser should apply the per acre values developed in paragraphs (64) and (65) of this subsection to the respective acreages of each parcel of qualified timberland in each forest type and soil productivity class in each taxing jurisdiction. Figures 35 and 36: 34 TAC 9.4011(g) show how to do this calculation for hypothetical counties in both Northeast and Southeast Texas, respectively.]

[(68) In determining the forest type and soil productivity class of qualified timberland in the district, the chief appraiser should use maps from one or more of the five official sources listed in subsection (f) of this section. As noted earlier in paragraphs (16)–(18) of this subsection, chief appraisers may use aerial photographs, forest type maps and soil class maps from any governmental source that is recognized as competent to determine soil type, soil capability, general topography, weather, location and any other pertinent factors necessary to classify commercial timberland by forest type and soil type. If the chief appraiser elects to use maps for classifying timberland within his or her district from a data source not listed in subsection (f) of this section, the chief appraiser should exercise great care to be certain that the maps are the most current and reliable maps available and that the source of the maps is a competent governmental source.]

[(f) Data sources for the chief appraiser.]

[(1) Chief appraisers are solely responsible for determining timber productivity values within their respective appraisal districts. To do so, they must obtain information on forest types, soil types, timber growth and forest product prices from sources listed in the Property Tax Code. While the following sources provide information on which to base determinations, the chief appraiser bears ultimate responsibility for determining timberland productivity value.]

[(2) United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). The NRCS is the federal agency charged with inventorying and classifying the nation's soils. This agency has detailed soil surveys of Texas timber-producing counties which show the potential productivity and site index of common trees in each soil series that is suitable for growing commercial trees. This information may be used to generate soil productivity maps.]

[(3) United States Department of Agriculture Forest Service. The USDA Forest Service is a branch of the United States Department of Agriculture. This agency collects voluminous information about average timber growth and forest characteristics in east Texas timber counties as part of its surveys of east Texas timber. The USDA Forest Service publishes the results of these surveys and makes much of the collected data available to the Texas Forest Service.]

[(4) United States Department of Interior Geological Survey. The United States Geological Survey periodically publishes land use/land cover maps, which classify forest types in a format useful for timberland appraisal. The agency has negatives of panchromatic (showing all colors in the visible color spectrum) aerial photographs and positive transparencies of color-infrared aerial photographs.]

{(5) Texas Forest Service (TFS): The Texas Forest Service (TFS) is a state agency and has branch offices throughout the state's timber region. TFS foresters help timber growers prepare management plans, giving priority to those with long-term timber production goals who are interested in using approved management practices, including cost-sharing. TFS headquarters are located in College Station, where the agency publishes a bi-monthly report of timber stumpage prices, called Texas Timber Price Trends. In addition, TFS publishes an annual report of timber harvests called Harvest Trends. This publication shows harvest information for each product and for each timber-producing county in Texas. Finally, the TFS has data about timber growth that the agency develops in cooperation with the United States Department of Agriculture Forest Service.}

{(6) Universities and colleges: The College of Forestry at Stephen F. Austin State University in Nacogdoches, the Department of Forest Science at Texas A&M University in College Station and other Texas colleges of forestry and universities with forest science departments often have research-based information unavailable from other sources. For example, personnel at the Texas Agricultural Experiment Station at Texas A&M University have developed forest type maps and soil productivity maps using United States Geological Survey maps and USDA Natural Resources Conservation Service data, respectively. These maps are available upon request for a nominal fee to cover reproduction costs.}

{(g) Appendix A contains Figures 6-22 which are referred to in this section. (A map and Tables 1-16B).}

{Figure 5: 34 TAC 9.4011 (g)}
{Figure 6: 34 TAC 9.4011 (g)}
{Figure 7: 34 TAC 9.4011 (g)}
{Figure 8: 34 TAC 9.4011 (g)}
{Figure 9: 34 TAC 9.4011 (g)}
{Figure 10: 34 TAC 9.4011 (g)}
{Figure 11: 34 TAC 9.4011 (g)}
{Figure 12: 34 TAC 9.4011 (g)}
{Figure 13: 34 TAC 9.4011 (g)}
{Figure 14: 34 TAC 9.4011 (g)}
{Figure 15: 34 TAC 9.4011 (g)}
{Figure 16: 34 TAC 9.4011 (g)}
{Figure 17: 34 TAC 9.4011 (g)}
{Figure 18: 34 TAC 9.4011 (g)}
{Figure 19: 34 TAC 9.4011 (g)}
{Figure 20: 34 TAC 9.4011 (g)}
{Figure 21: 34 TAC 9.4011 (g)}
{Figure 22: 34 TAC 9.4011 (g)}
{Figure 23: 34 TAC 9.4011 (g)}
{Figure 24: 34 TAC 9.4011 (g)}
{Figure 25: 34 TAC 9.4011 (g)}
{Figure 26: 34 TAC 9.4011 (g)}
{Figure 27: 34 TAC 9.4011 (g)}
{Figure 28: 34 TAC 9.4011 (g)}
{Figure 29: 34 TAC 9.4011 (g)}
{Figure 30: 34 TAC 9.4011 (g)}
{Figure 31: 34 TAC 9.4011 (g)}
{Figure 32: 34 TAC 9.4011 (g)}
{Figure 33: 34 TAC 9.4011 (g)}
{Figure 34: 34 TAC 9.4011 (g)}
{Figure 35: 34 TAC 9.4011 (g)}
{Figure 36: 34 TAC 9.4011 (g)}

{(h) Appendix B contains Figure 37 (Timber Cost Model).}
{Figure 37: 34 TAC 9.4011 (h)}

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 February 9, 2004.

TRD-200400812

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: March 21, 2004

For further information, please call: (512) 475-0387

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**PART 3. TEACHER RETIREMENT
SYSTEM OF TEXAS**

**CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER H. JOINT SERVICE WITH
EMPLOYEES RETIREMENT SYSTEM**

34 TAC §25.113

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.113 concerning transfer of credit between TRS and the Employees Retirement System of Texas (ERS). The amendments are proposed to implement House Bill 2359, 78th Texas Legislature, Regular Session, 2003, which repealed Government Code §805.002(e) regarding reinstatement of service credit cancelled by termination of membership that occurred after August 31, 1993. The proposed amendments to §25.113 make corresponding changes to the TRS rule relating to reinstatement of service credit for purpose of transfer to ERS or TRS. Additionally, the amendments change the restriction on employment after retirement from 30 days following retirement to the first full calendar month following retirement to more closely correspond to the applicable statute prohibiting employment after retirement in the first month following retirement.

The amendments are necessary for the proper and efficient administration of the requirements of Government Code §805.002 and §824.005.

Tony C. Galaviz, TRS Chief Financial Officer, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Galaviz also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of the section will be the appropriate implementation of the repeal of Government Code §805.002(e) and of the provision of Government Code §824.005(b), requiring revocation of retirement if a person becomes employed in the first month following the person's effective date of retirement. There will be no effect on small businesses. There are no anticipated economic costs to the persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Ronnie Jung, Interim Executive Director, Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701. Comments must be received no later than 30 days after the date the proposal is published in the *Texas Register*.

The amendments are proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the Board. They are proposed also under Government Code, Chapter 805, §805.009, which authorizes TRS to adopt rules for the administration of Chapter 805 relating to credit transfer between ERS and TRS.

Government Code §824.005 also is affected by the proposal.

§25.113. *Transfer of Credit between TRS and ERS.*

(a) - (f) (No change.)

(g) Reinstatement of withdrawn service credit.

(1) An ERS member with at least 36 months service credit in ERS may reinstate service credit in TRS that was canceled by the person's withdrawal of a TRS membership account [~~prior to September 1, 1993~~].

(2) Such reinstatement of TRS credit shall be in the amounts and rates applicable to TRS members eligible to repurchase such credit.

(3) A TRS member with three years' service credit may reinstate, through ERS, service credit canceled by withdrawal of an ERS membership account [~~prior to September 1, 1993~~].

(4) No service credit may be transferred based in whole or in part upon reinstated credit under this section unless the applicant meets all conditions for membership, amount of service credit, and payments required for the reinstatement of the credit.

(5) Any TRS membership service credit reinstated under this subsection may be applied toward the service credit requirements of TRS laws and rules for the purchase of out-of-state, military or other special service credit.

(h) Termination of membership. The transfer of TRS service credit to ERS will terminate TRS membership and cancel all rights to benefits from TRS based on that service.

(i) Service in the month following retirement. Both TRS and ERS laws require a separation from employment for a period following a member's effective retirement date as a condition for retirement with a benefit from the respective system. With respect to a service retirement by persons using credit transferred between the systems

(1) An ERS retiree, whose last place of employment is with a TRS covered employer must be off the payroll at the TRS covered employer for the first full calendar month [30 days] following retirement at ERS or the ERS retirement will be canceled. A TRS retiree, whose last place of employment is with an ERS covered agency must be off the payroll at the ERS agency for the first full calendar month [30 days] following retirement at the TRS or the TRS retirement will be canceled.

(2) An ERS retiree, whose last place of employment is with an ERS covered agency, may return to work with a TRS covered employer without restrictions. A retiree from the TRS, whose last place of employment is with a TRS covered employer, may go to work for an ERS agency without restrictions.

(j) Average salary. In determining average salary used in computing benefits available to a person transferring credit under this section, the receiving system will use the higher of the average compensation factors derived solely from the service originally established in each system respectively. Each system will be responsible for determining its respective average salary factor. The transferring system will certify its average salary factor to the receiving system. If there is

insufficient service to determine an average salary factor in the transferring system, benefits will be based upon the average salary factor of the receiving system.

(k) - (n) (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 February 9, 2004.

TRD-200400791

Ronnie Jung

Interim Executive Director

Teacher Retirement System of Texas

Proposed date of adoption: March 25, 2004

For further information, please call: (512) 542-6115

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SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.164

The Teacher Retirement System of Texas (TRS) proposes new §25.164 concerning purchase of waiting period service credit. The new section would address eligibility for purchase of waiting period service credit and the cost of such service credit. The purpose of the new section is to implement the provisions of H.B. 3459, 78th Legislature, Regular Session, which require a 90 day waiting period for certain employees before membership in TRS begins and authorize a member to purchase service credit for service performed during the waiting period. The new section would permit a member to purchase such service credit if the member did not serve a sufficient length of time in a school year after becoming eligible for TRS membership to earn a year of membership service credit.

Tony C. Galaviz, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Galaviz has also determined that for each year of the first five years the rule is in effect the public benefit anticipated will be that procedures for the purchase of waiting period service credit will be established and the cost will be determined according to actuarial tables adopted by the Board of Trustees. There will be no effect on small businesses. There are no anticipated economic costs to the persons who are required to comply with the rule as proposed since purchase of the service credit is optional and state law requires a member who wishes to purchase the service credit to pay the actuarial present value of the additional benefit that would result from the service credit.

Written comments on the proposal may be submitted to Ronnie Jung, Interim Executive Director, 1000 Red River, Austin, Texas 78701. The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under Government Code §823.406, which authorizes the TRS Board of Trustees to adopt rules to administer the statutory provision authorizing the purchase of waiting period service credit. The new section also proposed under Government Code, Chapter 825, §825.102, which authorizes the

TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board.

No other codes are affected by the proposal.

§25.164. Credit for Service During School Year With Membership Waiting Period.

(a) A member of the Teacher Retirement System of Texas (TRS) who is subject to a membership waiting period beginning on or after September 1, 2003, pursuant to Government Code §822.001, may purchase one year of equivalent membership service credit in TRS in accordance with Government Code §823.406 and this section.

(b) A member is eligible to purchase one year of service credit under this section if the following requirements are met:

(1) the individual served at least 4 1/2 months in an eligible position during the school year in which the waiting period ended or, in the alternative, the individual served a full semester of more than four calendar months in an eligible position during the school year in which the waiting period ended or the individual entered into an employment contract or oral or written work agreement for a period which would qualify the individual for a year of service credit but who actually renders only 90 working days of service, and

(2) any portion of that service was performed during the membership waiting period, and

(3) the individual did not serve a sufficient length of time during the school year after becoming eligible for TRS membership to earn a year of membership service credit in the retirement system.

(c) A member may not purchase service credit under this section until after the end of the school year in which the waiting period ended. If requested by TRS, in order to purchase service credit under this section, a member shall provide verification of service and salary during the school year in which the waiting period service was performed. The verification must be in a form that TRS finds acceptable to determine that the member meets the requirements of this section.

(d) Equivalent membership service credit may be established under this section by depositing with TRS the amount described in this subsection. To establish service credit for the year, the eligible member must deposit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the service credit to be purchased under this section.

(e) Upon receipt by TRS of the required amount, the member will be credited with the year of service credit. A member may not receive more than one year of service credit for the service performed in a school year.

(f) To calculate the amount required by this section, TRS will use the cost factors indicated on the "Waiting Period Service Credit Purchase Table" furnished by the TRS actuary of record. The table cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per \$1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The table sets the cost, per \$1,000 of salary, to purchase one year of service credit. For the purpose of calculating the required amount, the term "salary" is defined as follows:

(1) For the upper region of the table (where the factors appear above the line in italics), salary is the greater of current annual

salary or the average of the member's highest years of compensation, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or

(2) For the lower region of the table (where the factors appear below the line in bold), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line in bold) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.
Figure: 34 TAC §25.164(f)(2)

(g) The purchase cost described in subsection (f) of this section is based on a lump-sum deposit. If deposits are made by installment payments, the purchase cost will be adjusted to reflect applicable fees and any additional actuarial cost resulting from the schedule of payments.

(h) Service credit purchased under this section cannot be used to determine eligibility for Texas Public School Retired Employees Group Health Insurance under Insurance Code, Chapter 1575.

(i) Payments for TRS service credit purchased under this section shall be paid in a manner consistent with any applicable limitations of United States Code, Title 26, §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member, if service credit is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed applicable limitations on contributions.

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 February 9, 2004.

TRD-200400792

Ronnie Jung

Interim Executive Director

Teacher Retirement System of Texas

Proposed date of adoption: March 25, 2004

For further information, please call: (512) 542-6115

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CHAPTER 35. PAYMENTS BY TRS

34 TAC §35.1

The Teacher Retirement System of Texas (TRS) proposes amendments to §35.1 concerning computation errors. The amendments are proposed to implement House Bill 258, 78th Texas Legislature, Regular Session, 2003, which amended Subchapter B, Chapter 802, Government Code, by adding §802.1024 to establish a new three year limit on the length of time a public retirement system may go back in order to collect an overpayment of a benefit caused by an error in the records of the retirement system. The proposed amendments to §35.1 implement the new restriction on collection of overpayments and describe types of overpayments that are not subject to the restriction.

The amendments are necessary for the proper and efficient administration of the requirements of Government Code §802.1024.

Tony Galaviz, TRS Chief Financial Officer, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Galaviz also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of the section will be the appropriate implementation of Government Code §802.1024. There will be no effect on small businesses. There are no anticipated economic costs to the persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Ronnie Jung, Interim Executive Director, Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701. Comments must be received no later than 30 days after the date the proposal is published in the *Texas Register*.

The amendments are proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the system and the transaction of business of the Board.

Government Code §825.109 also is affected by the proposal.

§35.1. *Computation Error.*

(a) If [Should] any error in the records results in any member, beneficiary, or alternate payee under Gov't Code Section 804.005 receiving more or less than the recipient would have been entitled to receive had the records been correct, the Teacher Retirement System of Texas (TRS) shall correct such error and so far as practicable shall adjust any future [the] payment in such a manner that the actuarial equivalent of the benefit to which the recipient was correctly entitled will be paid.

(b) If no future payments are due, TRS may recover an overpayment in any manner that would be permitted for the collection of any other debt.

(c) TRS may correct an overpayment of benefits to a person entitled to receive payments from TRS by the method described in subsection (a) of this section only for an overpayment made during the three years preceding the date TRS discovers or discovered the overpayment.

(d) TRS may not recover from a person entitled to receive payments from TRS any overpayment made more than three years before the discovery of the overpayment. This subsection does not apply to recovery of any payments made after the death of a retiree or beneficiary if such payments were not due because of the death of the recipient but were paid because TRS did not receive notice of the recipient's death.

(e) The limitations in subsections (c) and (d) of this section do not apply to an overpayment that a reasonable person should know the person is not entitled to receive.

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 February 9, 2004.

TRD-200400790

Ronnie Jung
Interim Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: March 25, 2004
For further information, please call: (512) 542-6115

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CHAPTER 41. HEALTH CARE AND
INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE
BENEFITS (TRS-CARE)

34 TAC §§41.1, 41.2, 41.10

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.1 relating to enrollment periods for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) and §41.10 relating to eligibility for coverage under the Texas Public School Retired Employees Group Insurance Program, and a new §41.2 relating to an additional enrollment opportunity in TRS-Care. The proposed amendments and the new section implement Senate Bill 1369 and House Bill 3459, 78th Legislature, Regular Session, 2003, and House Bill 7, 78th Legislature, 3rd Called Session, 2003. The proposed amendments to §41.1 and §41.10 implement changes to TRS-Care eligibility required by House Bill 7 for those TRS members taking a service retirement after September 1, 2004. They also address when TRS-Care coverage begins for those retirees. The proposed amendments set out the four new eligibility criteria that TRS service retirees must meet to enroll in TRS-Care, as well as the effective date of their TRS-Care coverage. The proposed amendments implement House Bill 7's requirement that those TRS service retirees who are eligible to enroll in TRS-Care only under a grandfathering provision pay the total cost of their and their dependents' participation in the program. The proposed amendments also give those TRS retirees paying their cost of participation in TRS-Care a second initial enrollment opportunity when they meet one of the other TRS-Care eligibility criteria. The proposed new §41.2 addresses an additional enrollment opportunity for all TRS-Care participants to upgrade their level of coverage and/or add dependents in the same coverage level.

Tony C. Galaviz, Chief Financial Officer, has determined that for each year of the first five-year period that the proposed amendments and the new section are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the amendments or the new section. There is no foreseeable effect on local employment or local economies as a result of the proposed amendments or new section.

Mr. Galaviz has also determined that for each year of the first five years that the proposed amendments and new section are in effect, the public benefit anticipated as a result of the amendments will be that TRS rules will comply with the statutory changes and that those TRS members taking a retirement after September 1, 2004 will have notice of the new requirements to enroll in TRS-Care and notice of when their coverage will be effective. Another public benefit anticipated will be permitting those TRS-Care retirees who must pay the total cost of their participation in TRS-Care a second opportunity to enroll in TRS-Care when they meet another TRS-Care eligibility requirement that does not require payment of the total cost of participation. Mr. Galaviz has determined that for each year of the first five years

that the proposed new section is in effect, the public benefit anticipated as a result of the sections will be compliance with the new law and that all retirees will have an opportunity to change their level of TRS-Care coverage when they become 65. There is no anticipated adverse economic effect on small businesses or micro-businesses as a result of compliance with the proposed amendments or new section. Mr. Galaviz has determined that the potential economic costs to persons required to comply with the proposed amendments are an increase in the TRS-Care premium for those who are eligible to participate in TRS-Care under only the grandfathering provision that requires full payment. Mr. Galaviz has determined that the potential economic costs to persons required to comply with the proposed new section for each year of the first five years the proposal will be in effect may be the difference in the amount of premium paid for the tier of coverage selected as provided by this section and the premium for the coverage tier in which the retiree was previously enrolled.

Written comments on the proposal may be submitted to Ronnie Jung, Interim Executive Director, 1000 Red River, Austin, Texas 78701. Comments must be received within 30 days following the publication in this issue of the *Texas Register*.

These sections are proposed under Insurance Code §1575.052, which gives TRS the authority to adopt rules as necessary to administer and operate the TRS-Care program. The sections are also proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership; the administration of the funds of the retirement system; and the transaction of business of the Board.

There are no other codes affected.

§41.1. Enrollment Periods for the Texas Public School Retired Employees Group Insurance Program (TRS-Care).

(a) The initial enrollment period in the Texas Public School Retired Employees Group Insurance Program (TRS-Care) for eligible Teacher Retirement System of Texas (TRS) retirees who take a service retirement before September 1, 2004 expires at the end of the later of: or surviving spouses of eligible retirees, will end]:

~~(1)~~ for eligible service retirees at the later of:]

(1) ~~[(A)]~~ the 31st day [31 days] after their effective retirement date; or

(2) ~~[(B)]~~ the 31st day following the last day of the month in which their election to retire is received by TRS.

~~[(2) for surviving spouses, 31 days after the end of the month in which the eligible retiree died or 31 days following the date of notice of eligibility sent by TRS-Care to the survivor, whichever is later.]~~

~~[(3) for eligible disability retirees, 31 days after the date that the disability retirement is approved by the TRS Medical Board.]~~

(b) The initial enrollment period in TRS-Care for TRS retirees who take a service retirement after September 1, 2004 and who are eligible to enroll in TRS-Care at the time of retirement expires at the end of the later of:~~[The enrollment period for a surviving spouse of a deceased active member, as defined by Insurance Code, Article 3.50-4, §2, Subdivision 11, and for a surviving dependent child, as defined by Insurance Code, Article 3.50-4, §2, Subdivision 13, will end 31 days after the end of the month in which the eligible member or retiree died or 31 days following the date of notice of eligibility sent by TRS-Care to the survivor, whichever is later.]~~

(1) the 31st day after their effective retirement date; or

(2) the 31st day following the last day of the month in which their election to retire is received by TRS.

(c) The initial enrollment period in TRS-Care for TRS retirees who take a service retirement after September 1, 2004 and who are not eligible to enroll in TRS-Care at the time of retirement but who subsequently become eligible to enroll expires at the end of the later of: ~~[Notwithstanding the provisions of subsections (a) and (b) of this section:]~~

(1) the 31st day following the last day of the month in which the retiree becomes eligible to participate in TRS-Care; or~~[a participant in TRS-Care 1 will have coverage increased to TRS-Care 2 upon becoming eligible for Medicare;]~~

(2) the 31st day after the date of the notice of opportunity to enroll that is sent to the retiree at the retiree's last known address, as shown in the TRS-Care records.~~[A retiree may elect coverage for a spouse within 31 days of the date on which the retiree is married;]~~

~~[(3) A retiree or surviving spouse may add coverage for children within 31 days after the date on which the retiree or surviving spouse first acquires a child eligible for coverage under TRS-Care;]~~

~~[(4) a participant shall be entitled to all applicable rights under the Federal Public Health Service Act (COBRA), Title XXII.]~~

(d) The initial enrollment period in TRS-Care for eligible TRS disability retirees expires at the end of the 31st day after the date that the disability retirement is approved by the TRS Medical Board.~~[A participant's dependent coverage, if elected, will continue until the end of the month of the participant's death.]~~

(e) The initial enrollment period in TRS-Care for a surviving spouse and a surviving dependent child of an eligible retiree expires at the end of the later of:

(1) the 31st day after the end of the month in which the eligible retiree died; or

(2) the 31st day after the date of the notice of eligibility that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.

(f) The initial enrollment period for a surviving spouse of a deceased active member and for a surviving dependent child, as both are defined by §1575.003, Insurance Code, expires at the end of the later of:

(1) the 31st day after the end of the month in which the active member died; or

(2) the 31st day following the date of the notice of opportunity to enroll that is sent to the surviving spouse or the surviving dependent child at the individual's last known address, as shown in the TRS-Care records.

(g) TRS retirees who take a service retirement after September 1, 2004 and who are eligible to enroll in TRS-Care at the time of retirement under only subsection (c)(4) of §41.10 of this title (relating to Eligibility to Enroll in under the Texas Public School Retired Employees Group Insurance Program) ("Grandfathered Retirees") will have a second initial enrollment period when they first meet the requirements to enroll in TRS-Care under either subsection (c)(1), (c)(2), or (c)(3) of §41.10 of this title.

(1) This second initial enrollment period is also available to Grandfathered Retirees who waive or drop their TRS-Care coverage during or after their initial enrollment period. The second initial enrollment period is available when the Grandfathered Retirees first meet

the requirements to enroll in TRS-Care under either subsection (c)(1), (c)(2), or (c)(3) of §41.10 of this title.

(2) The second initial enrollment period expires at the end of the later of:

(A) the 31st day following the last day of the month in which the Grandfathered Retiree first becomes or would have become eligible to enroll in TRS-Care under subsection (c)(1), (c)(2), or (c)(3) of §41.10 of this title; or

(B) the 31st day after the date of the notice of opportunity to enroll that is sent to the Grandfathered Retiree at the retiree's last known address, as shown in the TRS-Care records.

(3) A Grandfathered Retiree can choose any tier of TRS-Care coverage during the second enrollment period.

(h) Notwithstanding the other provisions of this section:

(1) A participant enrolled in TRS-Care 1 will automatically have coverage increased to TRS-Care 2 upon becoming eligible for Medicare Part A;

(2) A retiree may enroll a new spouse within 31 days of the date on which the retiree marries;

(3) A retiree or surviving spouse may enroll a child who becomes a dependent as defined by §1575.003, Insurance Code, within 31 days after the date on which the child becomes a dependent eligible for coverage under TRS-Care; and

(4) A participant shall be entitled to all applicable COBRA rights under the Federal Public Health Service Act.

(i) If a retiree or surviving spouse fails to enroll a newly eligible spouse or dependent child within the time periods set out in subsection (h) of this section, the retiree or surviving spouse will not be able to enroll the spouse or dependent child in TRS-Care until a subsequent enrollment period.

§41.2. Additional Enrollment Opportunity.

(a) The following individuals have an additional enrollment opportunity in TRS-Care as described in this section when they become 65 years old:

(1) all TRS service retirees who are enrolled in TRS-Care;

(2) dependents, as defined in Insurance Code, §1575.003, who are enrolled in TRS-Care and who are eligible to enroll in TRS-Care in their own right as a TRS service or disability retiree; and

(3) surviving spouses, as defined in Insurance Code, §1575.003 who are enrolled in TRS-Care.

(b) The individuals defined in subsection (a) of this section are referred to as "eligible participants" in this section.

(c) Those eligible participants who are enrolled in TRS-Care on August 31, 2004, and who are 65 years old or older on that date have an additional enrollment opportunity on September 1, 2004.

(d) Those eligible participants who are enrolled in TRS-Care on August 31, 2004, and who become 65 years old after that date have an additional enrollment opportunity on the date that they become 65 years old.

(e) Those eligible participants who enroll in TRS-Care after August 31, 2004, and who become 65 years old after that date have an additional enrollment opportunity on the date that they become 65 years old.

(f) The additional enrollment opportunity for those eligible participants who enroll in TRS-Care after August 31, 2004, and

who are 65 years old or older when they enroll in TRS-Care runs concurrently with the initial enrollment period as set out in §41.1 of this chapter relating to Enrollment Periods for the Texas Public School Retired Employees Group Insurance Program (TRS-Care).

(g) An eligible participant who is not enrolled in Medicare Part A at the time of his or her additional enrollment opportunity can enroll in the next-higher TRS-Care coverage tier, as determined by TRS-Care, and add dependent coverage in that same coverage tier

(h) An eligible participant who is enrolled in Medicare Part A at the time of his or her additional enrollment opportunity can enroll in any TRS-Care coverage tier and add dependent coverage in that same coverage tier.

(i) An eligible participant can choose to remain in the same TRS-Care coverage tier and add dependent coverage in that coverage tier.

(j) If an eligible participant waives coverage for a dependent during the additional enrollment opportunity described in this section, the eligible participant will be able to enroll that dependent only as a result of a special enrollment event under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or during a subsequent enrollment period set by TRS. To enroll a dependent in TRS-Care as a result of a special enrollment event, the eligible participant must submit a TRS-Care application to TRS within 31 days of the date that the person becomes an eligible dependent.

(k) The additional enrollment period for eligible participants described in subsection (c) of this section ends on September 30, 2004.

(l) The additional enrollment period for eligible participants described in subsection (d) or (e) of this section expires at the end of the later of:

(1) the 31st day following the last day of the month in which the eligible participant becomes 65 years old; or

(2) the 31st day after the date printed on the notice of the additional enrollment opportunity sent to the eligible participant at the eligible participant's last-known address, as shown in the TRS-Care records.

(m) This section does not affect the right of a TRS service retiree or surviving spouse enrolled in a TRS-Care coverage tier to drop coverage, select a lower level of coverage, or drop dependents at any time.

§41.10. Eligibility to Enroll in [for Coverage under] the Texas Public School Retired Employees Group Insurance Program.

(a) If they meet the applicable requirements set out in this section, the [The] following persons are eligible to enroll [be enrolled] in the Texas Public School Retired Employees Group Insurance Program (TRS-Care):

(1) service retirees of the Teacher Retirement System of Texas (TRS) who are not eligible to enroll [be enrolled] as an employee or retiree in [by] a plan provided under the Texas Employees [Uniform] Group [Insurance] Benefits Act (Insurance Code, Chapter 1551 [Article 3.50-2]), or under the [Texas] State [College and] University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601 [Article 3.50-3]);

(2) disability retirees of TRS who are not eligible to enroll [be enrolled] as an employee or retiree in [by] a plan provided under the Texas Employees [Uniform] Group [Insurance] Benefits Act (Insurance Code, Chapter 1551 [Article 3.50-2]) or under the [Texas] State [College and] University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601 [Article 3.50-3]);

(3) surviving spouses of deceased service or disability retirees of TRS or of certain deceased active TRS members; and

(4) surviving dependent children of [a] deceased service or disability retirees of TRS [retiree] or of certain [a] deceased active TRS members [member].

(b) To be eligible to enroll in [for coverage under] TRS-Care under this section, a service retiree of TRS who retires before September 1, 2004 must have 10 years of service credit for actual service in the public schools of Texas, which can include only the following types of service credit:

(1) service credit for actual service in Texas public schools;

(2) service credit transferred to TRS from the Employees Retirement System of Texas (ERS);

(3) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(4) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(5) service credit for substitute service that the member has purchased and that has been credited to the member's account; and

(6) up to five years of out-of-state service credit that the member has purchased and that has been credited to the member's account.

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2004 must meet the requirements of at least one of the following paragraphs:

(1) at the time of retirement, a member:

(A) is at least 65 years old; and

(B) has at least 10 years of service credit in the system, which can include only the following types of service credit:

(i) service credit for actual service in Texas public schools;

(ii) service credit transferred to TRS from ERS;

(iii) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(iv) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(v) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(vi) up to five years of military service credit or re-employed veteran's (USERRA) service credit that the member has purchased and that has been credited to the member's account; and

(vii) any years of service credit that the member would have received but for the member's participation in the Deferred Retirement Option Program (DROP); or

(2) at the time of retirement, a member:

(A) meets the requirements of paragraph (1)(B) of this subsection; and

(B) meets the TRS-Care Rule of 80, which is determined by having the sum of the individual's age and the amount of service credit described in paragraph (1)(B) of this subsection equal or exceed 80; or

(3) a member:

(A) purchased any of the following types of service credit:

(i) out-of-state service credit;

(ii) military service credit;

(iii) re-employed veteran's (USERRA) service credit;

(iv) developmental leave service credit;

(v) sick leave service credit;

(vi) service credit purchase; or

(vii) service credit for work experience by a certified career or technology teacher;

(B) had the service described in paragraph (3)(A) of this subsection credited by August 31, 2003;

(C) except as provided by subsection (g) of this section, at the time of retirement, has the sum of the following equal or exceed 80 (the "Grandfathered TRS-Care Rule of 80"):

(i) age;

(ii) the service credit described in paragraph (3)(A) of this subsection;

(iii) service credit for actual service in Texas public schools;

(iv) service credit transferred to TRS from ERS;

(v) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(vi) service credit for unreported service that the member has purchased and that has been credited to the member's account; and

(vii) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(D) at the time of retirement, has at least 10 years of service credit in the system, which can include only the following types of service credit:

(i) service credit for actual service in Texas public schools;

(ii) service credit transferred to TRS from ERS;

(iii) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(iv) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(v) service credit for substitute service that the member has purchased and that has been credited to the member's account; and

(vi) up to five years of out-of-state service credit limited to that out-of-state service credit that was credited by August 31, 2003; and

(E) takes a normal age service retirement as determined under Government Code, Chapter 824, Subchapter C by August 31, 2009;

(4) a member:

(A) was employed in actual service in a Texas public school during or before the 2003-2004 school year; and

(B) at the time of retirement, has at least 10 years of service credit in TRS, which can include only the following types of service credit:

(i) service credit for actual service in Texas public schools;

(ii) service credit transferred to TRS from ERS;

(iii) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(iv) service credit for unreported service that the member has purchased and that has been credited to the member's account; and

(v) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(vi) up to five years of out-of-state service credit that the member has purchased and that has been credited to the member's account.

(d) For purposes of this section, "public school" means an educational institution or organization in this state that is entitled to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(e) Service retirees who are eligible to enroll in TRS-Care under only subsection (c)(4) of this section are required to pay the total cost of their participation in TRS-Care until the date that they first qualify for TRS-Care under subsection (c)(1), (c)(2), or (c)(3) of this section.

(f) Except as provided by subsection (g) of this section, service retirees retiring after September 1, 2004 who do not meet the TRS-Care eligibility requirements set out in subsection (c) of this section at the time of retirement will become eligible to enroll in TRS-Care on the date that they meet the requirements of subsection (c)(1), (c)(2), or (c)(3) of this section.

(g) Notwithstanding subsection (f) of this section, service retirees who meet all of the requirements of subsection (c)(3) of this section except the Grandfathered TRS-Care Rule of 80 in subsection (c)(3)(E) of this section at the time of retirement can become eligible to enroll in TRS-Care under subsection (c)(3) of this section after retirement only if they meet the Grandfathered TRS-Care Rule of 80 by August 31, 2009.

(h) [(e)] A disability retiree with less than 10 years of service credit will not be eligible for coverage under TRS-Care when disability retirement benefits terminate.

(i) [(d)] A surviving spouse of a deceased TRS service or disability retiree is eligible to enroll in TRS-Care if the deceased TRS service or disability retiree was enrolled, eligible to enroll, or would have been eligible to enroll in TRS-Care at the time of the retiree's death.

(j) [(e)] A surviving spouse of a deceased active TRS member is eligible to enroll in TRS-Care if the deceased active member:

(1) died on or after September 1, 1986;

(2) met the TRS-Care eligibility requirements that were in effect at the time of the active member's death [had 10 or more years of actual service credit in TRS]; and

(3) made contributions to TRS-Care at the member's last place of employment in public education in Texas.

(k) [(f)] A surviving dependent child of a deceased TRS retiree or deceased active TRS member is eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (i) [(d)] of this section or the deceased active member met the conditions of subsection (j) [(e)] of this section. A surviving dependent child must also meet the following conditions:

(1) the child must be a natural or adopted child of the deceased retiree or member or must be a foster child, stepchild, or other child who lived in a parent-child relationship with the retiree or member; and

(2) the child must be unmarried and under age 25 or must be age 25 or older but still unmarried and fully disabled to such an extent as to have been dependent upon the deceased retiree or active member for support at the time of the retiree's or active member's death, as determined by TRS as trustee and as described by Insurance Code, §1575.003 [Article 3.50-4, §3, subdivision (3)].

[(g) If a service or disability retiree has a legal spouse or if a retiree or surviving spouse has an eligible child or children when the retiree or surviving spouse becomes eligible but does not elect to cover that spouse or that child or children within 31 days, TRS-Care coverage may not be obtained for the spouse or the child until a subsequent enrollment period.]

[(h) If a service or disability retiree has no spouse or if a retiree or surviving spouse has no eligible child or children when he or she first becomes eligible, but acquires a spouse or child or children at a later date, the retiree can obtain spouse or child or children coverage if he or she makes application within 31 days of the date the spouse or first eligible child is acquired.]

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 February 9, 2004.

TRD-200400891

Ronnie Jung

Interim Executive Director

Teacher Retirement System of Texas

Proposed date of adoption: March 25, 2004

For further information, please call: (512) 542-6115

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**SUBCHAPTER C. TEXAS SCHOOL
EMPLOYEES GROUP HEALTH (TRS-
ACTIVECARE)**

34 TAC §41.50

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.50 relating to adjudication of claims in the Texas School Employees Uniform Group Health Coverage Program known as TRS-ActiveCare. The proposed amendments extend the time that a claimant has to file an appeal an appeal with the TRS Executive Director from 30 days to 45 days. Currently, a claimant dissatisfied with the TRS-ActiveCare Appeal Committee's ("Committee's") initial determination may appeal that determination in two ways: (1) request an appeal conference with the Committee; or (2) submit a written appeal to the Executive Director. The existing section contains a different timeframe for each of these options. An enrollee has

45 days from the Committee's initial determination to request an appeal conference but has 30 days from the Committee's initial determination to submit an appeal to the Executive Director. The proposed amendments will eliminate this inconsistency.

Tony C. Galaviz, Chief Financial Officer, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section. There is no foreseeable effect on local employment or local economies as a result of the proposed amendments.

Mr. Galaviz has also determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of the section will be that claimants have a longer period of time to appeal an adverse determination made by the Committee. Additionally, there will be consistency between the two time periods. There is no anticipated adverse economic effect on small businesses or micro-businesses as a result of compliance with the proposed section. Mr. Galaviz has determined that there are no anticipated economic costs to persons required to comply with the proposed section for each year of the first five years the proposal will be in effect.

Comments on the proposal may be submitted in writing to Ronnie Jung, Interim Executive Director, 1000 Red River, Austin, Texas 78701 within 30 days from the date of this publication.

These amendments are proposed under § 1579.052, Insurance Code, which gives TRS authority to adopt rules relating to the TRS-ActiveCare program as necessary. The amendments are also proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of business of the Board.

There are no other codes affected.

§41.50. Adjudication of Claims.

(a) A person enrolled in the TRS-ActiveCare program who is denied payment of a claim or other benefit ("Claimant") may submit a written request to the administering firm for reconsideration of the claim. The claimant shall submit a request for reconsideration according to procedures established by the administering firm. All relevant medical information should be submitted to the administering firm prior to a final decision.

(b) A claimant may appeal the final denial of a claim or other benefit by the administering firm to the Teacher Retirement System of Texas (TRS), acting in its capacity as trustee of the TRS-ActiveCare program.

(c) An appeal of a final denial of a claim or other benefit by the administering firm must be submitted in writing and received by TRS no later than 60 days after the date of the letter from the administering firm finally denying the claim. The appeal shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(d) An appeal of denial of a claim shall state the nature of the claim and shall include copies of all relevant documents that were considered by the administering firm, including copies of the correspondence to and from the administering firm.

(e) The TRS Appeal Committee ("Committee") is responsible for review and determination of appeals. The Committee shall be appointed by the TRS Deputy Director and shall serve at the discretion of the Deputy Director.

(f) The Committee shall review an appeal for timeliness and sufficiency and may deny an appeal that is not timely filed. Denial of an appeal for failure to file in a timely manner is a final decision by TRS.

(g) If the Committee determines that the claim should be paid, it shall so inform the administering firm and the claimant.

(h) If the Committee determines that the information submitted with the appeal supports the denial by the administering firm, the Committee shall provide a written explanation of the reasons to the claimant and to the administering firm. The explanation shall include information on how the claimant may request an appeal conference.

(i) To obtain an appeal conference, a claimant must submit a request in writing to the TRS-ActiveCare Grievance Administrator no later than 45 days after the date of the written explanation of the Committee.

(j) Upon receipt of a timely request for an appeal conference, the TRS-ActiveCare Grievance Administrator shall schedule an appeal conference with the Committee. The Grievance Administrator shall notify the claimant and the administering firm of the time, date, and manner of the conference, as well as the procedures applicable to the conference.

(k) At any time prior to the appeal conference, the Committee may decide to grant the appeal and will notify the claimant of this determination without the necessity of an appeal conference. The Committee can not deny a claim after an appeal conference has been requested without holding the conference.

(l) At the conference, the Committee shall consider the medical information previously submitted to the administering firm in support of the payment of the claim or benefit, as well as the administering firm's determination regarding medical issues. The Committee may request additional review by the administering firm on medical issues before the Committee issues a decision.

(m) The Committee shall decide the appeal and shall notify the claimant and the administering firm of the decision in writing. The decision will include an explanation of the basis for the decision.

(n) The decision of the Committee may be appealed by the claimant to the TRS Executive Director. An appeal to the Executive Director shall be submitted to TRS in writing no later than 45 [30] days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee after an appeal conference. The appeal shall specifically describe why the claimant alleges that the Committee's decision is erroneous. The Executive Director shall make a decision based on the written appeal and based on the written decision of the Committee, as well as any written documents reviewed by the Committee. Pursuant to the delegation of authority through this section, the decision of the Executive Director is the final decision of TRS.

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 February 9, 2004.

TRD-200400794

Ronnie Jung
Interim Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: March 25, 2004
For further information, please call: (512) 542-6115



SUBCHAPTER E. ACTIVE EMPLOYEES HEALTH REIMBURSEMENT ARRANGEMENTS

34 TAC §41.103

The Teacher Retirement System of Texas (TRS) proposes new § 41.103 concerning the definition of dependent in the new Active Employee Health Reimbursement Arrangement Program ("HRA Program") established by House Bill 3257, 78th Legislature, 2003 which amends article 3.50-8, Insurance Code. The proposed new section sets out the definition of dependent for the HRA program.

Tony Galaviz, Chief Financial Officer, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the new section. There is no foreseeable effect on local employment or local economies as a result of the new section.

Mr. Galaviz has also determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of the new section will be that only those persons recognized under the Internal Revenue Code as dependents will be eligible to participate in the program. This will eliminate potential tax consequences to participants who seek reimbursement from their HRA account for a person that the Internal Revenue Code does not recognize as a dependent. There is no anticipated adverse economic effect on small businesses or micro-businesses as a result of compliance with the proposed new section. Mr. Galaviz has determined that there are no anticipated economic costs to persons required to comply with the proposed new section for each year of the first five years that the new section will be in effect.

Comments on the proposal may be submitted to Ronnie Jung, Interim Executive Director, 1000 Red River, Austin, Texas 78701. The deadline for comments is thirty (30) days after publication in the *Texas Register*.

The new section is proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of

the Teacher Retirement System to adopt rules for, among other things, the administration of the funds of the retirement system and the transaction of business of the board. The new section is also proposed under Insurance Code, article 3.50-8, § 4, which authorizes TRS to adopt rules to implement the article.

There are no other codes affected.

§41.103. Definition of Dependent.

A dependent is:

(1) the spouse of an eligible employee; and

(2) any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the eligible employee taxpayer (or is treated under Internal Revenue Code of 1986, §152, subsection (c) or (e) and its subsequent amendments, as received from the taxpayer):

(A) an unmarried child of the person if that child is under 25 years of age, including:

(i) an adopted child;

(ii) a stepchild, foster child, or other child who has a regular parent-child relationship with the person; or

(iii) a recognized natural child; or

(B) the person's recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship with the participating employee and who lives with or has his or her care provided by the person on a regular basis regardless of the child's age if the child is mentally retarded or physically incapacitated to an extent that the child is dependent on the person for care or support, as determined by the trustee.

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 February 9, 2004.

TRD-200400793
Ronnie Jung
Interim Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: March 25, 2004
For further information, please call: (512) 542-6115



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 25. OPTIONAL RETIREMENT PROGRAM

SUBCHAPTER A. OPTIONAL RETIREMENT PROGRAM

19 TAC §§25.1 - 25.3

The Texas Higher Education Coordinating Board has withdrawn from consideration the proposed repeal of §§25.1 - 25.3 which appeared in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10633).

Filed with the Office of the Secretary of State on February 3, 2004.

TRD-200400661

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: February 3, 2004

For further information, please call: (512) 427-6114

19 TAC §§25.1 - 25.6

The Texas Higher Education Coordinating Board has withdrawn from consideration the proposed new §§25.1 - 25.6 which appeared in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10634).

Filed with the Office of the Secretary of State on February 3, 2004.

TRD-200400662

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: February 3, 2004

For further information, please call: (512) 427-6114

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 as published in 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 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.3

The Commission on State Emergency Communications (CSEC) adopts new §251.3, concerning use of revenue in certain counties, with changes to the proposed text as published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 9995).

The changes made to incorporate comments received are not considered to be substantive by the Office of the Attorney General.

The 78th Legislature passed House Bills (HB) 1771 and HB 3491. Both of these bills amend the CSEC's enabling legislation, Health and Safety Code, Chapter 771, by adding section 771.0751 - Use of Revenue in Certain Counties. The bills have exactly the same language, with the exception of the references to the qualifying counties. HB 1771 qualifies counties with a population of over 700,000, and HB 3491 qualifies the county with the highest population within a regional planning commission (RPC). The intent of the legislation is to allow for funding of items and activities that have not previously been funded by 9-1-1.

Comments to Proposed Rule 251.3 were received from Travis County and City of Austin jointly, and from the Texas Association of Regional Councils (TARC) 9-1-1 Coordinators' Subcommittee. Certain of these comments would be beneficial to the rule and have been incorporated into the proposed rule. Other comments provide valuable input and can best be addressed through the creation of a 9-1-1 Program Policy Statement (PPS) to allow for sufficient detail and flexibility for future revisions. A summary of comments and their inclusion follows.

Definitions for this and all other rules in the 251 series are being combined into a single rule for all definitions within the series. The purpose is to simplify individual rules, reduce unnecessary duplication, and ensure consistency of definitions. Comments received on the definitions of proposed Rule 251.3 will be incorporated into the proposed Rule 251.14, General Provisions and Definitions.

The definition of "Enhancements" has been revised to include the word "infrastructure" to reflect the definition of "9-1-1 System". However, "personnel" has not been included in the definition of a 9-1-1 System because the definition only refers to the

hardware and software required to deliver the call to an answering point.

The definition of "Approval" has been revised to incorporate language specific to legislation and the population threshold of "at least" 700,000.

Eligibility requirements have been modified to include that a request come from a PSAP within the largest county, and to add an "or" for clarification. However, to differentiate between types of PSAPs for requests for use of revenue under this rule would not be in keeping with the intent of the legislation, which is to allow use of 9-1-1 revenue for non-traditional activities, including the establishment of other related answering points and operation. A PPS will be developed to assist the regional planning councils with these requests.

Eligibility will be strictly determined by the rule. The largest county within a region participating within the CSEC program will be eligible. Although it is administered by Greater Harris County, Ft. Bend County has the largest population in the Houston-Galveston region, is a participant within the CSEC program and receives funding from the CSEC. Ft. Bend County would be eligible to request funds under this rule.

Applicable rules will apply to activities approved under this rule, i.e. procurement, monitoring, integrated services, etc. There are no rules or policies for the potential activities under the new rule; the Commission will make approval on a case-by-case basis per the proposed rule.

Approved requests for use of revenue in certain counties for the FY 2004-2005 biennium will be accommodated within the existing strategic plan structure in Level III - Other. Beginning with the FY 2006-2007 strategic plan submissions, a new Level IV will be added to the structure to incorporate requests for use of revenue under this rule. How this line item will be handled in the Legislative Appropriations Request (LAR) has yet to be determined and will depend upon instruction and direction given by the Legislative Budget Board (LBB) and the Governor's Office.

The new section is adopted under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071, 771.072, 771.075, and 771.0751, 771.079; and Title 1 Texas Administrative Code, Part XII, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, provide provisions and the enhancement of effective and efficient 9-1-1 service.

§251.3. *Use of Revenue in Certain Counties.*

(a) Purpose. The purpose of this rule is to establish the requirements for the submission and approval of proposals for allocations of revenue under Section 771.0751 of the Texas Health and Safety Code, which provides for use of 9-1-1 funds for services and/or equipment

closely related to the 9-1-1 system, but which have not historically been funded under Chapter 771 of the Texas Health and Safety Code.

(b) Background. As authorized by Chapter 771 of the Texas Health and Safety Code, the Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with Section 771.055 of the above chapter, such service implementation shall be consistent with regional plans developed by regional planning commissions (RPC). These regional plans must meet standards established by the Commission and include a description of how money allocated to the region under this chapter is to be allocated in the region. Section 771.0751 provides for use of revenue in certain counties for costs associated with the design of a 9-1-1 system and/or the purchase and maintenance of equipment and personnel necessary to establish and operate answering points and related operations.

(c) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.

(d) Eligibility. The eligibility for approval of funding under this rule is established as follows:

(1) A PSAP within a county participating in the Commission 9-1-1 program, with a population of at least 700,000 or greater as reported by the Texas State Data Center and adopted per Commission Rule 252.6, Wireless Service Fee Proportional Distribution, or

(2) A PSAP within the county, participating in the Commission 9-1-1 program, that has the highest population within a RPC as reported by the Texas State Data Center and adopted per Commission Rule 252.6, Wireless Service Fee Proportional Distribution.

(e) Requests. Requests for funding under this rule shall be submitted by the RPC as part of the regional strategic plan or proposed as an amendment to the regional plan, subject to the format and documentation requirements and review and approval processes as described in Commission Rule 251.1, Regional Strategic Plans for 9-1-1 Service, Commission Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation, and other applicable Commission rule and policy. Requests should demonstrate that all basic regional 9-1-1 needs are met and maintained prior to any additional costs proposed under this rule.

(f) Approval. Approval of regional plans or amendments requesting funds under this rule may only be approved by vote of the Commission. Once approved, procurement, operation, and maintenance of enhancements funded under this rule are subject to all applicable Commission rules and policies.

(g) Review. This rule shall be reviewed biennially in order to incorporate any changes made necessary by Legislative appropriation and/or change in applicable law.

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 February 9, 2004.

TRD-200400803

Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: February 29, 2004
Proposal publication date: November 14, 2003
For further information, please call: (512) 305-6933

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**CHAPTER 251. REGIONAL PLANS--
STANDARDS**

The Commission on State Emergency Communications adopts the repeal of and new §251.4, concerning guidelines for accessibility equipment, without changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8474).

The proposed section updates language, terms and reference; testing requirements to include integrated TDD equipment; additional of training requirements; and references to other relevant CSEC rules. The section provides consistency with the changes in Commission policy. This section was a part of the agency's rule review of Chapter 251.

There were no comments received regarding adoption of the repeal and new section.

1 TAC §251.4

The repeal is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071 and 771.072, which provide the Advisory Commission on State Emergency Communications with the authority to develop standards for the establishment and operation of 9-1-1 service.

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 February 9, 2004.

TRD-200400802
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: February 29, 2004
Proposal publication date: October 3, 2003
For further information, please call: (512) 305-6933

◆ ◆ ◆
1 TAC §251.4

The new section is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071 and 771.072, which provide the Advisory Commission on State Emergency Communications with the authority to develop standards for the establishment and operation of 9-1-1 service.

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 February 9, 2004.

TRD-200400801

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: February 29, 2004

Proposal publication date: October 3, 2003

For further information, please call: (512) 305-6933



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.4

The Texas State Securities Board adopts an amendment to §113.4, concerning application for registration, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9176).

The rule was updated to reflect recent changes to statute.

Statutory references in the regulation will be accurate.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Article 581- 28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-7.

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 February 4, 2004.

TRD-200400724

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300



CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.4

The Texas State Securities Board adopts an amendment to §114.4, concerning filings and fees, without changes to the

proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9176).

The rule was updated to reflect recent changes to statute.

Statutory references in the regulation will be accurate.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581- 28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-5, 581-7, and 581-8.

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 February 4, 2004.

TRD-200400725

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.8

The Texas State Securities Board adopts an amendment to §115.8, concerning fee requirements, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9177).

The rule was updated to reflect recent changes to statute.

Statutory references in the regulation will be accurate fee information will be easier to locate.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581-28-1, 581-12.C, and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.C provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule. Section 42.B provides the Board with the authority to adopt rules reducing fees for person registered in two or more capacities.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-12, 581-13, 581-18, 581-19, and 581-42.

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 February 4, 2004.

TRD-200400726

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300



CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTA- TIVES

7 TAC §116.8

The Texas State Securities Board adopts an amendment to §116.8, concerning fee requirements, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9178).

The rule was updated to reflect recent changes to statute.

Statutory references in the regulation will be accurate and fee information will be easier to locate.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581- 28-1, 581-12.C, and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.C provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule. Section 42.B provides the Board with the authority to adopt rules reducing fees for person registered in two or more capacities.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-12, 581-12-1, 581-13, 581-18, 581-19, and 581-42.

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 February 4, 2004.

TRD-200400727

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300



CHAPTER 123. ADMINISTRATIVE GUIDELINES FOR REGISTRATION OF OPEN-END INVESTMENT COMPANIES

7 TAC §123.3

The Texas State Securities Board adopts an amendment to §123.3, concerning conditional exemption for money market funds, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9179).

The rule was updated to reflect recent changes to statute.

Statutory references in the regulation will be accurate.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581- 28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-5, 581-7, and 581-35.

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 February 4, 2004.

TRD-200400728

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300



CHAPTER 133. FORMS

7 TAC §§133.7, 133.12, 133.13, 133.26

The Texas State Securities Board adopts the repeal of §§133.7, a form concerning application for registration of securities; 133.12, a form concerning renewal application for mutual funds and other continuous offerings; 133.13, a form concerning application for renewal permit; and 133.26, a form concerning request for determination of money market status for federal

covered securities, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9180).

The repeal allows for the simultaneous adoption of new updated forms.

The repeal eliminates outdated forms.

No comments were received regarding adoption of the repeals.

Statutory authority: Texas Civil Statutes, Article 581- 28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-5, 581-7, and 581-35.

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 February 4, 2004.

TRD-200400735

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300



7 TAC §§133.7, 133.12, 133.13, 133.26

The Texas State Securities Board adopts new §§133.7, a form concerning application for registration of securities; 133.12, a form concerning renewal application for mutual funds and other continuous offerings; 133.13, a form concerning application for renewal permit; and 133.26, a form concerning request for determination of money market fund status for federal covered securities. The forms were adopted with changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9180). The changes consisted of adding the word "Texas" before the official name of the Agency where it appears in the forms.

The new section adopts by reference forms to replace existing forms that are being simultaneously repealed.

The new forms contain updated and accurate statutory cross-references.

No comments were received regarding adoption of the new rules.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-5, 581-7, 581-35.

§133.7. *Application for Registration of Securities.*

The Texas State Securities Board adopts by reference the application for registration of securities form. This form is available from the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

§133.12. *Renewal Application for Mutual Funds and Other Continuous Offerings.*

The Texas State Securities Board adopts by reference the renewal application for mutual funds and other continuous offerings form. This form is available from the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

§133.13. *Application for Renewal Permit.*

The Texas State Securities Board adopts by reference the application for renewal permit form. This form is available from the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

§133.26. *Request for Determination of Money Market Fund Status for Federal Covered Securities.*

The Texas State Securities Board adopts by reference the request for determination of money market fund status for federal covered securities form. This form is available from the Texas State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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 February 4, 2004.

TRD-200400734

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.20

The Texas State Securities Board adopts an amendment to §139.20, concerning third party brokerage arrangements on financial entity premises, without changes to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9181).

The rule was updated to reflect recent changes to statute.

The statutory references in the regulation will be accurate.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581- 28-1 and 581-12.C. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements

for different classes. Section 12.C provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-19.

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 February 4, 2004.

TRD-200400729

Denise Voigt Crawford
Securities Commissioner

State Securities Board

Effective date: February 24, 2004

Proposal publication date: October 24, 2003

For further information, please call: (512) 305-8300

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TITLE 16. ECONOMIC REGULATION

**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 25. SUBSTANTIVE RULES
APPLICABLE TO ELECTRIC SERVICE
PROVIDERS**

**SUBCHAPTER H. ELECTRICAL PLANNING
DIVISION 1. RENEWABLE ENERGY
RESOURCES AND USE OF NATURAL GAS**

16 TAC §25.173

The Public Utility Commission of Texas (commission) adopts an amendment to §25.173, relating to Goal for Renewable Energy, with changes to the proposed text as published in the October 3, 2003 issue of the *Texas Register* (28 TexReg 8480). The amendment changes the formula for calculating final renewable energy credit (REC) purchase requirements, adds a mechanism to account for corrections to retail sales data, and permits the Program Administrator of the REC trading program to petition for deadline changes under certain circumstances. Project Number 28407 is assigned to this proceeding.

The commission proposed three changes to §25.173 in response to concerns about compliance difficulties caused by adjustments made by the Program Administrator in determining final REC requirements for individual competitive retailers (CRs) when taking into account settled corrections to retail sales. The commission proposed amending the rule so that each CR's final REC requirement for a compliance period is increased to recapture the total usable offsets calculated by dividing the CR's preliminary REC requirement by the total preliminary REC requirement of all CRs.

The commission also proposed that concurrent with determining a CR's final REC requirements for the compliance period, the Program Administrator is to recalculate the final REC requirements for the previous compliance period, taking into account

settled corrections to retail sales. Finally, the commission proposed amending the rule to allow the Program Administrator to request an adjustment to the deadlines set forth in §25.173(l) in subsequent compliance periods if changes to the ERCOT settlement calendar affect the availability of reliable sales data. The commission requested comments on the proposed changes.

The commission received written comments on the proposed amendment on November 3, 2003 and reply comments on November 14 and 17, 2003. Parties submitting written comments included Reliant Resources, Incorporated (RRI), Green Mountain Energy Company (Green Mountain), the Texas Wind Coalition, American Electric Power Company (AEP), and TXU Energy Retail Company (TXU Energy).

Comments on proposed changes to §25.173(h)(2)(C).

RRI strongly supported the changes proposed in §25.173(h)(2)(C) pertaining to the allocation of final REC requirements among CRs for a compliance period in order to recapture the total usable REC offsets. RRI asserted that the current method of reallocating offsets unfairly discriminates against CRs without offsets because it reallocates the offsets based on an adjusted market share determination instead of the actual market share on which the initial allocation is based. RRI alleged that the current method of reallocating offsets permits "double-dipping" by CRs applying offsets. RRI provided extensive comments and a mathematical example of this problem in Project Number 26912, *PUC Project to Review the Renewable Energy Credits Program Pursuant to §25.173(q)* which RRI incorporated into its comments in Project Number 28407 by reference. Green Mountain concurred with RRI and noted that the proposed change will present a more equitable reallocation method for offsets.

AEP argued that the commission's proposed change is confusing, unwarranted and inequitable. Specifically, AEP asserted that the proposed revision circumvents the treatment of REC offsets related to existing renewable facilities as agreed upon during the development of the existing rule and appears to increase the purchase requirements imposed upon all CRs that possess REC offsets. AEP asserted that entities that made long-term investments in renewable resources prior to adoption of §25.173 were given the opportunity to fully satisfy their REC obligations by utilizing REC offsets and that this opportunity will be diminished if the proposed amendment is adopted because it would effectively reduce the impact of any REC offsets. AEP argued that those entities that invested in renewable resources before they were required to do so and which, as a result, possess REC offsets far in excess of their preliminary REC requirements may nonetheless have a final REC purchase obligation. AEP argued that this significantly impacts small businesses and affected persons that made significant investments in existing renewable resources and runs contrary to the commission's contention that the current rule ensures that cumulative capacity targets required under Public Utility Regulatory Act (PURA) §39.904(a) are achieved in a manner that does not unnecessarily raise costs of the overall program to Texas consumers. AEP urged that, to the extent that the commission establishes a REC purchase requirement based more heavily upon a CR's percentage of total retail energy sales in Texas, any changes to this methodology should be explained in greater detail to eliminate the possibility of confusion.

TXU Energy agreed with AEP that the impact of the commission's proposed amendment would be to reduce the value of REC offsets. TXU Energy argues that the proposed amendment is not needed.

In its reply to AEP's comments, RRI urged the commission to reject any arguments that the proposed amendment is more complicated or confusing than the existing rule and indicated that it has previously provided comments that mathematically explain in detail the two different methods and that both are straightforward algebraic formulations. In fact, RRI argued the proposed method is slightly less complicated because it uses the original market share instead of an adjusted market share in calculating the offset reallocation, which is more intuitive. RRI asserted that the current methodology permits CRs with offsets to count those offsets twice--first by subtracting them from their preliminary requirement and again by using an adjusted market share calculation in recapturing offsets. RRI argued that it is the current rule that is unfair and inequitable to those CRs who do not have offsets because those CRs must obtain a disproportionate amount of additional RECs to make up the difference for the market as a whole. As to AEP's argument that the proposed amendment will increase costs to serve residential and small commercial customers, RRI replied that this suggestion is without merit. It argued that few CRs own offsets since offsets are only available to entities with renewable investments prior to electric restructuring. RRI contended that the proposed amendment should drive costs down as CRs will not have to buy more RECs to make up for the offsets used by others under the existing rule.

The Texas Wind Coalition urged the commission to ensure that any potential modification to the REC allocation methodology not lessen the quantity or timing of aggregate REC retirement obligations and suggested that it be made clear that the cumulative impact of REC obligation adjustments due to resettlements will not reduce the total quantity of RECs that have to be acquired during any compliance year. In reply, RRI noted that while proposed §25.173(h)(2) modifies the method by which offsets are allocated to market participants, it does not affect the overall number of RECs or offsets that must be retired by the market as a whole in any given compliance period.

Commission response

The commission agrees with RRI's reasoning that the methodology in the existing rule results in some retailers covering the obligation of others, placing them in a position of double liability, and that this double liability is unfair. Fundamentally, the current methodology allocates a preliminary requirement that is statutory in origin, adjusts the allocations, and recovers the cost of the adjustment from those who are not eligible for the adjustments. Unlike the preliminary requirement, however, the burden of the adjustment is not statutory in nature.

The commission finds that AEP has exaggerated and mischaracterized the reallocation that would result from this amendment. The net changes to a retailer's final REC requirement may be summarized more accurately as follows:

- (1) All retailers in aggregate: No net change; the total statewide requirement would be the same.
- (2) Retailer with *no* offsets: Decrease.
- (3) Retailer with *fewer* offsets than preliminary requirement: Decrease, no change, or increase (depending on number of offsets relative to requirement; the final requirement will decrease for those with few offsets, and will increase for those whose offsets are nearly equal to the preliminary requirement).
- (4) Retailer with offsets *equal* to preliminary requirement: Increase (currently zero).

(5) Retailer with *more* offsets than preliminary requirement: Increase or no change (depending on amount of excess offsets; if the retailer has enough offsets, the final requirement still may be zero).

The commission reaffirms its intent to recognize the value of renewable capacity installed before September 1999. REC offsets were created by the commission to embody this value in the REC trading program, but they were never intended to be superior to the value of new capacity. The statutory requirement for new renewable capacity, which is embodied in the preliminary requirement, is shared on a pro rata basis among all retailers who are subject to the requirements of PURA §39.904. The burden of taking into account the historical value of existing renewable capacity should also be shared on a pro rata basis by all these same retailers. The commission finds that the amended methodology strikes a fair balance between allowing individual retailers credit for their existing renewable resources, and sharing among all retailers the burden of recognizing existing renewable capacity. Subsection (h)(2)(C) is amended as published.

Comments on proposed §25.173(h)(3).

While RRI agreed with the principle of adjusting a CR's REC requirement if final resettlements related to retail sales result in a change in the REC requirement for the previous compliance period, RRI did not recommend the commission's proposed change to §25.173(h)(3). In its reply comments to the Texas Wind Coalition, RRI argued that the true-up process contemplated in proposed §25.173(h)(3) could result in the REC obligation being moved from one year to another (even if over the entire program the aggregate number of RECs retired remained unchanged).

RRI suggested that a better approach would be to ensure that the date for compliance by CRs follows the date when ERCOT issues true-up settlements of energy sales and that this approach will ensure that the REC obligations are calculated correctly the first time--eliminating the need for true-ups. RRI noted that Section 9.2 of the ERCOT protocols requires that final statements be issued 59 days following the end of an operating day and true-up statements issued within six months of an operating day. RRI asserted that the schedule under the ERCOT protocols as opposed to the compliance deadlines under §25.173 will always result in inaccurate calculations of REC requirements. RRI argued that the commission's proposed change will place CRs in the position of aiming for targets that potentially do not reflect reality. Instead, RRI suggested, the Program Administrator should be given until July 31 of each year (instead of January 31) to notify each CR of its REC requirement for the previous calendar year compliance period. July 31 uses the six-month period in which settlement statements are trueed up and an additional month to calculate the requirements (as provided for in the existing rule). While RRI recognized that true-up settlements are currently taking more than six months, RRI expected that the market settlement issues currently being experienced are not permanent issues. RRI suggested other deadlines consistent with the timeline established in the current rule. After the Program Administrator notifies a CR on July 31 of its REC requirement for the previous calendar year compliance period, the CR has until October 31 to satisfy its REC requirements (instead of March 31). In turn, on November 1 (instead of April 1), the Program Administrator would retire RECs that have not been retired by CRs and have reached the end of their three-year life. RRI suggested a deadline of November 30 (instead of April 15) for the Program

Administrator to submit its annual report to the commission pursuant to §25.173(g)(11). Finally, RRI proposed extending the enforcement deadline for noncompliance with REC requirements to December 31 (currently April 1). RRI recommended changes to the definition of "settlement period" in §25.173(c)(17) as well as changes to the corresponding portions of §25.173(g)(11), (k)(5), (l)(1)-(2) and (o) to reflect changes in deadlines.

Green Mountain supported RRI's comments regarding the proposed change to §25.173(h)(3), as it believes that delaying the compliance timeline to conform to the ERCOT settlement timeline, as recommended by RRI, would avoid the true-up contemplated in the proposed rule while still ensuring that the total annual REC requirement is appropriately allocated among load service entities. Green Mountain suggested that, with the extension of the deadlines as proposed by RRI, the rules should be relaxed to allow RECs generated in the first quarter of the year following the compliance period to be used to satisfy obligations for the compliance period. Specifically, Green Mountain recommended that §25.173(m)(5) be changed to permit a CR to meet its renewable energy requirements within one calendar quarter after the end of the compliance period.

TXU Energy disagreed with RRI's position and stated that there is no need to further delay the actions to be taken to meet a CR's obligation simply to ensure that its calculation is 100% accurate. TXU Energy agreed that Staff's proposal would give retail electric providers more than adequate time to know the impact of prior-period adjustments on their current compliance year requirement in order to take that into account in REC purchase/sale decisions. However, TXU Energy asserted that adoption of a true-up mechanism is unnecessary because corrections to retail sales that have taken place or may continue to take place in the near term are of minor magnitude.

Commission response

The commission finds that the approach advocated by RRI and Green Mountain would not necessarily solve the problems caused by revised settlement data. True-ups could conceivably be backed up to the new dates proposed by RRI, yet without the flexibility permitted by the proposed amendment, the problem would simply be delayed and yet remain unsolvable. While RRI may prove correct in its assumption that true-up delays are a thing of the past, the commission is unwilling to take that risk by sacrificing administrative flexibility. The transition to a nodal-priced wholesale market will necessarily involve many significant changes to ERCOT market operation systems, and these changes may cause a new round of settlement delays.

For this reason, the commission also disagrees with TXU's contention that the amendment is not necessary because the magnitude of future true-up changes will be small. If that turns out to be the case, then this amendment will do no harm to the REC program. On the other hand, if the transition to a nodal market (or some other cause) does result in significant resettlement issues, the amendment will provide the REC Program Administrator with a tool for dealing with it and assuring that delays do not result in an unfair shifting of the compliance burden.

The commission therefore adopts new subsection (h)(3) as published, and declines to add the changes proposed by RRI.

Comments on proposed changes to §25.173(l)(3).

RRI agreed with the commission's proposed modification to provide the Program Administrator with some flexibility to adjust the timelines if changes to the ERCOT settlement calendar warrant

such a change when calculating REC obligations. Finally, RRI agreed that the sentence in §25.173(l)(3) pertaining to compliance deadlines for 2002 can be deleted since they are no longer applicable.

AEP recommended that parties have notice of and an opportunity to comment on any change to the compliance deadlines which the Program Administrator requests. As such, AEP recommended that the proposed language be modified to require that notice be given to affected parties not later than 60 days prior to the date of any compliance deadline to be adjusted. TXU Energy agreed that notice as proposed by AEP should be given to affected parties.

RRI asserted that notice as to proposed schedule changes would be unnecessary under its proposal since it is recommending that the date for compliance by CRs follows the date when ERCOT issues true-up settlements of energy sales and that this approach will ensure that the REC obligations are calculated correctly the first time. As such, the need to invoke proposed §25.173(l)(3) would be very unusual.

Commission response

The commission finds that AEP's request to require at least 60 days advance notice of any calendar change requested by the Program Administrator is impractical, unreasonable, and would render the amendment useless. The amendment as published would enable the Program Administrator to address unforeseen circumstances--specifically, problems with obtaining settlement data--that may affect the timely calculation of CRs' final REC requirements. The extent of such problems and the time required to correct them may not be known before November, which is when the Program Administrator would have to request the extension if AEP's suggestion were adopted.

The commission finds that it would be prudent to allow for some limited ability to amend deadlines in response to problems beyond the control of the Program Administrator, and adopts the new paragraph as published.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2004)(PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and, specifically PURA §39.904, which requires that the commission adopt rules to promote the development of renewable energy technologies.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.904.

§25.173. Goal for Renewable Energy.

(a) Purpose. The purpose of this section is to ensure that an additional 2,000 megawatts (MW) of generating capacity from renewable energy technologies is installed in Texas by 2009 pursuant to the Public Utility Regulatory Act (PURA) §39.904, to establish a renewable energy credits trading program that would ensure that the new renewable energy capacity is built in the most efficient and economical manner, to encourage the development, construction, and operation of new renewable energy resources at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources, to protect and enhance the quality of the environment in Texas through increased use of renewable resources, to respond to customers' expressed preferences for renewable resources

by ensuring that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA §39.101(b)(3), and to ensure that the cumulative installed renewable capacity in Texas will be at least 2,880 MW by January 1, 2009.

(b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to definitions), and competitive retailers as defined in subsection (c) of this section. This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.

(c) Definitions.

(1) Competitive retailer--A municipally-owned utility, generation and transmission cooperative (G&T), or distribution cooperative that offers customer choice in the restructured competitive electric power market in Texas or a retail electric provider (REP) as defined in §25.5 of this title.

(2) Compliance period--A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a competitive retailer.

(3) Designated representative--A responsible natural person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

(4) Early banking--Awarding renewable energy credits (RECs) to generators for sale in the trading program prior to the program's first compliance period.

(5) Existing facilities--Renewable energy generators placed in service before September 1, 1999.

(6) Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(7) New facilities--Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Program administrator--The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.

(10) REC offset (offset)--An REC offset represents one MWh of renewable energy from an existing facility that may be used in place of an REC to meet a renewable energy requirement imposed under this section. REC offsets may not be traded, shall be calculated as set forth in subsection (i) of this section, and shall be applied as set forth in subsection (h) of this section.

(11) Renewable energy credit (REC or credit)--An REC represents one megawatt hour (MWh) of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.

(12) Renewable energy credit account (REC account)--An account maintained by the renewable energy credits trading program

administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.

(13) Renewable energy credits trading program (trading program)--The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(14) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(15) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(16) Repowering--Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(17) Settlement period--The first calendar quarter following a compliance period in which the settlement process for that compliance year takes place.

(18) Small producer--A renewable resource that is less than two megawatts (MW) in size.

(d) Renewable energy credits trading program (trading program). Renewable energy credits may be generated, transferred, and retired by renewable energy power generators, competitive retailers, and other market participants as set forth in this section.

(1) The program administrator shall apportion a renewable resource requirement among all competitive retailers as a percentage of the retail sales of each competitive retailer as set forth in subsection (h) of this section. Each competitive retailer shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (k) of this section to comply with this section. The requirement to purchase RECs pursuant to this section becomes effective on the date each competitive retailer begins serving retail electric customers in Texas.

(2) A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (j) of this section.

(3) RECs shall be credited on an energy basis as set forth in subsection (j) of this section.

(4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice are not obligated to purchase RECs. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to competitive retailers as set forth in subsection (j) of this section.

(5) Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.

(e) Facilities eligible for producing RECs in the renewable energy credits trading program. For a renewable facility to be eligible to produce RECs in the trading program it must be either a new facility or a small producer as defined in subsection (c) of this section and must also meet the requirements of this subsection:

(1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (n) of this section;

(2) The facility's above-market costs must not be included in the rates of any utility, municipally-owned utility, or distribution cooperative through base rates, a power cost recovery factor (PCRf), stranded cost recovery mechanism, or any other fixed or variable rate element charged to end users;

(3) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis;

(4) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources can not be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed renewable facility if it otherwise meets the requirements of this section; and

(5) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(6) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities would be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.

(f) Facilities not eligible for producing RECs in the renewable energy credits trading program. A renewable facility is not eligible to produce RECs in the trading program if it is:

(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519;

(2) An existing facility that is not a small producer as defined in subsection (c) of this section; or

(3) An existing fossil plant that is repowered to use a renewable fuel.

(g) Responsibilities of program administrator. No later than June 1, 2000, the commission shall approve an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

(1) Create accounts that track RECs for each participant in the trading program;

(2) Award RECs to registered renewable energy facilities on a quarterly basis based on verified meter reads;

(3) Assign offsets to competitive retailers on an annual basis based on a nomination submitted by the competitive retailer pursuant to subsection (n) of this section;

(4) Annually retire RECs that each competitive retailer submits to meet its renewable energy requirement;

(5) Retire RECs at the end of each REC's three-year life;

(6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

(7) Create an exchange procedure where persons may purchase and sell RECs. The exchange shall ensure the anonymity of persons purchasing or selling RECs. The program administrator may delegate this function to an independent third party. The commission shall approve any such delegation;

(8) Make public each month the total energy sales of competitive retailers in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the renewable energy responsibility to each competitive retailer in accordance with subsection (h) of this section; and

(11) Submit an annual report to the commission. Beginning with the program's first compliance period, the program administrator shall submit a report to the commission on or before April 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and competitive retailers. At a minimum, the report shall contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all competitive retailers participating in the trading program, each competitive retailer's renewable energy credit requirement, the number of offsets used by each competitive retailer, the number of credits retired by each competitive retailer, a listing of all competitive retailers that were in compliance with the REC requirement, a listing of all competitive retailers that failed to retire sufficient REC requirement, and the deficiency of each competitive retailer that failed to retire sufficient RECs to meet its REC requirement.

(h) Allocation of REC purchase requirement to competitive retailers. The program administrator shall allocate REC requirements among competitive retailers. Any renewable capacity that is retired before January 1, 2009 or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after which the facility was retired or capacity shortfall occurred. The program administrator shall use the following methodology to determine the total annual REC requirement for a given year and the final REC requirement for individual competitive retailers:

(1) The total statewide REC requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the renewable capacity target multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (j) of this section. The renewable energy capacity targets for the compliance period beginning January 1, of the year indicated shall be:

(A) 400 MW of new resources in 2002;

(B) 400 MW of new resources in 2003;

(C) 850 MW of new resources in 2004;

- (D) 850 MW of new resources 2005;
- (E) 1,400 MW of new resources in 2006;
- (F) 1,400 MW of new resources in 2007;
- (G) 2,000 MW of new resources in 2008; and
- (H) 2,000 MW of new resources in 2009 through 2019.

(2) The final REC requirement for an individual competitive retailer for a compliance period shall be calculated as follows:

(A) Each competitive retailer's preliminary REC requirement is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all competitive retailers, and multiplying that percentage by the total statewide REC requirement for that compliance period.

(B) The adjusted REC requirement for each competitive retailer that is entitled to an offset is determined by reducing its preliminary REC requirement by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the competitive retailer's preliminary REC requirement. The total reduction for all competitive retailers is equal to the total usable offsets for that compliance period.

(C) Each competitive retailer's final REC requirement for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional REC requirement shall be calculated by dividing the competitive retailer's preliminary REC requirement by the total preliminary REC requirement of all competitive retailers. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the competitive retailer's adjusted REC requirement to produce the competitive retailer's final REC requirement for the compliance period.

(3) Concurrent with determining competitive retailers' final REC requirements for the current compliance period in accordance with this subsection, the Program Administrator shall recalculate the final REC requirements for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a competitive retailer's corrected final REC requirement and its original final REC requirement for the previous compliance periods shall be added to or subtracted from the retailer's final REC requirement for the current compliance period.

(i) Nomination and calculation of REC offsets.

(1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets are nominated in a filing with the commission by June 1, 2001. A G&T may nominate the combined offsets for itself and its member distribution cooperatives upon the presentation of a resolution by its Board authorizing it to do so.

(2) The commission shall verify any designations of REC offsets and notify the program administrator of its determination by December 31, 2001.

(3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.

(4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:

(A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it is owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(5) If the production from a facility producing the REC offset energy ceases for any reason, the competitive retailer may no longer claim the REC offset against its REC requirement.

(j) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate credits to competitive retailers shall be calculated as follows:

(1) The capacity conversion factor (CCF) shall be administratively set at 35% for 2002 and 2003, the first two compliance periods of the program.

(2) During the fourth quarter of the second compliance year (2003), the CCF shall be readjusted to reflect actual generator performance data associated with all renewable resources in the trading program. The program administrator shall adjust the CCF every two years thereafter and shall:

(A) be based on all renewable energy resources in the trading program for which at least 12 months of performance data is available;

(B) represent a weighted average of generator performance;

(C) use all valid performance data that is available for each renewable resource; and

(D) ensure that the renewable capacity goals are attained.

(k) Production and transfer of RECs. The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

(1) A REC will be awarded to the owner of a renewable resource when a MWh is metered at that renewable resource. A generator producing 0.5 MWh or greater as its last unit generated should be awarded one REC on a quarterly basis. The program administrator shall record the amount of metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis.

(2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.

(3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number, REC issue date, and the renewable resource that produced the REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) A competitive retailer shall surrender RECs to the program administrator for retirement from the market in order to meet its REC allocation for a compliance period. The program administrator will document all REC retirements annually.

(5) On or after each April 1, the program administrator will retire RECs that have not been retired by competitive retailers and have reached the end of their three-year life.

(6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.

(l) Settlement process. Beginning in January 2003, the first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each competitive retailer of its total REC requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each competitive retailer must submit credits to the program administrator from its account equivalent to its REC requirement for the previous compliance period. If the competitive retailer has insufficient credits in its account to satisfy its obligation, and this shortfall exceeds the applicable deficit allowance as set forth in subsection (m)(2) of this section, the competitive retailer is subject to the penalty provisions in subsection (o) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

(m) Trading program compliance cycle.

(1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. Early banking of RECs is permissible and may commence no earlier than July 1, 2001. The program's first settlement period shall take place during the first quarter of 2003.

(2) A competitive retailer may incur a deficit allowance equal to 10% of its REC requirement in 2002 and 2003 (the first two compliance periods of the program). This 10% deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to a penalty for any REC shortfall that is greater than 10% of its REC requirement under subsection (h) of this section. During the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 10% of the second year REC allocation. All competitive retailers incurring a 10% deficit pursuant to this subsection must make up the amount of RECs associated with the deficit in the next compliance period.

(3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program.

(4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.

(5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.

(n) Registration and certification of renewable energy facilities. The commission shall register and certify all renewable facilities that will produce either REC offsets or RECs for sale in the trading program. To be awarded RECs or REC offsets, a power generator must complete the registration process described in this subsection. The program administrator shall not award offsets or credits for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility shall file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either certify the renewable facility as eligible to receive either RECs or offsets, or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended by 30 days.

(3) Upon receiving notice of certification of new facilities, the program administrator shall create an REC account for the designated representative of the renewable resource.

(4) The commission may make on-site visits to any certified unit of a renewable energy resource and may decertify any unit if it is not in compliance with the provisions of this subsection.

(5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a competitive retailer prior to the decertification remain valid.

(o) Penalties and enforcement. If by April 1 of the year following a compliance year it is determined that a competitive retailer with an allocated REC purchase requirement has insufficient credits to satisfy its allocation, the competitive retailer shall be subject to the administrative penalty provisions of PURA §15.023 as specified in this subsection.

(1) Except as provided in paragraph (4) of this subsection, a penalty will be assessed for that portion of the deficient credits.

(2) The penalty shall be the lesser of \$50 per MWh or, upon presentation of suitable evidence of market value by the competitive retailer, 200% of the average market value of credits for that compliance period.

(3) There will be no obligation on the competitive retailer to purchase RECs for deficits, whether or not the deficit was within or was not within the competitive retailer's reasonable control, except as set forth in subsection (m)(2) of this section.

(4) In the event that the commission determines that events beyond the reasonable control of a competitive retailer prevented it from meeting its REC requirement there will be no penalty assessed.

(5) A party is responsible for conducting sufficient advance planning to acquire its allotment of RECs. Failure of the spot or short-term market to supply a party with the allocated number of RECs shall not constitute an event outside the competitive retailer's reasonable control. Events or circumstances that are outside of a party's reasonable control may include weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions

of a governmental authority that adversely effect the generation, transmission, or distribution of renewable energy from an eligible resource under contract to a purchaser.

(p) Renewable resources eligible for sale in the Texas wholesale and retail markets. Any energy produced by a renewable resource may be bought and sold in the Texas wholesale market or to retail customers in Texas and marketed as renewable energy if it is generated from a resource that meets the definition in subsection (c)(14) of this section.

(q) Periodic review. The commission shall periodically assess the effectiveness of the energy- based credits trading program in this section to maximize the energy output from the new capacity additions and ensure that the goal for renewable energy is achieved in the most economically-efficient manner. If the energy-based trading program is not effective, performance standards will be designed to ensure that the cumulative installed renewable capacity in Texas meets the requirements of PURA §39.904.

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 February 4, 2004.

TRD-200400690

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Public Utility Commission of Texas

Effective date: February 24, 2004

Proposal publication date: October 3, 2003

For further information, please call: (512) 936-7223



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §§73.1, 73.10, 73.20 - 73.24, 73.30, 73.40, 73.60, 73.65, 73.70, 73.80, 73.90, 73.100

The Texas Department of Licensing and Regulation ("Department") adopts new rules at 16 Texas Administrative Code, Chapter 73, §§73.1, 73.10, 73.20 - 73.24, 73.30, 73.40, 73.60, 73.65, 73.70, 73.80, 73.90, and 73.100, regarding the Electricians program. Sections 73.1, 73.22 - 73.24, 73.30, 73.60, 73.65, 73.70, 73.80, 73.90 and 73.100 are adopted without changes to the text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10859), and will not be republished. Sections 73.10, 73.20, 73.21, and 73.40 are adopted with changes to the text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10859).

The adopted rules are in response to House Bill 1487 enacted by the 78th Legislature to establish regulation of electricians and electrical contractors. Persons performing electrical work must be licensed and business entities engaged in electrical contracting must also be licensed. House Bill 1487 also includes a list of matters that fall within the definition of electrical work, but for their having been exempted. House Bill 1487, and newly created Occupations Code, §§1305.101, 1305.102, 1305.152, and

1305.168 require the Texas Commission of Licensing and Regulation to adopt rules regarding licensing, standards of conduct, nature of activities to be performed by each class of licensee, financial responsibility of contractors, continuing education, a state electrical code, and a process to evaluate work experience. With the exception of continuing education rules, which are not required until January 2005, the rules are proposed in response to the requirements of House Bill 1487 and Occupations Code, Chapter 1305.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. Written comments were received from two organizations and eight individuals concerning the rules as proposed. The comments, along with the department's responses to the comments were presented to the Electrical Safety and Licensing Advisory Board on January 6, 2004.

One commenter referred to §73.10(2), which simply defines business affiliations, and inquired whether there are any licensing rules for such business organizations. The Act requires that an electrical contractor be licensed and provides that in order to obtain a license the contractor must either be a licensed master electrician, or have hired one, must provide proof of financial responsibility and must maintain workers compensation insurance or have elected not to provide such insurance as allowed by the Insurance Code. Since §73.40 addresses these matters, no rule change is made.

One commenter objected to the portion of §73.10(3) that defines "employee" as one who is subject to deductions by his employer of social security and federal income taxes from his pay. The purpose of using the reference to federal withholding requirements is to draw a distinction between contract laborers, who are not employees and employees. The Act requires that a contractor who is not licensed employ a licensee. Except for meeting that requirement, there is no limitation on the manner in which a contractor obtains and pays for services and the rules do not impose any additional requirements. No rule change is made.

Two commenters objected to the provisions of §73.10(3) addressing simultaneous employment with a temporary employment agency or staff leasing service on the basis that the reference is confusing and could cause problems with regard to employment taxes. Their points are well taken. The reference is unnecessary and the last sentence of the paragraph is deleted. Section 73.10 (3) is amended to read as follows: "Employee--An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal."

Three commenters objected to §73.10(4) that defines employer as one who employs the services of others on the basis that the term, 'others' could cause confusion. They suggested that the term, 'employees' be used. The reference is changed to "employs the services of employees."

PSI, a business organization located in Glendale California, filed a comment objecting to the inclusion in §73.21(a) of a reference to the International Code Council examination as the one to be used to obtain a license. The company suggested that the department should select one examination provider through the competitive bid process, and specifically advised against using a generic term such as, "authorized testing vendor." Even though the proposed rule named one organization, the department contemplates the possibility that additional organizations may offer

suitable examinations and that the department may add one or more names in the future. The company's comments concerning the difficulty of changing a rule to include new organizations are well taken. Section 73.21(a) is amended to read as follows: "To obtain by examination a license issued under this chapter, an applicant must successfully complete an examination approved by the Executive Director."

One commenter expressed a concern that §73.24(b), which outlines the documentation the department will accept to establish required work experience, is too vague, while the statutory requirements are specific. The rule, rather than describing statutory requirements, describes the manner in which proof of having met the requirements is demonstrated. The commenter also expressed concern that the statutory requirements may be too lax. The department cannot change the statutory requirements by rule, and the methods of establishing proof of experience set out in the rule are permissive and are not exclusive. The rule references department prescribed forms and specific types of documentation such as transcripts, diplomas or certificates as methods to establish proof. No rule change is made.

One commenter inquired concerning the meaning of §73.24(b)(2) which restates the requirement set out in the statute that certain applicants must have been licensed for at least one year. Specifically, his inquiry involved persons who would be seeking a license September 1, 2004 who obtain a municipal license for example in January 2004. Will such persons be able to meet the one-year requirement? They will not be able to meet the requirement. The agency cannot by rule change a statutory provision. No rule change is made.

Three commenters inquired whether §73.24 and §73.20 which address the requirement that a master electrician must have supervised applicants during requisite work experience periods could be interpreted or worded so that supervision by electrical engineers or registered professional engineers would meet the statutory requirement. The requirement is statutory and the commission may not by rule amend it. No rule change is made.

A commenter proposed that licensing and codes should be enforced by counties rather than by municipalities, which would have the effect of ensuring statewide enforcement. The commenter made no specific recommendations for any of the rules. The statute requires all electrical work not exempted by statute to be performed by licensees. The proposed rules include adoption of the NEC to apply as a minimum throughout the state. No rule change is made.

A commenter objected that an employer as defined in §73.10(3), is not required to be licensed or bonded. An electrical contractor must either be licensed or hire a master electrician and must have insurance. Since all electrical work not exempted must be performed by a licensee who must work through an electrical contractor, these concerns are addressed in other rules. No rule change is made.

A commenter proposed that a municipality should not be allowed to require a person to have a state license as prerequisite to issuing a municipal license. The Act provides that municipalities may continue to issue licenses; and it also provides that a state issued license is valid anywhere in the state. The department may not by rule change the statutory requirements. No rule change is made.

A commenter proposed that the rules regarding proof of work experience be clarified and referenced §73.24(b)(1). Section 73.20

also addresses work experience. The commenter specifically inquired how a person who has held a masters license for a number of years could establish such proof. The statute provides the experience requirements and the department may not change them. The rules regarding the manner in which a person establishes the experience do not specifically define the methodology since a number of fact situations will arise, such as a deceased supervising master. The forms will require an applicant to provide the name and license number of the master plus a description of the job duties. No rule change is made.

A commenter said that training as an electrical engineer should meet the requirements for on the job experience. All work experience must be work done under the supervision of a master electrician. If training as an electrical engineer was obtained under the supervision of a master electrician, it does. The commenter also inquired as to what aspects of work apply to the experience requirement and he distinguished between "wiring time" and time interfacing with the public. The statute does not define matters so finely and the department has not proposed rules that do so. No rule change is made.

A commenter proposed that insurance required of electrical contractors should be required not later than September 1, 2004. An electrical contractor may not provide services without being licensed after September 1, 2004 and may not become licensed without insurance. No rule change is made

A commenter noted that §73.40(c) provides that proof of workers compensation insurance along with other insurance is established by use of a standard certificate of insurance. His concern is that the wording invites an inference that workers compensation insurance provided by an insurance company is required when the Act allows a contractor to self-insure, or elect not to provide workers' compensation coverage. The objection is well taken and language is added to make this point clear. Section 73.40(c) is amended to read as follows: Proof of the required general liability and workers' compensation insurance can be submitted on an industry standard certificate of insurance form with a 30 day cancellation notice. Workers' compensation coverage may be established by a certificate of authority to self insure, or an applicant may state that it has elected not to obtain workers' compensation coverage.

In addition to the change made to §73.40(c), §73.20(a)(2) is amended to read as follows: Applicants for contractor's licenses must submit proof of general liability insurance and either workers' compensation insurance or a certificate of authority to self insure, or a statement that the applicant has elected not to obtain workers' compensation insurance pursuant to Subchapter A, Chapter 406, Labor Code with the initial and renewal applications.

A commenter noted that there is no provision to allow persons licensed as water well drillers and as water well pump installers to perform wiring tasks necessary to complete water well installations. Even though the commenter did not specifically request rule language, it appears that the commenter believed the matter could be addressed through rule making to provide an exemption. The Commission, through rulemaking, may not provide an exemption in addition to those provided by statute. No rule change is made.

A commenter inquired whether it would be possible to allow contractors specializing in oil field construction in unincorporated areas to be licensed by a grandfathering process much the same

as electricians working in unincorporated areas may obtain licenses without taking an examination. The provisions of the bill providing for such "grandfathering" are specific and the commission may not add to them by rule. No rule change is made.

Associated Builders and Contractors (ABC) made several comments about the statute and even though it did not make specific requests regarding proposed rules the comments may be addressed in the context of proposed rules. The organizations' desired outcome is that all electrical work performed within an industrial facility should be exempt from the Act. ABC notes that several exemptions set out in the Act may apply to the circumstances encountered in industrial plants. The maintenance exception found at §1305.002(7) appears to apply and persons providing maintenance as defined in the statute do not need a license. Further, the exemptions in §1305.002(12) and (14) appear to apply. The exception for utilities found at paragraph (5) does not apply, as the generation of power by an industrial plant is not a utility function; see Utility Code, §31.002. The functions of installing electrical systems fall within the definition and performing such work requires a license. The department may not change a statutory provision by rule.

ABC recognized that the department likely could not define away the licensing requirement discussed above. Two issues were presented for consideration if such work, or any part of it, requires a license.

1. Who must have provided supervision to meet work experience requirements?

2. Which examination is required? Can industrial licensees take a different exam?

The first issue is addressed by statute and the commission may not change the requirements by rule.

Which examination must be taken and passed is left to the Commission to develop. An amendment to §73.21(a) set out above will allow the department to approve more than one examination for licensure.

The new rules are adopted under Title 8, Occupations Code, Chapter 1305 and Title 2, Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Title 8, Occupations Code, Chapter 1305 and Title 2, Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§73.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Assumed name--A name used by a business as defined in the Business and Commerce Code, Title 4, Chapter 36, Subchapter A, §36.02.

(2) Business affiliation--The business organization to which a master licensee may assign his or her license.

(3) Employee--An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal.

(4) Employer--One who employs the services of employees, pays their wages, deducts the required social security and federal

income taxes from the employee's pay, and directs and controls the employee's performance.

(5) Filed--a document is deemed to have been filed with the department on the date that the document has been received by the department or, if the document has been mailed to the department, the date a postmark is applied to the document by the U.S. Postal Service.

§73.20. Licensing Requirements--Applicant and Experience Requirements.

(a) An applicant for a license must submit the required fees with a completed application and the appropriate attachments:

(1) Applicants for Master Electrician, Master Sign Electrician, Journeyman Electrician, Journeyman Sign Electrician, Residential Wireman, and Maintenance Electrician must submit proof of a passing grade on the accepted examination.

(2) Applicants for contractor's licenses must submit proof of general liability insurance and either workers' compensation insurance or certificate of authority to self insure, or a statement that the applicant has elected not to obtain workers' compensation insurance pursuant to Subchapter A, Chapter 406, Labor Code with the initial and renewal applications.

(b) An applicant must complete all requirements within one year of the date the application is filed.

(c) Except as provided by §73.24, each applicant must pass all parts of a Department accepted examination, and provide proof of a passing grade, before the applicant will be licensed. To be accepted, an examination must have been taken and passed no more than two years before the date of the application.

(d) For purposes of this chapter, 2,000 hours of on the job training shall equal one year of on the job training. On the job training must be established by letter(s) setting out dates of employment from persons who either employed or supervised the applicant or as required by the application. Letters must include the name and license type of the supervising person.

(e) Each applicant must meet the applicable eligibility requirements as set forth in the Occupations Code, §§1305.153 - 1305.161.

(f) Obtaining a license by fraud or false representation is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

§73.21. Licensing Requirements--Examinations.

(a) To obtain by examination a license issued under this chapter, an applicant must successfully complete an examination approved by the Executive Director of the Texas Department of Licensing and Regulation.

(b) To obtain a license without examination, a completed application must be filed on or before June 1, 2004 and the provisions in Section 3, House Bill 1487 of the 78th Legislative Session and §73.24 must be met.

§73.40. Insurance Requirements.

(a) Electrical contractors and electrical sign contractors are required to maintain at least the minimum general liability insurance coverages at all times to satisfy proof of financial responsibility. The insurance must:

(1) be at least \$300,000 per occurrence (combined for property damage and bodily injury);

(2) be at least \$600,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage); and

(3) be at least \$300,000 aggregate for products and completed operations.

(b) A license applicant or licensee shall file with the Department a completed certificate of insurance or other evidence satisfactory to the Department when applying for an initial and renewal licenses and upon request of the Department.

(c) Proof of the required general liability and workers' compensation insurance can be submitted on an industry standard certificate of insurance form with a 30 day cancellation notice. Workers' compensation coverage may be established by a certificate of authority to self insure, or an applicant may state that it has elected not to obtain workers' compensation coverage.

(d) A licensed contractor shall furnish the name of the insurance carrier, policy number, name, address, and telephone number of the insurance agent with whom the contracting company is insured to any customer who requests it.

(e) Insurance must be obtained from an admitted company or an eligible surplus lines carrier, as defined in the Texas Insurance Code, Article 1.14-2, or other insurance companies that are rated by A.M. Best Company as B+ or higher.

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 February 9, 2004.

TRD-200400823
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 463-7348



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§1.1 - 1.13

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 1, §§1.1 - 1.13 of Board rules, concerning Agency Administration without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10615) Specifically, this repeal deletes Chapter 1, Subchapter A, regarding General Provisions, and all sections within it. In conducting a review of Chapter 1, the Office of General Counsel concluded that, despite the fact that few of the existing rules needed to be amended in any material way, the recently mandated role of the ADR coordinator required significant reorganization and renumbering of the entire chapter. Consequently, this subchapter is repealed.

No comments were received regarding the proposed repeal of Chapter 1.

The repeal of the sections is adopted under the Texas Education Code, §§61.025-61.029, 61.031, 61.084, 61.301-61.319, and 61.401-61.405; Texas Government Code, §§552.231, 559.004, ch. 2001, §§2003.021, 2155.076, 2161.003, 2255.001, ch. 2260, ch. 2008, ch. 2009; Texas Transportation Code, §201.112; Civil Practice and Remedies Code, ch. 107, ch. 154

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 February 6, 2004.

TRD-200400766
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 427-6114



SUBCHAPTER B. HEARINGS AND APPEALS

19 TAC §§1.21 - 1.29

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 1, §§1.21 - 1.29 of Board rules, concerning Agency Administration without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10615) Specifically, this repeal deletes Chapter 1, Subchapter B regarding Hearings and Appeals, and all sections within it. In conducting a review of Chapter 1, the Office of General Counsel concluded that, despite the fact that few of the existing rules needed to be amended in any material way, the recently mandated role of the ADR coordinator required significant reorganization and renumbering of the entire chapter. Consequently, this subchapter is repealed.

No comments were received regarding the proposed repeal of Chapter 1.

The repeal of the sections is adopted under the Texas Education Code, §§61.025-61.029, 61.031, 61.084, 61.301-61.319, and 61.401-61.405; Texas Government Code, §§552.231, 559.004, ch. 2001, §§2003.021, 2155.076, 2161.003, 2255.001, ch. 2260, ch. 2008, ch. 2009; Texas Transportation Code, §201.112; Civil Practice and Remedies Code, ch. 107, ch. 154.

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 February 6, 2004.

TRD-200400767
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 427-6114



SUBCHAPTER C. BREACH OF CONTRACT CLAIMS

19 TAC §§1.40 - 1.47

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 1, Subchapter C, §§1.40 - 1.47 of Board rules, concerning Breach of Contract Claims without changes to the proposal as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10616).

Specifically, this repeal deletes Chapter 1, Subchapter C, regarding Breach of Contract Claims, and all sections within it. In conducting a review of Chapter 1, the Office of General Counsel concluded that, despite the fact that few of the existing rules needed to be amended in any material way, the recently mandated role of the ADR coordinator required significant reorganization and renumbering of the entire chapter. Consequently, this subchapter is repealed.

No comments were received regarding the proposed repeal.

The repeal of the sections is adopted under the Texas Education Code, §§61.025 - 61.029, 61.031, 61.084, 61.301 - 61.319, and 61.401 - 61.405; Texas Government Code, §§552.231, 559.004, Chapter 2001, §§2003.021, 2155.076, 2161.003, 2255.001, Chapters 2260, 2008, and 2009; Texas Transportation Code, §201.112; Civil Practice and Remedies Code, Chapters 107 and 154.

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 February 6, 2004.

TRD-200400768

Jan Greenberg

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Effective date: February 26, 2004

Proposal publication date: November 28, 2003

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SUBCHAPTER D. STANDARDS OF CONDUCT

19 TAC §§1.60 - 1.67

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 1, Subchapter D, §§1.60 - 1.67 of Board rules, concerning Standards of Conduct without changes to the proposal as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10617).

Specifically, this repeal deletes Chapter 1, Subchapter D regarding Standards of Conduct, and all sections within it. In conducting a review of Chapter 1, the Office of General Counsel concluded that, despite the fact that few of the existing rules needed to be amended in any material way, the recently mandated role of the ADR coordinator required significant reorganization and renumbering of the entire chapter. Consequently, this subchapter is repealed.

No comments were received regarding the proposed repeal.

The repeal of the sections is adopted under the Texas Education Code, §§61.025 - 61.029, 61.031, 61.084, 61.301 - 61.319, and 61.401 - 61.405; Texas Government Code, §§552.231, 559.004, Chapter 2001, §§2003.021, 2155.076, 2161.003, 2255.001, Chapters 2260, 2008, and 2009; Texas Transportation Code, §201.112; Civil Practice and Remedies Code, Chapters 107 and 154.

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 February 6, 2004.

TRD-200400769

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: February 26, 2004

Proposal publication date: November 28, 2003

For further information, please call: (512) 427-6114



SUBCHAPTER E. RIGHT TO CORRECTION OF INCORRECT INFORMATION

19 TAC §§1.80 - 1.83

The Texas Higher Education Coordinating Board adopts the repeal of Chapter 1, Subchapter E, §§1.80 - 1.83 of Board rules, concerning Right to Correction of Incorrect Information without changes to the proposal as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10617).

Specifically, this repeal deletes Chapter 1, Subchapter E, regarding Right to Correction of Incorrect Information, and all sections within it. In conducting a review of Chapter 1, the Office of General Counsel concluded that, despite the fact that few of the existing rules needed to be amended in any material way, the recently mandated role of the ADR coordinator required significant reorganization and renumbering of the entire chapter. Consequently, this subchapter is repealed.

No comments were received regarding the proposed repeal.

The repeal of the sections is adopted under the Texas Education Code, §§61.025 - 61.029, 61.031, 61.084, 61.301 - 61.319, and 61.401 - 61.405; Texas Government Code, §§552.231, 559.004, Chapter 2001, §§2003.021, 2155.076, 2161.003, 2255.001, Chapters 2260, 2008, and 2009; Texas Transportation Code, §201.112; Civil Practice and Remedies Code, Chapters 107 and 154.

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 February 6, 2004.

TRD-200400770

Jan Greenberg
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Texas Higher Education Coordinating Board
Effective date: February 26, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 427-6114

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CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§1.1 - 1.14

The Texas Higher Education Coordinating Board adopts new §§1.1 - 1.14, without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10618). Specifically, there are non-substantive language amendments to prior rules throughout the subchapter, and many of the section numbers have been changed from prior numbering. There are two completely new sections: §1.14 which concerns negotiated rulemaking, and §1.7, which describes the process by which a member of the public may propose the adoption, repeal, or amendment of a rule. These new rules spell out agency procedures in order to ensure that such cases are treated in accordance with the requirements of the Texas Government Code.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §§61.025-61.029, 61.031, 61.084; and the Texas Government Code, §§552.231, 2155.076, 2161.003, ch. 2008.

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 February 6, 2004.

TRD-200400762
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 427-6114

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SUBCHAPTER B. DISPUTE RESOLUTION

19 TAC §§1.20 - 1.27, 1.30 - 1.35, 1.40 - 1.48, 1.60 - 1.67

The Texas Higher Education Coordinating Board adopts new §§1.20 - 1.27; §§1.30 - 1.35; §§1.40 - 1.48; and §§1.60 - 1.67 concerning Dispute Resolution, without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10621). Specifically, these new sections provide for a new staff role of ADR coordinator; establish procedures for management of contract disputes and all other cases in which a party may have a right to a contested case hearing; bring the process for negotiated rulemaking within the ADR coordinator's oversight; and give the Office of General Counsel the responsibility for determining whether a petitioner for a contested

case has satisfied all the pleading requirements and has established a right to a contested case.

There were no comments received regarding the new sections.

The new sections are adopted under the Texas Government Code, ch. 2001, §2003.021, ch. 2260, ch. 2009; Civil Practice and Remedies Code, ch. 154.

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 February 6, 2004.

TRD-200400763
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 427-6114

◆ ◆ ◆
SUBCHAPTER C. STANDARDS OF CONDUCT

19 TAC §§1.80 - 1.87

The Texas Higher Education Coordinating Board adopts new §§1.80 - 1.87, regarding Standards of Conduct, without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10628). Specifically, these sections relate to standards of conduct governing relationships between the Texas Higher Education Coordinating Board (Board), its officers and employees, and private donors and private organizations that exist to further the purposes, and to assist in accomplishing the duties of the Board.

There were no comments received regarding the new sections.

The new sections are adopted under the Texas Government Code, §2255.001.

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 February 6, 2004.

TRD-200400764
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 427-6114

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**SUBCHAPTER D. RIGHT TO CORRECTION
OF INCORRECT INFORMATION**

19 TAC §§1.96 - 1.99

The Texas Higher Education Coordinating Board adopts new §§1.96 - 1.99, concerning Right to Correction of Incorrect Information without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10630). Specifically, these new sections describe the process by which a person may correct information that the Board has recorded about them, and which is incorrect.

No comments were received regarding the new sections.

The new sections are adopted under Texas Government Code, §559.004.

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 February 6, 2004.

TRD-200400765

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: February 26, 2004

Proposal publication date: November 28, 2003

For further information, please call: (512) 427-6114



CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.4

The Texas Higher Education Coordinating Board adopts amendments to §4.4 of Board rules, concerning excused absences for religious holy days for students in public institutions of higher education, without changes to the text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10632). Specifically, the amendments removed a previous requirement that a student must notify his or her instructor within 15 days from the start of the semester of an absence for the purpose of observing a religious holy day. TEC §51.911(b) also requires that a student shall be excused from attending classes or other required activities, including examinations, during time needed for travel for the purpose of the observance of a religious holy day, and that students shall be granted a reasonable amount of time to make up work or take examinations they miss during an excused absence under this section. The amendments indicate that institutional policies and procedures for absences due to religious holy days shall be consistent with (or no more arduous than) the institution's policies and procedures relating to other excused absences. The amendments also include a provision for the resolution of any disputes that could arise regarding the nature of an absence under this section and a provision for a reasonable time in which to make up the work that was missed during such an absence.

One comment was received from The University of Texas Medical Branch at Galveston regarding the amendments to §4.4. That comment contained no objections to the amendments and did not require any changes to the proposed amendments.

The amendment is adopted under the Texas Education Code, §51.911(e), which requires the Board to adopt rules concerning excused absences for the purpose of observing religious holy days.

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 February 4, 2004.

TRD-200400721

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: February 24, 2004

Proposal publication date: November 28, 2003

For further information, please call: (512) 427-6114



SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.85

The Texas Higher Education Coordinating Board adopts amendments to §4.85(d) of Board rules, concerning dual credit courses without changes to the proposed text as published in the December 19, 2003, issue of the *Texas Register* (28 TexReg 10754). Specifically, these amendments provide an exception allowing dual credit students to mix with high school-only students in dual credit classes. Dual credit rules originally provided for an exception for mixed classes that included honors students. During a previous rule review, the exception was removed because it was too broad and was not conducive to preserving college-level rigor. However, removing that exception had the unintended consequence of prohibiting dual credit students to mix with students who are working for articulated credit in workforce education courses. The staff believes that an exception should be made because, as in the case of Advanced Placement students, both types of students are attempting to earn college credit but through different pathways.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §§29.182, 29.184, 54.216, 61.027, 61.076(j), 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d), which provide the Coordinating Board with the authority to regulate dual credit partnerships between public two-year colleges and public universities with secondary schools.

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 February 6, 2004.

TRD-200400781

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 26, 2004
Proposal publication date: December 19, 2003
For further information, please call: (512) 427-6114



CHAPTER 11. TEXAS STATE TECHNICAL COLLEGE SYSTEM

SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§11.24, 11.25, 11.28

The Texas Higher Education Coordinating Board adopts amendments to §§11.24, 11.25, and 11.28 concerning the Texas State Technical College System without changes to the proposed text as published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10633). Specifically, these amendments provide updated references in §§11.24, 11.25, and 11.28 to other sections of Board rules.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §§61.051, 61.053, 61.056, 61.058, 61.0583, 135.01, 135.04, 135.02, and 135.06, which authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the Texas State Technical College System relating to the review of its role and mission statement, new program approval, approval and operation of extension centers, approval of land acceptance or acquisition, and the audit of its facilities.

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 February 5, 2004.

TRD-200400743
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 25, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY RATINGS AND ACKNOWLEDGMENTS

DIVISION 1. STANDARD ACCOUNTABILITY SYSTEM

19 TAC §97.1003

The Texas Education Agency (TEA) adopts an amendment to §97.1003, concerning the Texas public school accountability

system, with changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9666). The section adopted by reference *Sections 1 and 2 of the 2003 Accountability Plan*, dated July 2002, which specifies the procedures by which the accountability system will be administered in 2003. The amendment adopts by reference *Sections 1 and 2 of the 2003 Accountability Plan*, as updated October 2003.

State statute requires annual district performance ratings with the standard accountability labels of *Exemplary*, *Recognized*, *Academically Acceptable*, and *Academically Unacceptable*. Campuses must also be evaluated annually; however, accountability labels for campuses are not specified in statute. To comply with state statute, district 2002 accountability ratings were carried forward to 2003. The 2003 Adequate Yearly Progress (AYP) Status and 2002-2003 Academic Excellence Indicator System (AEIS) report releases addressed the statutory requirement for annual campus evaluations. In 2003, the TEA administered the accountability system under the procedures specified in *Sections 1 and 2 of the 2003 Accountability Plan*.

Legal counsel with the TEA has recommended that the procedures for issuing regular accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter / publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000.

The TEA adopted by reference *Sections 1 and 2 of the 2003 Accountability Plan*, dated July 2002, as 19 TAC §97.1003 to establish the standard procedures by which the Texas public school accountability will be administered for school year 2002-2003. The 2003 accountability system provides a transition from the current accountability rating system that uses Texas Assessment of Academic Skills (TAAS) results and annual dropout rates to the new accountability rating system that will use Texas Assessment of Knowledge and Skills (TAKS) results and longitudinal completion rates. State statute requires annual district performance ratings with the standard accountability labels of *Exemplary*, *Recognized*, *Academically Acceptable*, and *Academically Unacceptable*. Campuses must also be evaluated annually; however, accountability labels for campuses are not specified in statute. To comply with state statute, district 2002 accountability ratings were carried forward to 2003.

The amendment to 19 TAC §97.1003 adopts by reference *Sections 1 and 2 of the 2003 Accountability Plan*, updated October 2003. Changes from the July 2002 version include the removal of information related to the December 2003 campus and district performance evaluations. The 2003 AYP Status and 2002-2003 AEIS report releases addressed the statutory requirement for annual campus evaluations. Districts with a 2002 accountability rating of *Academically Unacceptable* may receive follow-up site visits during the 2003-2004 school year.

The rule text of §97.1003 is adopted without changes since published as proposed; however, a section of the *2003 Accountability Plan*, adopted by reference, is adopted with the following changes. Dates in *Section 1* have been updated to reflect current information related to development of the accountability system for 2004 and beyond. Specifically, the commissioner will notify

districts and campuses of decisions about the indicators and accountability standards for 2004 ratings in April 2004 rather than late March and the 2004 accountability ratings will be released in October 2004 rather than September.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §§39.051(c)-(e), 39.073, 39.074(a)-(b), and 39.075, which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c)-(e), 39.073, 39.074(a)-(b), and 39.075.

§97.1003. *Adoption by Reference: 2003 Accountability Plan.*

(a) The standard procedures by which the Texas public school accountability system will be administered for school year 2002-2003 are described in the official Texas Education Agency (TEA) publication, *Sections 1 and 2 of the 2003 Accountability Plan*, updated October 2003, which is adopted by this reference as the agency's official rule. A copy of the *2003 Accountability Plan* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the Texas Education Agency official website.

(b) The commissioner of education shall amend *Sections 1 and 2 of the 2003 Accountability Plan* and this section adopting it by reference, as needed.

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 February 9, 2004.

TRD-200400804

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency

Effective date: March 1, 2004

Proposal publication date: November 7, 2003

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 117. FACULTY AND STUDENTS IN ACCREDITED DENTAL SCHOOLS

22 TAC §117.1

The Texas State Board of Dental Examiners (Board) adopts amendments to §117.1, concerning exemptions without changes to the proposed text published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10649). The text will not be republished. The section provides that members of the faculty of a reputable dental or dental hygiene college

or school are no longer exempt from licensure and must be licensed to practice dentistry in Texas or must obtain a license to practice where such faculty members perform their services for the sole benefit of such school or college.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, §26, 78th Legislature, 2003, which requires the Board to establish rules for the licensure of faculty members of dental or dental hygiene schools.

The adopted rule effects Title 3, Subtitle D, Chapter 267 of the Occupations Code and Title 22, Texas Administrative Code, Section 117.

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 February 4, 2004.

TRD-200400701

Bobby D. Schmidt, M.Ed.

Executive Director

Texas State Board of Dental Examiners

Effective date: February 24, 2004

Proposal publication date: November 28, 2003

For further information, please call: (512) 475-0972



22 TAC §117.2

The Texas State Board of Dental Examiners (Board) adopts a new rule §117.2, concerning dental faculty licensure without changes to the proposed text published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10650). The section provides that any person who serves as a faculty member of a dental school must hold a dental school faculty license.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, §26, 78th Legislature, 2003, which requires the Board to establish rules for the licensure of faculty members of dental or dental hygiene schools.

The new rule effects Title 3, Subtitle D, Chapter 267 of the Occupations Code and Title 22, Texas Administrative Code, Section 117.

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 February 4, 2004.

TRD-200400702

Bobby D. Schmidt, M.Ed.
Executive Director
Texas State Board of Dental Examiners
Effective date: February 24, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 475-0972



22 TAC §117.3

The Texas State Board of Dental Examiners (Board) adopts a new rule §117.3, concerning dental hygiene faculty licensure without changes to the proposed text published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10651). The section provides that any person who serves as a faculty member of a dental hygiene school must hold a dental or dental hygiene school faculty license.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, §26, 78th Legislature, 2003, which requires the Board to establish rules for the licensure of faculty members of dental or dental hygiene schools.

The new rule effects Title 3, Subtitle D, Chapter 267 of the Occupations Code and Title 22, Texas Administrative Code, Section 117.

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 February 4, 2004.

TRD-200400704
Bobby D. Schmidt, M.Ed.
Executive Director
Texas State Board of Dental Examiners
Effective date: February 24, 2004
Proposal publication date: November 28, 2003
For further information, please call: (512) 475-0972



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 amendments to Title 22, Texas Administrative Code, Chapter 203, Section 203.6 (relating to Provisional Licensees). Notice of the proposed amendments was published in the September 12, 2003 issue of the *Texas Register* (28 TexReg 7935). The amended section is adopted with changes to the proposed text.

The amendments are adopted in order to comply with the requirements of HB1538 as it relates to provisional licensees.

The commission received comments on the proposed amendments from the Texas Funeral Directors Association (commenter).

Generally, the comments addressed matters which commenter believes to be drafting oversights in sections 203.6(f) and (k).

Comment on 203.6(e): The commenter expressed the view that the new language added to the end of 203.6(e), "Cases performed in mortuary college may count toward the required cases if the college certifies to the commission that the cases were performed," contradicts existing language in the final sentence of 203.6(f) which reads, "...however, any cases performed in mortuary college will not count toward the 60 cases required to complete the provisional embalmer program." The Commission agrees. The referenced language at the end of 203.6(f) will be deleted in the adopted version of the rule.

Comment on 203.6(o): The commenter expressed the view that the new language of 203.6(o), "A student enrolled in an accredited mortuary college must have the college forward a letter of enrollment to the commission prior to entering the provisional program," contradicts the existing language of 203.6(k) which reads, "No person shall be eligible to participate in the provisional funeral director or provisional embalmer program unless the applicant has graduated from an accredited school or college of mortuary science." The Commission agrees. The referenced language at 203.6(k) will be deleted, and the subsections renumbered accordingly in the adopted version of the rule.

The amendments to 203.6 are adopted under Texas Occupations Code, Section 651.152. The commission interprets section 651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the new section.

§203.6. *Provisional Licensees.*

(a) Participants in the provisional licensure program may serve as provisional licensees only in funeral establishments or commercial embalming establishments licensed by the commission, and all work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license. The provisional funeral director program may not be served in a commercial embalming establishment.

(b) Provisional licensees must work in a funeral establishment or commercial embalming establishment a minimum of 17 hours per week or 73 hours per month, or as otherwise permitted by the commission, under actual working conditions directly related to funeral directing and/or embalming.

(c) The provisional licensure period is a minimum of 12 and a maximum of 24 consecutive months, unless extended pursuant to an exit interview, and the provisional licensure programs for funeral director and embalmer may be served simultaneously. If a provisional licensee does not complete a program in the prescribed time, the provisional licensee will be cancelled and may be reinstated only upon petition to the commission after retaking and passing the applicable examinations.

(d) Provisional licenses issued after the effective date of this amendment expire on the last day of the month twelve months from their issue date. No fees shall be refunded to provisional licenses who fail to complete the program. Provisional licenses must be renewed for

any period following the first year if the program has not been completed, the exit interview and all applicable examinations taken and passed, and fees paid in full for a regular license. Fees are not refundable.

(e) Of the 60 cases required for each provisional licensure program, at least 10 must be complete cases and performed and reported during the last three months of the program. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body; a complete embalming requires the provisional embalmer to handle all major actions included in §203.16 of this title (relating to Minimum Standards for Embalming) performed on a particular body. Cases performed in mortuary college may count toward the required cases if the college certifies to the commission that the cases were performed.

(f) A provisional embalmer shall assist in the embalming of six autopsied remains during the course of the provisional embalmer program. Autopsied cases completed while in an accredited mortuary college may count toward the six required autopsy cases if the college certifies to the commission that the cases were performed.

(g) Provisional licensees must file with the commission a case report for each month of the provisional license program by the 10th day of the next month. Case report submission post marked after the 10th day of the month will not be accepted. The licensee will not be given credit for those case reports. In any month in which the provisional licensee does not perform a case, the provisional licensee must file a "notwithstanding" report with the commission, and that month will not count toward the 12 required months. If a provisional licensee files "notwithstanding" reports for two consecutive months, the commission may start the provisional licensee's program over.

(h) It is the responsibility of the sponsor of the provisional, the funeral director in charge of the establishment, and the provisional licensee to schedule case work sufficient for reporting in the provisional program. Penalties for failure to file case reports in a timely manner may lie against the sponsor of the provisional, the funeral director in charge of the establishment, and the provisional licensee. The commission may start a provisional licensure program over if the provisional licensee fails on two occasions to timely file a case report.

(i) Each case report shall be certified by the licensee under whom the provisional licensee performed the work. The supervising licensee and the provisional licensee both are subject to disciplinary action in the information submitted is not true and accurate.

(j) Upon completion of a minimum of 12 months and 60 required cases of the provisional license program, each provisional licensee must appear before at least one member of the commission for an oral exit interview in order to demonstrate proficiency related to the duties of a funeral director and/or embalmer. Any person not recommended for licensure must undergo further exit interviews and extensions until recommended for licensure.

(k) Before a provisional licensee is issued an embalmer's license, the provisional licensee must take and pass the National Board Examination with at least a grade of 75% on both portions of the test. Before a provisional licensee is issued a funeral director's license, the provisional licensee must take and pass the State Board Examination with at least a grade of 75%. Both tests are administered by the International Conference of Funeral Service Examining Boards, Inc.

(l) Before a provisional licensee is issued a regular license, a provisional licensee must take and pass the Texas State Mortuary Law Exam with at least a grade of 75%. The test is administered by the commission.

(m) If a provisional licensee leaves the employment of a funeral director or embalmer, the funeral director or embalmer must file an affidavit as described in Texas Occupations Code, Section 651.304(d) within fifteen (15) days of employment termination.

(n) A student enrolled in an accredited mortuary college must have the college forward a letter of enrollment to the commission prior to entering the provisional program.

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 February 9, 2004.

TRD-200400816
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: February 29, 2004
Proposal publication date: September 12, 2003
For further information, please call: (512) 936-6552



22 TAC §203.30

The Texas Funeral Service Commission (commission) adopts amendments to Title 22, Texas Administrative Code, Chapter 203, §203.30 (relating to Continuing Education). Notice of the proposed amendment was published in the September 12, 2003 issue of the *Texas Register* (28 TexReg 7936). The amended section is adopted without changes to the proposed text and will not be republished.

The amendments to §203.30 are adopted because of the necessity to clarify that newly licensed individuals by examination whose renewal dates are more than 12 months from original licensure will be required to obtain the 3 mandatory continuing education courses.

The commission received no comments on the proposed amendments to §203.30.

The amendments are 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 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 February 9, 2004.

TRD-200400813
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: February 29, 2004
Proposal publication date: September 12, 2003
For further information, please call: (512) 936-6552



22 TAC §203.34

The Texas Funeral Service Commission (commission) adopts a new rule at Title 22, Texas Administrative Code, Chapter 203, Section 203.34 (relating to reinstatement of License).

Notice of the proposed new rule was published in the September 12, 2003 issue of *Texas Register* (28 TexReg 7938). The new section is adopted without change to the proposed text.

The new rule is adopted in order to set forth the reinstatement requirements for those individuals whose license has been expired for more than one (1) year. Requirements include: examination; payment of applicable fees; including all back renewal fees and penalty fees as determined by the commission; and mandatory continuing education on ethics, law updates, and vital statistics.

The commission received no comments on the proposed new section.

The new section 203.34 is adopted under Texas Occupations Code, Section 651.152. The commission interprets section 651.152 as authorizing it to adopt rules as necessary to administer chapter 651.

No other statutes, articles, or codes are affected by the new 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 February 9, 2004.

TRD-200400814
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: February 29, 2004
Proposal publication date: September 12, 2003
For further information, please call: (512) 936-6552



CHAPTER 205. REGISTRATION AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §205.1, §205.2

The Texas Funeral Service Commission (commission) adopts amendments to Title 22, Texas Administrative Code, Chapter 205, §205.1 (relating to Registration of Cemeteries and Crematories) and §205.2 (relating to Fees for Registration of Cemeteries and Crematories).

Notice of the proposed amendments was published in the September 12, 2003 issue of the *Texas Register* (28 TexReg 7939). The amended sections are adopted without changes to the proposed text and will not be republished.

The amendments to §§205.1 and 205.2 are adopted because of the necessity to delete all references to crematory registration because, under law, crematories will not be required to be licensed by the commission.

The commission received no comments on the proposed amendments to §§205.1 and 205.2.

The amendments are 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 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 February 9, 2004.

TRD-200400811
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: February 29, 2004
Proposal publication date: September 12, 2003
For further information, please call: (512) 936-6552



22 TAC §205.3

The Texas Funeral Service Commission (commission) adopts a new rule at Title 22, Texas Administrative Code, Chapter 205, Section 205.3 (relating to Fees for Licensing of Crematory Establishment).

Notice of the proposed new rule was published in the September 12, 2003 issue of the *Texas Register* (28 TexReg 7940). The new section is adopted without changes to the proposed text.

The new rule is adopted to set forth license fee requirements for crematory establishments, including determination of fee, posting of fee, when the fee is payable, and late penalty fee.

The commission received no comments on the proposed new section.

The new section 205.3 is adopted under Texas Occupations Code, Section 651.152. The commission interprets section 651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the new 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 February 9, 2004.

TRD-200400815
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: February 29, 2004
Proposal publication date: September 12, 2003
For further information, please call: (512) 936-6552



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The Commissioner of Insurance adopts an amendment to §9.1 which concerns the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual). The amended section is adopted with changes to the proposed text and to the items adopted by reference as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9709).

The adopted amendment to §9.1 updates the date of the amended Basic Manual. The effective date of the section as published in the proposal was January 1, 2004; the effective date of the section has been changed to April 1, 2004. The amendments to the Basic Manual which the amended section adopts by reference were considered at the rulemaking phase of the 2002 Texas Title Insurance Biennial Hearing. Adopting new rules and forms and modifying or replacing currently existing rules and forms in the Basic Manual facilitate the administration and regulation of title insurance in this state. The adopted amendments to the Basic Manual will clarify and standardize the rules and forms regulating title insurance. The adopted amendments to the Basic Manual are identified by item number and result from consideration at the 2002 Texas Title Insurance Biennial Hearing, Rulemaking Phase, Docket Number 2537, (rulemaking hearing), held on September 24, 2003. Of the remaining Agenda Items, Items 2002-21, 2002-22, 2002-23, 2002-26, 2002-27, 2002-28, 2002-29, 2002-30, and 2002-31 were withdrawn at the rulemaking hearing by their respective submitters, and Items 2002-3, 2002-4, 2002-5, 2002-6, 2002-7, 2002-18, 2002-19, and 2002-25 were not adopted, which decision was set forth in a separate Commissioner's Order. The department has made clarification changes and typographical corrections to the items adopted by reference, and based on comments, the department has changed some of the Agenda Items, all as more specifically described herein. Agenda Items 2002-8, 2002-12, and 2002-14 have been changed to reflect grammatical changes that are in conformity with forms used on a national basis, thus promoting uniformity in endorsements relating to access, non-imputation, and contiguity. Agenda Item 2002-24 has been changed to require annual reporting of directly issued policies and to describe more specifically the identifying numbers referenced therein. The later transition period in Agenda Item 2002-33 has been changed to July 1, 2004. Agenda Item 2002-37 has been changed to delete the words "seminar" and "lecture" from the prohibitions in paragraph two as these are more in line with legal educational activities which are allowed, to delete paragraph six regarding an allowance of de minimis expenditures, and to add clarifying language to paragraph seven (now numbered six) that reflects, among other things, a consistent reference to a title insurance transaction(s).

The items that are the subject of this adoption are as follows: Ten items relate to new endorsements and their corresponding

procedural rules. The purpose of these endorsements is to facilitate commercial transactions regarding insurance relating to access, contiguity, restrictions, encroachments, minerals, and provide coverage when additional insureds are added in an estate planning context or when new investors acquire an interest in an existing entity. This reflects a nationwide trend regarding uniformity of these types of endorsements. A brief description of each item follows its listing:

Item 2002-8 - Adoption of a new Access Endorsement (Form T-23). This endorsement would apply only to commercial transactions and would insure specific access to and from a designated public street. Grammatical changes have been made to this form that are in conformity with forms used on a national basis.

Item 2002-9 - Adoption of a new procedural rule (P-54) for the newly adopted Access Endorsement. This procedural rule would authorize the use of the endorsement described in Item 2002-8.

Item 2002-10 - Adoption of a new Restrictions, Encroachments, Minerals Endorsement- Owner Policy (Form T-19.1). This endorsement provides insurance to owners in commercial transactions relating to restrictions, encroachments, and minerals, and is the equivalent of the recently adopted Form T-19 for mortgage policies. This endorsement provides coverage for losses arising out of building setback line violations and other restrictions which have established easements, provided for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant, or provided a right of reentry, possibility of reverter or right of forfeiture because of violations of enforceable covenants, conditions or restrictions. Also covered is damage to existing buildings located or encroaching upon any portion of the land subject to any easement excepted in Schedule B that results from the future exercise of any right existing on the date of the policy to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B and from a final court order or judgment requiring removal from the land adjoining the insured land of any encroachment, other than fences, landscaping or driveways, excepted in Schedule B.

Item 2002-11 - Adoption of an amendment to procedural rule P-50 for the newly adopted Restrictions, Encroachments, Minerals Endorsement- Owner Policy. This amendment to procedural rule P-50 authorizes the use of the newly adopted endorsement described in Item 2002-10 in its application to owner policies.

Item 2002-12 - Adoption of a new Non-Imputation Endorsement (Form T-24). This endorsement applies only to commercial transactions and would be issued when new investors acquire an interest in an existing entity or in an entity in which a prior party, such as an investor, remains a participant. Grammatical changes have been made to this form that are in conformity with forms used on a national basis.

Item 2002-13 - Adoption of a new procedural rule (P-55) for the newly adopted Non-Imputation Endorsement. This procedural rule authorizes the use of the endorsement described in Item 2002-12.

Item 2002-14 - Adoption of a new Contiguity Endorsement (Form T-25). This endorsement applies only to commercial transactions and insures that multiple tracts adjoin each other, subject to underwriting requirements. Grammatical changes have been made to this form that are in conformity with forms used on a national basis.

Item 2002-15 - Adoption of a new procedural rule (P-56) for the newly adopted Contiguity Endorsement. This procedural rule authorizes the use of the endorsement described in Item 2002-14.

Item 2002-16 - Adoption of a new Additional Insured Endorsement (Form T-26). This endorsement applies to either residential or commercial transactions and is issued to name particular parties as additional insureds in connection with estate planning or transfers to family-owned entities.

Item 2002-17 - Adoption of a new procedural rule (P-57) for the newly adopted Additional Insured Endorsement. This procedural rule authorizes the use of the endorsement described in Item 2002-16.

Six items provide clean up language in certain rules and forms, conform language to new statutory requirements, and update statutory references as detailed herein:

Item 2002-1 - Adoption of an amendment to the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R) and Addendum (T-2R Addendum). This amendment clarifies that additional matters excepted to in the Addendum are not affected by the express insurance provided in Schedule B and adds a reference to Form T-39, Balloon Mortgage Endorsement adopted in a previous hearing. It also adds language to permit subparagraphs of endorsement forms T-17 (Planned Unit Development) and T-19 (Restrictions, Encroachments, and Minerals Endorsement) to be deleted in Schedule A as provided in the procedural rules for those endorsements.

Item 2002-2 - Adoption of an amendment to the Tax Deletion Endorsement Form T-30 to conform the tax assessment language to the current mortgagee policy of title insurance.

Item 2002-20 - Adoption of an amendment to the Residential Real Property Affidavit Form T-47 to allow the affiant to specify what changes have been made to the property and to delete the requirement that a copy of the survey be attached to the affidavit.

Item 2002-34 - Adoption of an amendment to the Administrative Rules in Section VI of the Basic Manual to update statutory references, conform current practices concerning notification of ownership change of a corporate title agent, and correct a reference regarding direct operations.

Item 2002-35 - Adoption of an amendment to Form T-37, Immediately Available Funds Procedure Agreement to update the form consistent with changes to Article 9 of the Uniform Commercial Code (Chapter 9 of the Texas Business and Commerce Code).

Item 2002-36 - Repeal of Procedural Rule P-33 which has expired by its own terms. Four items reinstate reporting requirements for directly issued policies, clarify procedures regarding overcharges and institute internal controls related to title agents' reporting of defalcations, change and modernize certain requirements for continuing education, and establish a new rule regarding rebating and discounts, all as detailed herein.

Item 2002-24 - Re-adoption of a procedural rule concerning the reporting to the department of all directly issued policies of title insurance. This adopted rule, newly numbered P-58, will aid the department's auditing and enforcement of rules regarding payment of services rendered by title companies, agents, and direct operations. Changes have been made to this rule to require annual reporting of directly issued policies and to describe more specifically the identifying numbers referenced therein.

Item 2002-32 - Adoption of an amendment to the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers. This amendment clarifies specific areas and procedures regarding overcharges and markups as well as minimum escrow accounting procedures and internal controls related to title agents' reporting of defalcations. The amendment also conforms number 21 of the standards with Procedural Rule P-27.

Item 2002-33 - Adoption of an amendment to Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers. This amendment changes and modernizes certain requirements for continuing education, increases the number of continuing education requirements by two hours but allows a later date for a transition period, which has been changed to July 1, 2004, and updates a statutory reference in this procedural rule.

Item 2002-37 - Adoption of a new Procedural Rule P-53 regarding prohibitions of rebates and discounts, specifying parameters of allowed activities, and placing restrictions on multi-state transactions which include Texas land. This amendment will assist in implementing Insurance Code Article 9.30 regarding rebates and discounts, and balances developing normal business relationships while preserving the regulatory provisions that materially advance the state's interest in the prohibition of rebates addressed by Article 9.30. Changes have been made to this rule to delete the words "seminar" and "lecture" from the prohibitions in paragraph two as these are more in line with legal educational activities which are allowed, to delete paragraph six regarding an allowance of de minimis expenditures, and to add clarifying language to paragraph seven (now numbered six) that reflects, among other things, a consistent reference to a title insurance transaction(s).

The department has filed a copy of each of the adopted items with the Secretary of State's Texas Register section. Persons desiring copies of the adopted items can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Sylvia Gutierrez at 512/463-6327.

Comment: Several commenters either supported or had no objection to the various new endorsements and corresponding procedural rules that are the subjects of Agenda Items 2002-8 through 2002-17. Commenters supported these items as clarifying and standardizing the rules and forms regulating title insurance as well as facilitating the administration and regulation of title insurance in this state. One commenter submitted grammatical changes to the endorsement forms relating to access, non-imputation, and contiguity, stating that the changes are in conformity with recently adopted national forms and recommending that the changes be incorporated in Agenda Items 2002-8, 2002-12, and 2002-14. One commenter believed that some of the provisions of these new forms should be in the policy of title insurance instead of as a separate endorsement, while another commenter stated that some of the provisions are not needed in the regular policy of title insurance because they may not be needed in every case.

Agency Response: The department agrees with the stated benefits of the new endorsements and procedural rules and agrees with a commenter's statement that some of the endorsements may not be needed in every instance to justify inclusion in the

regular policy of title insurance; however, it is noted that experience with these endorsements will help the department determine whether the frequent use of these endorsements warrants their incorporation into standard policies. The department has also made the grammatical changes to Agenda Items 2002-8, 2002-12, and 2002-14.

Comment: Some commenters supported Agenda Item 2002-20 as providing flexibility in the use of the affidavit concerning a prior survey.

Agency Response: The department agrees.

Comment: Several commenters supported Agenda Item 2002-24 regarding reporting on directly-issued policies as highlighting the use of these types of policies. The commenters also stated that access to statistical information will enable fair play and protection within the business environments. Other commenters contend that an agent will know if such a policy is being issued and that the rule is not necessary and fell away in the past due to its disuse. One commenter pointed out that the reference to "SBI" is outdated and should be changed and that the reference to the standard three digit county code should be more specifically described.

Agency Response: The department believes that it is beneficial to re-institute reporting of directly-issued policies to aid the department's auditing and enforcement of rules regarding payment of services rendered by title companies, agents, and direct operations. The department has changed the rule to update the reference to the department and to describe more specifically the identifying numbers referenced therein. The department has also changed the reporting period to an annual basis as part of the Texas Title Insurance Statistical Plan for purposes of better compilation and tracking. Thus, the department believes that the rule is necessary and anticipates reporting compliance.

Comment: Several commenters stated support for the updating, clarifying, and streamlining of rules the subject of Agenda Items 2002-32, 2002-34, 2002-35 and 2002-36. One commenter noted concerns regarding immunity aspects of the new defalcation provisions of the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers. Another commenter wanted to add language to include a designated agent of a federally-insured lender to Form T-37, Immediately Available Funds Procedure Agreement.

Agency Response: The department notes the commenter's concerns regarding immunity and feels that specific safeguards surrounding notification have been built into the rule. The department will consider language regarding a designated agent of a federally-insured lender in future rulemaking proceedings that will provide the opportunity for all interested persons to comment.

Comment: Several commenters supported the efforts to modernize the continuing education requirements for agents contained in Agenda Item 2002-33, although with changes as suggested at the rulemaking hearing by some of the commenters. Specifically, some commenters felt that there should be a transition period regarding the implementation date for increasing the number of hours and that agents should be able to offer their own continuing education courses. The commenters also opposed a reduction in the number of self-study hours and requested the ability to extend the completion of continuing education hours during the late-filing period.

Agency Response: The department agrees with the later transition period, which has been changed to July 1, 2004, but disagrees on allowing agents to offer their own courses, retaining the same number of self-study hours, and allowing completion of courses during the late filing period. The department believes that the suggested changes will not aid in an efficient continuing education process and may prevent or impair full utilization by agents of the benefits of the courses.

Comment: At the rulemaking hearing, Agenda Item 2002-37, regarding the prohibition of rebates and discounts, specifying parameters of allowed activities, and placing restrictions on multi-state transactions which include Texas land, generated many comments and suggested changes. Some commenters suggested deleting the provisions allowing certain payments as long as fair market value was paid as a potential loophole in the rule. Other commenters suggested deleting the provisions regarding a presumption of illegality of certain activities as being an improper attempt to curtail commercial free speech. The department assimilated the various suggestions and republished a version of Agenda Item 2002-37 that sought to balance developing normal business relationships while preserving the regulatory provisions that materially advance the state's interest in the prohibition of rebates addressed by Article 9.30. This resulted in a subsequent hearing upon request. Many commenters either completely supported the republished version of the newly numbered procedural rule P-53 as providing much needed assistance to independent agents across Texas or supported the concept and purpose of the rule with suggested changes. Except for comments on the multi-state transaction and penalty provisions of the rule, there was an overall consensus that P-53 is a rule that the industry needs and that Texas consumers deserve. One commenter noted that there is a need to stop subsidizing other businesses. Some commenters suggested clarifying certain provisions of the rule or deleting them entirely such as paragraph six concerning the one unsolicited \$50 or less item within any one-year period. One commenter stated that adopting procedural rule P-53, with the deletion of paragraph six, will lower the barrier to home ownership and lower closing costs for all homebuyers in the state of Texas. Specifically regarding paragraph six, some commenters pointed to many practical problems associated with the language of that paragraph and suggested deletion of the paragraph in favor of a common sense policy to direct enforcement actions at substantively significant violations rather than matters of de minimis importance. Another commenter suggested adding grammatical changes and another exception in paragraph six so the rule does not prohibit an authorized person from purchasing advertising in any media under bona fide advertising agreements, including media owned, controlled, or held by a producer or affiliate, with attendant parameters regarding fair market value. Other commenters specified the questions that may arise in interpreting the subsidization of producers and in defining certain prohibited practices which, depending on the item involved and to whom it is furnished, may not be considered a rebate.

Agency Response: The department appreciates the overall statements of support from a broad cross-section of commenters regarding the major provisions of the rule that deal with the prohibition of paying or subsidizing advertising or promotional activities of producers. The department agrees with many commenters' concerns about paragraph six regarding an allowance of de minimis expenditures and has changed the rule by deleting paragraph six and renumbering the remaining paragraphs. The department notes that paragraph six was

added based on comments from the rulemaking hearing that de minimis expenditures, such as holiday activities, should not be prohibited. This resulted in many comments questioning its application and suggesting that title agents and title companies were already calculating exponentially the amount of money they would be able to give to realtors and other producers. While the department has accepted the suggestion to delete paragraph six in favor of a common sense policy to direct enforcement actions at substantively significant violations rather than matters of de minimis importance, the department notes that the reaction of title agents and title companies is illustrative of the pervasiveness of rebating activity and the necessity of clear prohibitions of such activity with little room for exceptions. Thus, the department urges title agents and title companies to comply with the rule and not attempt to circumvent it. In this vein, the department must reject a commenter's grammatical changes and suggestion to insert a paragraph stating an exception for purchasing advertising in any media under bona fide advertising agreements, including media owned, controlled, or held by a producer or affiliate, with attendant parameters regarding fair market value. The department notes that title companies and title agents may certainly advertise their businesses, but as with the de minimis exception, the department will not attempt to define the parameters of such an exception in the rule but instead will direct its enforcement resources to scrutinizing the essence of the advertising activity to determine compliance with the stated intent and purpose of the rule. Clearly, paying a producer an inflated price for advertising, over and above the normal market rate, "subsidizes the business, products, services or promotional activities of a Producer or Affiliate of a Producer." Further, the department believes that the definitions in the rule clarify the grammatical concerns of the commenter. Regarding the examples given by a commenter concerning the furnishing of computer hardware or software to an attorney who is not licensed as an escrow officer but may be doing business regularly with a designated authorized person and the reproduction of recorded public documents for education purposes, the department notes that the Texas Title Insurance Act specifies the allowable practices of an attorney, and the reproduction of a recorded document for educational purposes should not trigger a violation of the rule; however, as noted, the department will direct its enforcement resources to scrutinizing the essence of the activity to determine compliance with the stated intent and purpose of the rule.

Comment: One commenter requested clarification on the auditable records provision of the rule, now numbered paragraph seven, concerning the type of documentation required. The commenter also stated that given the language in paragraphs one and two, paragraph three seems redundant. Further, the commenter requested a new provision be added to the rule to evidence the intent of the department not to disturb the rights of producers to own and operate licensed title agencies or authorized underwriters.

Agency Response: The department understands the commenter's concerns regarding auditable records and would note that the records of expenditures would be indicative of whether there is compliance with the rule, for example, to the extent that a particular expenditure may present evidence of payment or subsidization of advertising or promotional materials or activities of a producer. The department disagrees that paragraph three is redundant since it relates to any advertising medium which is an additional distinct reference from paragraphs one and two. The department also disagrees with the requested new

provision as the department believes that the definitions in paragraph one of the rule are sufficiently clear that a person is not a producer if the person is an authorized person or an affiliate of authorized person(s).

Comment: Additionally in regard to Agenda Item 2002-37, some commenters focused on the multi-state transaction and penalty provisions of the rule and raised objections that the multi-state transaction provision is void for vagueness, beyond the commissioner's jurisdiction to promulgate, and violates the full faith and credit clause of the United States Constitution and that accordingly, the penalty provision may be seen as excessive. One commenter expressed concern that the rule would create a new minimum floor for rates in other states if there also is any connection to Texas land, and asserted that this will increase costs for commercial businesses who operate in more than one state. Some commenters found ambiguity in the meanings of "transaction(s)" and "normal and customary" in the multi-state transaction provision of the rule and gave various hypothetical situations. Commenters also concluded that this provision of the rule could violate the constitutional principle of equal protection of the law and could also interfere with interstate commerce. One commenter stated that the multi-state issue is a commercial issue and not a homeowner issue. Another commenter pointed out that on commercial transactions, people are not paying the promulgated rate because part of the Texas premium is being sent to other states. One commenter responded to the various constitutional, jurisdictional, and enforcement issues by noting that the multi-state provision of the rule gives fair notice and is consistent with the legislative intent that title insurance be completely regulated. The commenter also recognized that the multi-state provision is not regulating what title companies can do in other states but is indeed regulating the Texas title insurance premium from being used to fund a title insurance transaction outside the state of Texas. The commenter further noted that "normal and customary" is an evidentiary standard and thus would be used to look at the market as a whole and not on a company-specific basis. Other commenters noted the penalty provision of the rule is beneficial because it clarifies the consequences of not following the rule and can be used as self-regulation by the title industry as well as an educational tool.

Agency Response: The department agrees with the commenter that the multi-state provision of the rule gives fair notice and is consistent with the legislative intent that title insurance be completely regulated. Indeed, as set forth in one of the cases cited by commenters stating that the multi-state provision is void for vagueness, in determining whether civil or regulatory statutes are unconstitutionally vague, no more than a reasonable degree of certainty is required. Nor is there a constitutional requirement that a statute define all words or terms used, and courts recognize the myriad of factual situations that may arise and allow statutes to be worded with flexibility, provided the public has fair notice of what is required or prohibited. Further, the case noted that a statute is not automatically void for vagueness simply because it is difficult to determine whether certain marginal acts fall within its language. The purpose of the multi-state provision of the rule is to prohibit a form of rebating in which as part of the multi-state deal, the Texas title insurance premium is used to fund a portion of an out-of-state premium by virtue of a discount or other special reduction in order to obtain the title insurance business. Whether such rebating occurs as part of one transaction or more, enforcement will focus on the essence of the deal to achieve the intent and purpose of the prohibition, all for the

benefit of Texas consumers and Texas title insurance rate stability. The multi-state provision of the rule is not intended to regulate title insurance business in another state but rather to ensure that Texas title agents and title companies involved in multi-state transactions conduct such title insurance transactions governed by the Texas Insurance Code in compliance with the Texas Insurance Code. In response to comments, the department has added clarifying language to paragraph seven (now numbered six) that reflects, among other things, a consistent reference to a title insurance transaction(s).

For: American College of Real Estate Lawyers; San Augustine County Abstract Company; Professional Title Services, Inc.; A.A.A. Abstract Companies, Inc.; Pittsburg Title Company; legislator; independent title agents; lawyers.

For with changes: Office of Public Insurance Counsel; Sierra Title Company, Inc., Metro Title Company, Inc., d/b/a Sierra Title of Cameron & Willacy Counties, Sierra Title of North Texas, Inc., Sierra Title of Corpus Christi, L.L.C., and Sierra Title of Hidalgo County, Inc. (Sierra Group); Texas Association of Realtors; Chicago Title Insurance Company; Fidelity National Title Insurance Company/Alamo Title Insurance and Chicago Title Insurance Company/Security Union Title Insurance Company/Ticor Title Insurance Company; First Collateral Services, Inc.; Allegiance Title Company, a wholly-owned subsidiary of First American Title Company; Texas Association of Abstractors and Title Agents; Print and Imaging Association of Mid-America and Print Image International Association; First American Title Insurance Company; individual consumers.

Against: Calpine Corporation.

Against with changes: Stewart Title Guaranty Company; Texas Land Title Association; Independent Metropolitan Title Insurance Agents of Texas; Ticor Title Agency (New Braunfels); Rattikin Title Company (Fort Worth); Texas Society of Professional Surveyors; West Texas Title Company (Lubbock); real estate lawyers; independent title agents.

The amended section is adopted pursuant to Insurance Code Articles 9.07, 9.21, 9.30, and §36.001. Article 9.07 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Article 9.30 prohibits the giving, allowance, acceptance or receipt of a rebate, discount, commission, or other thing of value directly or indirectly for solicitation or referral of title insurance business. Section 36.001 of the Insurance Code 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.

§9.1. *Basic Manual Of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.*

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas as amended effective April 1, 2004. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

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 February 5, 2004.

TRD-200400740

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 1, 2004

Proposal publication date: November 7, 2003

For further information, please call: (512) 463-6327

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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 §41.6

The Teacher Retirement System of Texas (TRS) adopts new §41.6 concerning the required contribution from public schools in the Texas Public School Employees Group Benefits Program known as TRS-Care. The new section is adopted with one non-substantive change to the text as published in the August 29, 2003 issue of the *Texas Register* (28 TexReg 7165).

The new section implements the new requirement set out under House Bill 3459, 78th Legislature, Regular Session, that public schools contribute a percentage of the salaries of active employees to the TRS-Care program. One technical change to subsection (a) of the text as proposed is adopted in order to correct the reference to the complete name of the TRS-Care fund.

The General Appropriations Act sets the percentage that public schools must contribute to the TRS-Care fund at 0.4% of the salaries of active employees for the 2004-2005 biennium. The new section implements that mandate and requires public schools to make these contributions in the same way that they make their retirement contributions.

No written comments on the proposal were received.

The new section is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for, among other things, the transaction of business of the board. The new section is also adopted under Insurance Code, Chapter 1575, §1575.052, which authorizes TRS, as trustee, to adopt rules reasonably necessary to implement the TRS-Care program, including procedures for contributions and deductions. The new section is also adopted under House Bill 3459, 78th Legislature, Regular Session, Section 54 and House Bill 1, 78th Legislature, Regular Session.

§41.6. *Required Contributions from Public Schools.*

(a) On a monthly basis, each public school shall contribute 0.4% of the salary of each active employee to TRS for deposit in the Retired School Employees Group Insurance Fund. The public school shall make the contribution at the same time and in the same manner in which the public school delivers retirement contributions. Any waiver granted to a public school under Government Code §825.408(a) does not apply to the contribution under this section.

(b) For purposes of this section, "active employee" means a contributing member of TRS who is employed by a public school and is not entitled to coverage under a plan provided under Chapter 1551 or Chapter 1601, Insurance Code.

(c) For purposes of this section, "public school" means a school district; another educational district whose employees are TRS members; a regional education service center established under Chapter 8, Education Code; or an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(d) TRS may take corrective action against a public school that fails to make the required contribution in accordance with the requirements of this section, including but not limited to placement of a warrant hold with the Comptroller of Public Accounts.

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 February 4, 2004.

TRD-200400731
Ronnie Jung
Interim Executive Director
Teacher Retirement System of Texas
Effective date: February 29, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 542-6115



SUBCHAPTER B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §§41.15, 41.16, 41.18 - 41.20

The Teacher Retirement System of Texas (TRS) adopts amendments to rules §41.15 relating to requirements to bid, §41.16 relating to coverage offered, §41.18 relating to eligibility for the long-term care program, §41.19 concerning initial enrollment periods, and §41.20 relating to effective date of coverage in the Long-Term Care Insurance Program now recodified in chapters 1576 and 1577, Texas Insurance Code. The amendments are adopted without changes to the text as published in the October 24, 2003 issue of the *Texas Register* (28 TexReg 9200) and therefore will not be republished.

The amendments to §§41.15, 41.16, 41.18, and 41.19 provide the correct references to the recodified Insurance Code provisions that establish the program and clarify initial enrollment periods and the effective date of coverage for eligible individuals. The former articles 3.50-4A were recodified as chapters 1576 and 1577, respectively, effective June 1, 2003. The amendments also add a subsection (c) to §41.18 that clarifies which applicants are subject to underwriting approval. §41.19 is amended to clarify the initial enrollment periods for persons eligible to participate

in the program and §41.20 addresses the effective date of coverage for all of the categories of potentially eligible individuals.

No comments on the proposals were received.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for, among other things, the transaction of business of the board. The amendments are also adopted under Insurance Code, Chapter 1576, §1576.006 and Insurance Code, Chapter 1577, §1577.002 which authorize TRS to adopt rules to implement the chapters.

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 February 4, 2004.

TRD-200400733
Ronnie Jung
Interim Executive Director
Teacher Retirement System of Texas
Effective date: February 24, 2004
Proposal publication date: October 24, 2003
For further information, please call: (512) 542-2115



SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS- ACTIVECARE)

34 TAC §41.37

The Teacher Retirement System of Texas (TRS) adopts amendments to §41.37 concerning the effective date of coverage in the Texas School Employees Uniform Group Health Coverage Program ("TRS-ActiveCare"). The amendments are adopted without changes to the text as published in the September 5, 2003 issue of the *Texas Register* (28 TexReg 7637) and therefore will not be republished.

The amendments to §41.37 allow public school employees whose employers are participating in TRS-ActiveCare additional flexibility in determining the starting date of their TRS-ActiveCare coverage. Employees who are subject to a new 90-day waiting period for TRS membership and for supplemental compensation may delay the effective date of their TRS-ActiveCare coverage until the first day of the month in which the employee completes the waiting period and is able to receive supplemental compensation..

No comments on the proposal were received.

The amendments are adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for, among other things, the administration of the funds of the retirement system and the transaction of business of the board. The amendments are also adopted under Insurance Code, Chapter 1579, §1579.052, Insurance Code, which authorizes TRS, as trustee, to adopt rules relating to the program as considered necessary.

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 February 4, 2004.

TRD-200400732

Ronnie Jung

Interim Executive Director

Teacher Retirement System of Texas

Effective date: February 29, 2004

Proposal publication date: September 5, 2003

For further information, please call: (512) 542-6115



34 TAC §41.53

The Teacher Retirement System of Texas (TRS) adopts new §41.53 concerning the waiting period for supplemental compensation. The new section is adopted without changes to the text as published in the August 29, 2003 issue of the *Texas Register* (28 TexReg 7165) and therefore, will not be republished.

The new section implements new legislation requiring a 90-day waiting period for the supplemental compensation offered to eligible employees of school districts, participating charter schools, other educational districts whose employees are members of TRS, and regional educational services who are hired on or after September 1, 2003, when the employee is not already a TRS member on the date of employment. The new section provides notice to employees affected by the waiting period as to how that waiting period is calculated for supplemental compensation. The new section also requires an entity to correct an erroneous report previously filed with TRS regarding supplemental compensation and in addition, requires entities and individuals to provide records that TRS determines are necessary to administer the section.

No comments on the proposal were received.

The new section is adopted under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for, among other things, the transaction of business of the board. The new rule is also adopted under section 1580.002, Insurance Code, which authorizes TRS, as trustee, to adopt rules to implement the supplemental compensation program.

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 February 4, 2004.

TRD-200400730

Ronnie Jung

Interim Executive Director

Teacher Retirement System of Texas

Effective date: February 29, 2004

Proposal publication date: August 29, 2003

For further information, please call: (512) 542-6115



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 1. PRESUMPTIVE MEDICAID FOR PREGNANT WOMEN PROGRAM SUBCHAPTER A. ELIGIBILITY REQUIREMENTS

40 TAC §1.1

The Texas Department of Human Services (DHS) adopts an amendment to §1.1 without changes to the proposed text published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10900).

Justification for the amendment is to correct a reference within the rule. The reference to applicable eligibility requirements in §1.1(b) needed to be updated because certain rules in DHS's Chapter 4 were moved to Chapter 2 as part of an agency initiative to rewrite Medicaid rules in plain English. The reference is corrected to state that pregnant applicants must meet all applicable eligibility requirements for pregnant women as specified in Chapter 2 of this title (relating to Medically Needy and Children and Pregnant Women Programs) and apply at qualified provider sites.

DHS received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

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 February 3, 2004.

TRD-200400663

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: February 23, 2004

Proposal publication date: December 5, 2003

For further information, please call: (512) 438-3734



CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Texas Department of Human Services (DHS) adopts the repeal of Subchapter M, Home-Delivered Meals, consisting of §§48.9502, 48.9504, 48.9506, 48.9508, 48.9510, 48.9512,

48.9514, 48.9516, 48.9518, 48.9520, 48.9522, 48.9524, 48.9526, 48.9528, 48.9530, 48.9532, 48.9534, 48.9536, 48.9538, 48.9540, 48.9542, 48.9544, and 48.9546; and Subchapter N, Support Documents, consisting of §48.9806, without changes to the proposal published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10110).

The repeals were undertaken to remove the rules concerning the Home-Delivered Meals (HDM) Program from Chapter 48 and place them in DHS's new Chapter 55. DHS's Long Term Care Program determined that placing HDM rules in their own chapter will make program requirements easier for provider agencies to locate and use.

DHS received no comments regarding adoption of the repeals.

SUBCHAPTER M. HOME-DELIVERED MEALS

40 TAC §§48.9502, 48.9504, 48.9506, 48.9508, 48.9510, 48.9512, 48.9514, 48.9516, 48.9518, 48.9520, 48.9522, 48.9524, 48.9526, 48.9528, 48.9530, 48.9532, 48.9534, 48.9536, 48.9538, 48.9540, 48.9542, 48.9544, 48.9546

The repeals are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

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 February 3, 2004.

TRD-200400681

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: March 1, 2004

Proposal publication date: November 14, 2003

For further information, please call: (512) 438-3734



SUBCHAPTER N. SUPPORT DOCUMENTS

40 TAC §48.9806

The repeal is adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal affects the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

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 February 3, 2004.

TRD-200400680

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: March 1, 2004

Proposal publication date: November 14, 2003

For further information, please call: (512) 438-3734



CHAPTER 55. CONTRACTING TO PROVIDE HOME-DELIVERED MEALS

40 TAC §§55.1, 55.3, 55.5, 55.7, 55.9, 55.11, 55.13, 55.15, 55.17, 55.19, 55.21, 55.23, 55.25, 55.27, 55.29, 55.31, 55.33, 55.35, 55.37, 55.39, 55.41, 55.43, 55.45

The Texas Department of Human Services (DHS) adopts new Chapter 55, Contracting to Provide Home-Delivered Meals, consisting of §§55.1, 55.3, 55.5, 55.7, 55.9, 55.11, 55.13, 55.15, 55.17, 55.19, 55.21, 55.23, 55.25, 55.27, 55.29, 55.31, 55.33, 55.35, 55.37, 55.39, 55.41, 55.43, and 55.45, without changes to the proposed text published in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10112).

The new sections were undertaken to locate the rules concerning the Home-Delivered Meals (HDM) Program in DHS's new Chapter 55. DHS's Long Term Care Program determined that placing HDM rules in their own chapter will make program requirements easier for provider agencies to locate and use. The proposal also updates terminology in order to be consistent with other community care programs. In addition, adding the reimbursement methodology rule governing the HDM Program to new Chapter 55 places all relevant rules in the same location.

DHS received no comments regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001 - 22.040 and §§32.001 - 32.067.

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 February 3, 2004.

TRD-200400679

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: March 1, 2004

Proposal publication date: November 14, 2003

For further information, please call: (512) 438-3734



PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 115. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

The Texas Rehabilitation Commission (TRC) adopts a change to Title 40, Chapter 115, concerning memoranda of understanding with other state agencies. The change repeals and replaces §115.8 to update a memorandum of understanding dealing with the provision of services needed to prepare students enrolled in special education to transition from public school to adult life, which was first adopted in 1990. The repeal and new rule are adopted without changes to the proposed text as published in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9490) and will not be republished.

Article IX, Section 10.04 of the General Appropriations Act, 78th Legislature, Regular Session (2003), requires that the Texas Education Agency (TEA), the Texas Department of Mental Health and Mental Retardation (TDMHMR), and TRC, by a cooperative effort, develop and by rule adopt an MOU. The section specifies that the TEA, the TDMHMR, and the TRC may request other appropriate agencies to participate in the development of the MOU. Accordingly, the adopted MOU includes the participation of the following agencies: Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Department of Health, Texas Department of Housing and Community Affairs, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department of Protective and Regulatory Services, Texas Education Agency, Texas Higher Education Coordinating Board, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, Texas Workforce Commission, and Texas Youth Commission.

The adopted new MOU addresses respective roles and responsibilities of participating agencies in the sharing of information about, and coordination of services to, eligible students with disabilities receiving special education services. The new MOU clarifies and adds definitions and better addresses information sharing and agency participation, regional and local collaboration, cross-agency training, and dispute resolution. Other terms of the MOU provide for the MOU to be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the parties agree or at least every four years.

No comments were received regarding adoption of the rules.

40 TAC §115.8

The repeal is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources 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 February 9, 2004.

TRD-200400786

Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: February 29, 2004
Proposal publication date: October 31, 2003
For further information, please call: (512) 424-4050



40 TAC §115.8

The new section is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources 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 February 9, 2004.

TRD-200400787
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: February 29, 2004
Proposal publication date: October 31, 2003
For further information, please call: (512) 424-4050



CHAPTER 116. ADVISORY COMMITTEES/COUNCILS

40 TAC §116.5

The Texas Rehabilitation Commission (TRC) adopts the repeal of Title 40, Chapter 116, §116.5, concerning the Community Rehabilitation Programs Advisory Committee, without changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8303) and will not be republished.

The repeal is being adopted because the Committee is no longer necessary pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code §701 et seq., and it has been abolished in accordance with House Bill 2292, 78th Legislature.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources 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 February 9, 2004.

TRD-200400788

Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: February 29, 2004
Proposal publication date: September 26, 2003
For further information, please call: (512) 424-4050



40 TAC §116.8

The Texas Rehabilitation Commission (TRC) adopts the repeal of Title 40, Chapter 116, §116.8, concerning Comprehensive Rehabilitation Advisory Committee, without changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8303) and will not be republished.

The repeal is being adopted because the Committee has been abolished in accordance with House Bill 2292, 78th Legislature.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources 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 February 9, 2004.

TRD-200400789
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Effective date: February 29, 2004
Proposal publication date: September 26, 2003
For further information, please call: (512) 424-4050



TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §57.3, §57.42

The Automobile Theft Prevention Authority (ATPA) adopts amendments to §57.3 and §57.42 of Chapter 57, relating to the ATPA, without changes to the proposed text as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10902) and will not be republished.

The amendments update the zip code for the ATPA physical and mailing addresses that are listed in §57.3 and §57.42.

No comments were received concerning the proposed amendments.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties.

The following are the statutes, articles, or codes affected by the amendments: Article 4413(37), §6(a)

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 February 5, 2004.

TRD-200400761
Charles Caldwell
Grant Administrator
Automobile Theft Prevention Authority
Effective date: February 25, 2004
Proposal publication date: December 5, 2003
For further information, please call: (512) 374-5103



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF AMENDMENTS TO THE TEXAS ADDENDUM TO THE FIRE SUPPRESSION RATING SCHEDULE TO CHANGE THE STORAGE LOCATION OF THE FIRE SAFETY EDUCATION AND EXIT DRILL REPORTS.

The Commissioner adopts the proposal as noticed in the December 5, 2003 issue of the *Texas Register* (28 TexReg 10975) to the Texas Addendum to the Fire Suppression Rating Schedule which changes the storage location of the fire safety education and exit drill reports and grammatically changes one sentence for ease in readability.

The amendments to TX-C, Public Fire Safety Education, Section 2, Programs for public fire safety education, subsection b, Fire Safety in Schools, as set forth in Exhibit 1, change the storage location of the fire safety education and exit drill reports from the State Fire Marshal Office to the school district. For ease in readability, the amendments also grammatically change the sentence that pertains to the frequency of mandatory fire drills.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.33, 5.96 and 5.98.

The amendments as adopted by the Commissioner of Insurance are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference No. F-1103-24-I and are incorporated by reference into Commissioner's Order No. 04-0136.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to the Texas Addendum to the Fire Suppression Rating Schedule set forth in Exhibit 1 attached to this Order and incorporated into this Order by reference, be adopted and applicable to be effective on the 15th day after publication of the notification of the Commissioner's action in the *Texas Register*.

TRD-200400899
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 10, 2004

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2004 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0204-02-I, was filed on February 11, 2004.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2004 model vehicles.

A copy of the petition, including a 102-page exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0204-02-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on March 22, 2004 to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200400957
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 11, 2004

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 14, concerning Research Funding Programs. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200400933
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: February 10, 2004



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 17, concerning Campus Planning. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200400932
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: February 10, 2004



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 21, concerning Student Services. This review is in accordance with the requirements of the Texas Government Code, § 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200400931
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: February 10, 2004



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 22, concerning Grant & Scholarship Programs. This review is in accordance with the requirements of the Texas Government Code, § 2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200400930
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: February 10, 2004



Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 150 concerning Representation of Parties Before the Agency--Qualifications of Representatives. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

§150.1. Minimum Standards of Practice for an Attorney.

§150.2. Qualification and Authorization of Attorney to Practice Before the Commission.

§150.3. Representatives: Written Authorization Required.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist

must be received by 5:00 p.m. on March 22, 2004 and submitted to Linda Velásquez, Legal Services, Office of General Counsel, MS 4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609.

TRD-200400942
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: February 11, 2004



The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 165 concerning Rejected Risk: Injury Prevention Services. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

§165.1 Identification and Notification of Certain Policyholder Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort.

§165.2 Safety Consultation.

§165.3 Formulation and Components of Accident Prevention Plan.

§165.4 Request for Safety Consultation From the Division.

§165.5 Reimbursement of Division of Services Provided to Rejected Risk Employers.

§165.6 Follow-up Inspection of the Policyholders' Premises by the Division.

§165.7 Report of Follow-up Inspection.

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on March 22, 2004 and submitted to Linda Velásquez, Legal Services, Office of General Counsel, MS 4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1609.

TRD-200400941
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: February 11, 2004



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §311.5(c)

Type of License	1 Year Fee	2 Year Fee	3 Year Fee
Adoption Program Personnel	\$20		
Announcer	\$25		
Apprentice Jockey	\$55		
Assistant Farrier/Plater/Blacksmith	\$20		
Assistant Starter	\$20		
Assistant Trainer	\$75		
Assistant Trainer/Owner	\$75		
Association Assistant Management	\$35		
Association Management Personnel	\$50		
Association Officer/Director	\$75		
Association Other	\$50		
Association Staff	\$25		
Association Veterinarian	\$50		
Authorized Agent	\$10		
Chaplain	\$20		
Chaplain Assistant	\$20		
Exercise Rider	\$20		
Farrier/Plater/Blacksmith	\$55		
Groom/Hot Walker	\$20		
Jockey	\$75	\$150	\$225
Jockey Agent	\$75		
Kennel	\$50		
Kennel Helper	\$20		
Kennel Owner	\$75	\$150	\$225
Kennel Owner/Owner	\$75	\$150	\$225
Kennel Owner/Owner-Trainer	\$75	\$150	\$225
Kennel Owner/Trainer	\$75	\$150	\$225
Lead-Out	\$20		
Maintenance	\$20		
Medical Staff	\$25		
Miscellaneous	\$20		

Multiple Owner	\$25	\$50	\$75
Mutuel Clerk	\$25		
Mutuel Other	\$25		
Owner	\$75	\$150	\$225
Owner-Trainer	\$75	\$150	\$225
Pony Person	\$20		
Racing Industry Representative	\$75		
Racing Industry Staff	\$25		
Racing Official	\$25		
Security Officer	\$25		
Stable Foreman	\$25		
Tattooer	\$75		
Test Technician	\$20		
Tooth Floater	\$75		
Trainer	\$75	\$150	\$225
Training Facility Employee	\$25		
Training Facility General Manager	\$25		
Valet	\$20		
Vendor Concessionaire	\$75		
Vendor/Concessionaire Employee	\$25		
Veterinarian	\$75	\$150	\$225
Veterinarian Assistant	\$25		

Figure: 22 TAC §137.31(b)(2)

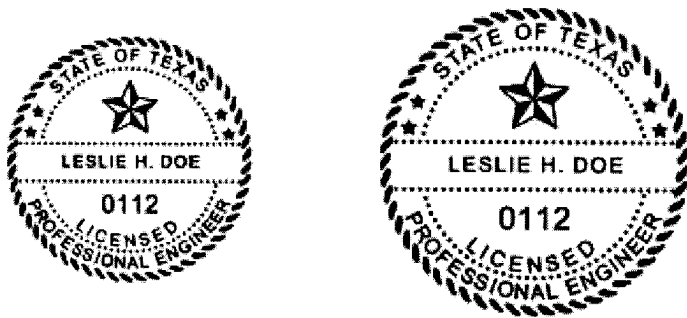


Figure: 22 TAC §139.35(b)

Classification	Violation	Citation	Suggested Sanctions
Engineering Misconduct			
	Gross negligence	§137.55(a), (b)	Revocation/\$3,000.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/\$3,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/\$3,000.00
	Felony Conviction with incarceration	§139.43(a)	Revocation/\$3,000.00
Licensing			
	Failure to return seal imprint and/or portrait	§§133.95(e), (f); 137.31(a)	Reprimand/\$500.00
	Fraud or deceit in obtaining a license	§§1001.452(a)(2), 1001.453	Revocation/\$3,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year probated suspension/\$1,500.00
	Enter into a business relationship which is in violation of §137.77 (Firm Compliance)	§137.51(d)	1 year probated suspension/\$1,000.00
Ethics Violations			
	Failure to report change of address or employment	§137.5	Reprimand/\$500.00
	Failure to respond to Board communications	§137.51(c)	6 month probated suspension/\$1,000.00
	Failure to engage in professional and business activities in a honest and ethical manner	§137.63(a)	2 year probated suspension/\$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent, deceitful, or misleading	§137.57(a), (b)	2 year suspension/\$2,500.00

	Conflict of interest	§137.57(c), (d)	2 year suspension/\$2,500.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year probated suspension/\$2,500.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year probated suspension/\$2,500.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year probated suspension/\$2,500.00
	Offer or practice engineering while license is expired or inactive	§§137.7(a), 137.13(g)	1 year probated suspension/\$500.00
	Failure to include "inactive" representation with title while in inactive status	§137.13(e)	Reprimand/\$500.00
	Failure to act as a faithful agent to their employers or clients	§137.61(a)	1 year probated suspension/\$1,500.00
	Reveal confidences and private information	§137.61(b), (c), (d)	Reprimand/\$1,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year probated suspension/\$1,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year probated suspension/\$1,500.00
	Aiding and abetting unlicensed practice or other assistance	§§137.63(b)(3), 137.63(c)(1)	3 year probated suspension/\$3,000.00
	Failure to report violations of others	§137.55(c)	Reprimand/\$1,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/\$1,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/\$1,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(4)	1 year probated suspension/\$1,500.00

	Competitive bidding with governmental entity	§137.53	Reprimand/\$1,500.00
	Expressing an opinion before a court or other public forum which is contrary to generally accepted scientific and engineering principals without fully disclosing the basis and rationale for such an opinion	§137.59(c)	2 year suspension/\$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2)	2 year suspension/\$2,500.00
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal			
	Failure to safeguard seal	§137.33(d)	Reprimand/\$1,000.00
	Failure to sign, seal, date work	§137.33(e),(f), (h)	Reprimand/\$500.00
	Alter work of another	§§137.33(i), 137.37(3)	1 year probated suspension/\$1,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand/\$1,000.00
	Practice or affix seal with expired or inactive license	§§137.13(g), 137.37(2)	1 year probated suspension/\$500.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation/\$3,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas; rubber stamp or computer-generated signature in lieu of actual signature	§137.31(e), (f)	1 year probated suspension/\$1,500.00
	Sealing work endangering the public	§137.37(1)	Revocation/\$3,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/\$500.00
	Improper use of standards	§137.33(c)	Reprimand/\$500.00

Figure: 22 TAC §139.35(c)

VIOLATION	CITATION	SUGGESTED SANCTION	
		First Occurrence	Subsequent Occurrences
Use of "Engineer" title	§§1001.004(c)(2)(B),(C); 1001.301(b)(1)	Voluntary compliance Notice to Cease and Desist	Injunctive/Criminal and \$1,000.00
Use of "P.E." designation, or claim to be a "Professional Engineer"	§1001.301(b)(2)-(6), (c), and (e)	Notice to Cease and Desist and \$1,500.00	Injunctive/Criminal and \$3,000.00
Offer or attempt to practice engineering (e.g., through solicitation, proposal, contract, etc.)	§§1001.004(c)(2)(A); 1001.30(a), (c)-(e); 1001.405	Notice to Cease and Desist and \$1,500.00	Injunctive/Criminal and \$3,000.00
Representation of ability to perform engineering (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.)	§1001.405(e)	Voluntary compliance	Notice to Cease and Desist and \$500.00
Use of word "engineer" or any variation or abbreviation thereof under any assumed, trade, business, partnership, or corporate name	§1001.405(e)	Voluntary compliance	Injunctive/Criminal and \$3,000.00
Unlicensed practice of engineering	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405; 137.51(e), 137.77(a)	Notice to Cease and Desist and \$2,000.00	Injunctive/Criminal and \$3,000.00

Figure: 22 TAC §139.35(d)

VIOLATION	CITATION	SUGGESTED SANCTION		
		FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE
Offer and perform consulting engineering services without being registered	§1001.405; §137.77(a), (d), (e)	Voluntary Compliance. If not corrected within 30 days, \$250.00	\$500	\$750
Offer and perform consulting engineering services while registration was expired	§1001.405; §137.77(c), (e)	\$500.00	\$750.00	\$1,200.00
Offer only (no consulting engineering services were performed) without being registered or while registration was expired	§1001.405; §137.77(a), (d), (e)	\$100.00	\$500.00	\$1,000.00

Figure: 22 TAC §139.35(e)

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURRENCE	SECOND OCCURRENCE
Failure to engage a professional engineer in the construction of any public work involving professional engineering	§1001.407(1)	\$1,000.00	\$2,500.00
Accepting engineering plans, specifications and estimates that were not prepared by a professional engineer	§1001.402	\$500.00	\$2,500.00
Failure to ensure that the engineering construction is performed under the direct supervision of a professional engineer	§1001.407(2)	\$500.00	\$2,500.00

Figure: 34 TAC \$25,164(f)(2)

Cost to Purchase One Year of Additional Service Credit

Age	Years of Credited Service (Before Purchase)												
	1	2	3	4	5	6	7	8	9	10	11	12	13
25	103.79	104.84	107.98	111.16	114.46	117.78	121.23	124.72	128.33	131.98	135.77	139.60	143.57
26	103.69	105.75	108.91	112.18	115.48	118.90	122.36	125.94	129.56	133.32	137.11	141.05	145.02
27	105.53	106.62	109.86	113.14	116.53	119.97	123.52	127.11	130.84	134.60	138.50	142.44	146.53
28	105.39	107.51	110.76	114.13	117.54	121.07	124.64	128.33	132.06	135.93	139.84	143.88	147.98
29	107.20	108.35	111.69	115.08	118.57	122.11	125.77	129.48	133.32	137.19	141.21	145.27	149.48
30	107.03	109.20	112.56	116.04	119.55	123.19	126.86	130.67	134.52	138.51	142.53	146.71	150.93
31	108.81	110.01	113.46	116.94	120.55	124.21	127.99	131.81	135.76	139.75	143.90	148.08	152.42
32	108.60	110.82	114.29	117.88	121.50	125.25	129.05	132.97	136.94	141.05	145.20	149.50	153.85
33	110.34	111.58	115.14	118.75	122.47	126.24	130.13	134.07	138.15	142.26	146.55	150.87	155.34
34	110.08	112.36	115.93	119.63	123.38	127.25	131.16	135.21	139.31	143.54	147.82	152.26	156.74
35	111.76	113.07	116.74	120.46	124.30	128.19	132.21	136.28	140.49	144.74	149.15	153.60	158.21
36	111.45	113.79	117.48	121.30	125.16	129.16	133.20	137.38	141.60	145.97	150.40	154.97	159.60
37	113.07	114.44	118.23	122.07	126.04	130.06	134.20	138.40	142.75	147.14	151.68	156.27	161.03
38	112.69	115.09	118.91	122.85	126.84	130.97	135.14	139.46	143.82	148.33	152.89	157.61	162.38
39	114.24	115.67	119.60	123.56	127.66	131.81	136.09	140.43	144.91	149.44	154.13	158.87	163.77
40	113.78	116.25	120.20	124.28	128.40	132.66	136.97	141.42	145.93	150.59	155.30	160.17	165.10
41	115.26	116.75	120.81	124.91	129.15	133.44	137.87	142.35	146.97	151.65	156.49	161.39	166.45
42	114.71	117.25	121.34	125.55	129.82	134.23	138.69	143.29	147.94	152.75	157.61	162.64	167.73
43	116.10	117.66	121.86	126.11	130.50	134.93	139.51	144.14	148.92	153.76	158.76	163.82	169.04
44	115.44	118.05	122.29	126.66	131.08	135.64	140.25	145.01	149.82	154.79	159.82	165.02	170.28
45	116.73	118.37	122.72	127.12	131.66	136.26	141.00	145.79	150.74	155.74	160.90	166.13	171.53
46	115.97	118.66	123.05	127.57	132.15	136.87	141.65	146.57	151.56	156.70	161.90	167.27	172.70
47	117.15	118.85	123.36	127.92	132.62	137.39	142.30	147.26	152.38	157.56	162.91	168.32	173.90
48	116.25	119.02	123.57	128.26	133.00	137.89	142.84	147.96	153.11	158.43	163.82	169.37	174.99
49	117.31	119.09	123.76	128.49	133.36	138.30	143.38	148.53	153.83	159.20	164.74	170.34	176.12
50	117.74	119.87	123.85	128.70	133.62	138.69	143.82	149.10	154.46	159.97	165.56	171.31	177.14
51	118.73	120.59	124.67	128.81	133.86	138.97	144.25	149.58	155.08	160.65	166.39	172.19	178.18
52	119.62	121.56	125.44	129.68	133.99	139.25	144.57	150.05	155.60	161.32	167.11	173.08	179.12
53	124.45	124.45	126.47	130.51	134.92	139.41	144.87	150.41	156.11	161.89	167.84	173.86	180.07
54	129.51	129.51	129.51	131.61	135.81	140.40	145.07	150.75	156.52	162.45	168.46	174.65	180.92
55	134.80	134.80	134.80	134.80	136.99	141.36	146.14	150.99	156.91	162.91	169.09	175.35	181.79
56	140.34	140.34	140.34	140.34	140.34	142.62	147.17	152.15	157.20	163.36	169.60	176.04	182.55
57	146.15	146.15	146.15	146.15	146.15	146.15	148.52	153.26	158.44	163.71	170.12	176.62	183.32
58	152.24	152.24	152.24	152.24	152.24	152.24	152.24	154.71	159.65	165.05	170.53	177.22	183.99
59	158.66	158.66	158.66	158.66	158.66	158.66	158.66	158.66	161.23	166.38	172.00	177.72	184.69
60	165.42	165.42	165.42	165.42	165.42	165.42	165.42	165.42	168.11	173.48	178.94	184.49	190.27
61	172.58	172.58	172.58	172.58	172.58	172.58	172.58	172.58	172.58	172.58	175.38	180.98	186.68
62	180.16	180.16	180.16	180.16	180.16	180.16	180.16	180.16	180.16	180.16	180.16	183.08	188.93
63	182.32	185.26	188.21	188.21	188.21	188.21	188.21	188.21	188.21	188.21	188.21	188.21	191.27
64	178.51	184.56	193.70	196.78	196.78	196.78	196.78	196.78	196.78	196.78	196.78	196.78	196.78
65	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63
66	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63
67	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53
68	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33
69	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02
70	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58
71	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98
72	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19
73	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24
74	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14
75	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91
76	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57
77	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11
78	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56
79	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94
80	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27
81	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58
82	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89
83	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22
84	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61
85	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04
86	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51
87	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01
88	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55
89	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18
90	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95
91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91

Note: Factors (above line) are per \$1,000 of greater of current annual salary or average of 3 highest yrs. of compensation. Bold factors (below line) are per \$1,000 of average of 3 highest yrs. of compensation.

Years of Credited Service (Before Purchase)

Age	14	15	16	17	18	19	20	21	22	23	24	25	26
25	179.20												
26	149.14	186.17											
27	150.66	154.94	193.40										
28	152.22	156.51	160.96	200.92									
29	153.74	158.15	162.60	167.22	208.74								
30	155.30	159.72	164.30	168.93	173.73	216.86							
31	156.81	161.35	165.94	170.70	175.51	180.50	225.30						
32	158.36	162.91	167.63	172.40	177.35	182.35	187.53	234.08					
33	159.85	164.53	169.26	174.16	179.12	184.26	189.45	194.84	243.21				
34	161.39	166.08	170.95	175.86	180.96	186.11	191.45	196.85	202.44	252.69			
35	162.87	167.69	172.57	177.62	182.73	188.02	193.38	198.92	204.53	210.34	262.56		
36	164.38	169.22	174.24	179.31	184.56	189.87	195.36	200.92	206.69	212.51	218.55	272.81	
37	165.83	170.81	175.84	181.05	186.32	191.77	197.29	203.00	208.77	214.76	220.82	227.10	283.47
38	167.32	172.32	177.49	182.72	188.13	193.60	199.27	205.00	210.94	216.94	223.16	229.45	235.97
39	168.73	173.87	179.06	184.43	189.86	195.49	201.17	207.06	213.02	219.19	225.43	231.89	238.43
40	170.19	175.35	180.68	186.08	191.66	197.30	203.14	209.05	215.18	221.36	227.78	234.26	240.98
41	171.57	176.87	182.22	187.77	193.37	199.17	205.04	211.11	217.25	223.61	230.05	236.71	243.45
42	173.00	178.32	183.82	189.39	195.15	200.97	207.00	213.09	219.41	225.79	232.40	239.08	246.01
43	174.33	179.80	185.33	191.05	196.84	202.82	208.88	215.14	221.48	228.04	234.68	241.55	248.50
44	175.71	181.20	186.89	192.64	198.59	204.60	210.82	217.12	223.63	230.21	237.03	243.93	251.07
45	177.00	182.64	188.36	194.27	200.24	206.43	212.68	219.15	225.69	232.46	239.31	246.39	253.56
46	178.32	184.00	189.87	195.81	201.95	208.16	214.59	221.09	227.82	234.62	241.65	248.77	256.14
47	179.55	185.38	191.29	197.40	203.57	209.95	216.41	223.09	229.85	236.84	243.91	251.23	258.62
48	180.80	186.67	192.74	198.88	205.23	211.65	218.29	225.01	231.95	238.97	246.24	253.59	261.20
49	181.96	188.00	194.11	200.42	206.80	213.40	220.08	226.98	233.96	241.18	248.49	256.05	263.69
50	183.15	189.23	195.51	201.86	208.42	215.06	221.92	228.86	236.04	243.31	250.82	258.41	266.27
51	184.24	190.49	196.81	203.34	209.95	216.78	223.68	230.82	238.04	245.50	253.05	260.87	268.77
52	185.35	191.65	198.16	204.73	211.52	218.39	225.49	232.68	240.10	247.61	255.38	263.24	271.36
53	186.36	192.84	199.40	206.16	213.00	220.07	227.22	234.60	242.08	249.80	257.62	265.70	278.76
54	187.39	193.93	200.67	207.49	214.53	221.66	229.01	236.45	244.13	251.91	259.95	272.92	258.49
55	188.32	195.04	201.85	208.87	215.97	223.30	230.71	238.37	246.11	254.11	262.00	255.95	255.95
56	189.26	196.06	203.06	210.15	217.45	224.85	232.47	240.19	248.16	260.97	253.25	253.25	253.25
57	190.10	197.09	204.17	211.46	218.84	226.45	234.15	242.09	254.82	250.40	250.40	250.40	250.40
58	190.97	198.03	205.31	212.69	220.28	227.97	235.90	248.55	247.40	247.40	247.40	247.40	247.40
59	191.75	199.02	206.38	213.97	221.65	226.81	236.64	244.26	244.26	244.26	244.26	244.26	244.26
60	190.14	195.89	201.73	207.67	213.71	224.36	240.98	240.98	240.98	240.98	240.98	240.98	240.98
61	192.47	198.37	204.36	210.46	221.11	237.56	237.56	237.56	237.56	237.56	237.56	237.56	237.56
62	194.88	200.93	207.08	217.73	234.01	234.01	234.01	234.01	234.01	234.01	234.01	234.01	234.01
63	197.38	203.59	214.23	230.34	230.34	230.34	230.34	230.34	230.34	230.34	230.34	230.34	230.34
64	199.98	210.61	226.54	226.54	226.54	226.54	226.54	226.54	226.54	226.54	226.54	226.54	226.54
65	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63
66	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63
67	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53
68	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33
69	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02
70	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58
71	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98
72	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19
73	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24
74	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14
75	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91
76	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57
77	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11
78	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56
79	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94
80	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27
81	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58
82	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89
83	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22
84	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61
85	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04
86	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51
87	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01
88	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55
89	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18
90	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95
91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91

Note: Factors (above line) are per \$1,000 of greater of current annual salary or average of 3 highest yrs. of compensation. Bold factors (below line) are per \$1,000 of average of 3 highest yrs. of compensation.

Years of Credited Service (Before Purchase)

Age	27	28	29	30	31	32	33	34	35
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									
36									
37									
38	294.55								
39	245.21	306.08							
40	247.77	254.81	318.07						
41	250.43	257.49	264.81	330.55					
42	253.02	260.27	267.61	275.21	343.53				
43	255.69	262.97	270.52	278.14	286.05	357.05			
44	258.29	265.77	273.33	281.18	289.10	297.32	371.13		
45	260.99	268.49	276.27	284.13	292.28	300.52	309.07	385.79	
46	263.59	271.31	279.11	287.20	295.37	303.85	317.55	274.32	274.32
47	266.28	274.03	282.06	290.17	298.58	312.19	272.74	272.74	272.74
48	268.90	276.86	284.91	293.26	306.77	271.05	271.05	271.05	271.05
49	271.60	279.60	287.88	301.30	269.26	269.26	269.26	269.26	269.26
50	274.22	282.45	295.77	267.35	267.35	267.35	267.35	267.35	267.35
51	276.94	290.18	265.33	265.33	265.33	265.33	265.33	265.33	265.33
52	284.51	263.18	263.18	263.18	263.18	263.18	263.18	263.18	263.18
53	260.90	260.90	260.90	260.90	260.90	260.90	260.90	260.90	260.90
54	258.49	258.49	258.49	258.49	258.49	258.49	258.49	258.49	258.49
55	255.95	255.95	255.95	255.95	255.95	255.95	255.95	255.95	255.95
56	253.25	253.25	253.25	253.25	253.25	253.25	253.25	253.25	253.25
57	250.40	250.40	250.40	250.40	250.40	250.40	250.40	250.40	250.40
58	247.40	247.40	247.40	247.40	247.40	247.40	247.40	247.40	247.40
59	244.26	244.26	244.26	244.26	244.26	244.26	244.26	244.26	244.26
60	240.98	240.98	240.98	240.98	240.98	240.98	240.98	240.98	240.98
61	237.56	237.56	237.56	237.56	237.56	237.56	237.56	237.56	237.56
62	234.01	234.01	234.01	234.01	234.01	234.01	234.01	234.01	234.01
63	230.34	230.34	230.34	230.34	230.34	230.34	230.34	230.34	230.34
64	226.54	226.54	226.54	226.54	226.54	226.54	226.54	226.54	226.54
65	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63	222.63
66	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63	218.63
67	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53	214.53
68	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33	210.33
69	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02	206.02
70	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58	201.58
71	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98	196.98
72	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19	192.19
73	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24	187.24
74	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14	182.14
75	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91	176.91
76	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57	171.57
77	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11	166.11
78	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56	160.56
79	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94	154.94
80	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27	149.27
81	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58	143.58
82	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89	137.89
83	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22	132.22
84	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61	126.61
85	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04	121.04
86	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51	115.51
87	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01	110.01
88	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55	104.55
89	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18	99.18
90	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95	93.95
91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91	88.91

Note: Factors (above line) are per \$1,000 of greater of current annual salary or average of 3 highest yrs. of compensation. Bold factors (below line) are per \$1,000 of average of 3 highest yrs. of compensation.

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

Correction of Error

The Texas Department of Agriculture adopted on an emergency basis amendments to 4 TAC §20.22, concerning Stalk Destruction Requirements. The notice appeared in the January 30, 2004, issue of the *Texas Register* (29 TexReg 737).

The preamble contained an inadvertent error. The references to the "2004 crop year" should reference the "2003 crop year". This error occurs in the second paragraph, the third paragraph, second sentence, and in the fourth paragraph.

This correction is to clarify that the emergency amendments to §20.22, including the February 1 cotton destruction deadline for Pest Management Zone 9, are effective for the 2003 crop year.

TRD-200400953



Office of the Attorney General

Chapter 154, Child Support, Subchapter C, Child Support Guidelines - 2004 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts for 2004 to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. Computation of the obligee's net resources should follow similar steps.

**EMPLOYED PERSONS
2004 TAX CHART**

Monthly Gross Wages	Social Security Taxes		Federal Income Taxes**	Net Monthly Income
	Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Hospital (Medicare) Insurance Taxes (1.45%)*		
\$100.00	\$6.20	\$1.45	\$0.00	\$92.35
\$200.00	\$12.40	\$2.90	\$0.00	\$184.70
\$300.00	\$18.60	\$4.35	\$0.00	\$277.05
\$400.00	\$24.80	\$5.80	\$0.00	\$369.40
\$500.00	\$31.00	\$7.25	\$0.00	\$461.75
\$600.00	\$37.20	\$8.70	\$0.00	\$554.10
\$700.00	\$43.40	\$10.15	\$3.75	\$642.70
\$800.00	\$49.60	\$11.60	\$13.75	\$725.05
\$892.67***	\$55.35	\$12.94	\$23.02	\$801.36
\$900.00	\$55.80	\$13.05	\$23.75	\$807.40
\$1,000.00	\$62.00	\$14.50	\$33.75	\$889.75
\$1,100.00	\$68.20	\$15.95	\$43.75	\$972.10
\$1,200.00	\$74.40	\$17.40	\$53.75	\$1,054.45
\$1,300.00	\$80.60	\$18.85	\$65.83	\$1,134.72
\$1,400.00	\$86.80	\$20.30	\$80.83	\$1,212.07
\$1,500.00	\$93.00	\$21.75	\$95.83	\$1,289.42
\$1,600.00	\$99.20	\$23.20	\$110.83	\$1,366.77
\$1,700.00	\$105.40	\$24.65	\$125.83	\$1,444.12
\$1,800.00	\$111.60	\$26.10	\$140.83	\$1,521.47
\$1,900.00	\$117.80	\$27.55	\$155.83	\$1,598.82
\$2,000.00	\$124.00	\$29.00	\$170.83	\$1,676.17
\$2,100.00	\$130.20	\$30.45	\$185.83	\$1,753.52
\$2,200.00	\$136.40	\$31.90	\$200.83	\$1,830.87
\$2,300.00	\$142.60	\$33.35	\$215.83	\$1,908.22
\$2,400.00	\$148.80	\$34.80	\$230.83	\$1,985.57
\$2,500.00	\$155.00	\$36.25	\$245.83	\$2,062.92
\$2,600.00	\$161.20	\$37.70	\$260.83	\$2,140.27
\$2,700.00	\$167.40	\$39.15	\$275.83	\$2,217.62
\$2,800.00	\$173.60	\$40.60	\$290.83	\$2,294.97
\$2,900.00	\$179.80	\$42.05	\$305.83	\$2,372.32
\$3,000.00	\$186.00	\$43.50	\$320.83	\$2,449.67
\$3,100.00	\$192.20	\$44.95	\$337.50	\$2,525.35
\$3,200.00	\$198.40	\$46.40	\$362.50	\$2,592.70
\$3,300.00	\$204.60	\$47.85	\$387.50	\$2,660.05
\$3,400.00	\$210.80	\$49.30	\$412.50	\$2,727.40
\$3,500.00	\$217.00	\$50.75	\$437.50	\$2,794.75
\$3,600.00	\$223.20	\$52.20	\$462.50	\$2,862.10
\$3,700.00	\$229.40	\$53.65	\$487.50	\$2,929.45
\$3,800.00	\$235.60	\$55.10	\$512.50	\$2,996.80
\$3,900.00	\$241.80	\$56.55	\$537.50	\$3,064.15
\$4,000.00	\$248.00	\$58.00	\$562.50	\$3,131.50
\$4,250.00	\$263.50	\$61.63	\$625.00	\$3,299.87
\$4,500.00	\$279.00	\$65.25	\$687.50	\$3,468.25
\$4,750.00	\$294.50	\$68.88	\$750.00	\$3,636.62
\$5,000.00	\$310.00	\$72.50	\$812.50	\$3,805.00
\$5,250.00	\$325.50	\$76.13	\$875.00	\$3,973.37
\$5,500.00	\$341.00	\$79.75	\$937.50	\$4,141.75
\$5,750.00	\$356.50	\$83.38	\$1,000.00	\$4,310.12
\$6,000.00	\$372.00	\$87.00	\$1,062.50	\$4,478.50
\$6,250.00	\$387.50	\$90.63	\$1,125.00	\$4,646.87
\$6,500.00	\$403.00	\$94.25	\$1,187.50	\$4,815.25
\$6,750.00	\$418.50	\$97.88	\$1,250.00	\$4,976.87
\$7,000.00	\$434.00	\$101.50	\$1,326.75	\$5,137.75
\$7,500.00	\$454.15****	\$108.75	\$1,466.75	\$5,470.35
\$8,000.00	\$454.15	\$116.00	\$1,606.75	\$5,823.10
\$8,250.75*****	\$454.15	\$119.64	\$1,676.96	\$6,000.00
\$8,500.00	\$454.15	\$123.25	\$1,746.75	\$6,175.85
\$9,000.00	\$454.15	\$130.50	\$1,886.75	\$6,528.60
\$9,500.00	\$454.15	\$137.75	\$2,026.75	\$6,881.35
\$10,000.00	\$454.15	\$145.00	\$2,166.75	\$7,234.10
\$10,500.00	\$454.15	\$152.25	\$2,306.75	\$7,586.85
\$11,000.00	\$454.15	\$159.50	\$2,446.75	\$7,939.60
\$11,500.00	\$454.15	\$166.75	\$2,586.75	\$8,292.35
\$12,000.00	\$454.15	\$174.00	\$2,726.75	\$8,643.65
\$12,500.00	\$454.15	\$181.25	\$2,871.09	\$8,993.51
\$13,000.00	\$454.15	\$188.50	\$3,022.40	\$9,334.95
\$13,500.00	\$454.15	\$195.75	\$3,179.81	\$9,659.29
\$14,000.00	\$454.15	\$203.00	\$3,360.92	\$9,981.93
\$14,500.00	\$454.15	\$210.25	\$3,529.33	\$10,306.27
\$15,000.00	\$454.15	\$217.50	\$3,697.74	\$10,630.61

Footnotes to Employed Persons 2004 Tax Chart:

- * An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.
- ** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption (\$3,100.00, subject to reduction in certain cases, as described in the next paragraph of this footnote) and taking the standard deduction (\$4,850.00).

For a single taxpayer with an adjusted gross income in excess of \$142,700.00, the deduction for the personal exemption is reduced by two percent (2%) for each \$2,500.00 or fraction thereof by which adjusted gross income exceeds \$142,700.00. The reduction is completed (*i.e.*, the deduction for the personal exemption is eliminated) for adjusted gross income in excess of \$265,200.00. In no case is the deduction for the personal exemption reduced by more than 100%. For example, monthly gross wages of \$15,000.00 times 12 months equals \$180,000.00. The excess over \$142,700.00 is \$37,300.00. \$37,300.00 divided by \$2,500.00 equals 14.92. The 14.92 amount is rounded up to 15. The reduction percentage is 30% (15 x 2% = 30%). The \$3,100.00 deduction for one personal exemption is reduced by \$930.00 (\$3,100.00 x 30% = \$930.00) to \$2,170.00 (\$3,100.00 - \$930.00 = \$2,170.00).

- *** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage (\$5.15 per hour) for a 40 hour week for a full year. \$5.15 per hour x 40 hours per week x 52 weeks per year equals \$10,712.00 per year. One-twelfth (1/12) of \$10,712.00 equals \$892.67.
- **** For annual gross wages above \$87,900.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2004 maximum Old-Age, Survivors and Disability Insurance tax of \$5,449.80 per person (6.2% of the first \$87,900.00 of annual gross wages equals \$5,449.80). One-twelfth (1/12) of \$5,449.80 equals \$454.15.
- ***** This amount represents the point where the monthly gross income of an employed individual would result in \$6,000.00 of net resources.

* * * * *

References Relating to Employed Persons 2004 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax
 - (a) Contribution Base

(1) Social Security Administration's notice dated October 16, 2003, and appearing in 68 Fed. Reg. 60,437 (October 22, 2003)

(2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)

(b) Tax Rate

(1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(a))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(b))

3. Federal Income Tax

(a) Revised Tax Rate Schedule for 2004 for Single Taxpayers

(1) Revenue Procedure 2003-85, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2003-49, dated December 8, 2003

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2003-85, Section 3.10(1), which appears in Internal Revenue Bulletin 2003-49, dated December 8, 2003

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

(1) Revenue Procedure 2003-85, Section 3.16, which appears in Internal Revenue Bulletin 2003-49, dated December 8, 2003

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

**SELF-EMPLOYED PERSONS
2004 TAX CHART**

Monthly Net Earnings From <u>Self-Employment *</u>	Social Security Taxes		Federal Income Taxes***	Net Monthly Income
	Old-Age, Survivors and Disability Insurance Taxes (12.4%)**	Hospital (Medicare) Insurance Taxes (2.9%)**		
\$100.00	\$11.45	\$2.68	\$0.00	\$85.87
\$200.00	\$22.90	\$5.36	\$0.00	\$171.74
\$300.00	\$34.35	\$8.03	\$0.00	\$257.62
\$400.00	\$45.81	\$10.71	\$0.00	\$343.48
\$500.00	\$57.26	\$13.39	\$0.00	\$429.35
\$600.00	\$68.71	\$16.07	\$0.00	\$515.22
\$700.00	\$80.16	\$18.75	\$0.00	\$601.09
\$800.00	\$91.61	\$21.43	\$8.10	\$678.86
\$900.00	\$103.06	\$24.10	\$17.39	\$755.45
\$1,000.00	\$114.51	\$26.78	\$26.69	\$832.02
\$1,100.00	\$125.97	\$29.46	\$35.98	\$908.59
\$1,200.00	\$137.42	\$32.14	\$45.27	\$985.17
\$1,300.00	\$148.87	\$34.82	\$54.57	\$1,061.74
\$1,400.00	\$160.32	\$37.49	\$66.00	\$1,136.19
\$1,500.00	\$171.77	\$40.17	\$79.94	\$1,208.12
\$1,600.00	\$183.22	\$42.85	\$93.88	\$1,280.05
\$1,700.00	\$194.67	\$45.53	\$107.82	\$1,351.98
\$1,800.00	\$206.13	\$48.21	\$121.76	\$1,423.90
\$1,900.00	\$217.58	\$50.88	\$135.70	\$1,495.84
\$2,000.00	\$229.03	\$53.56	\$149.64	\$1,567.77
\$2,100.00	\$240.48	\$56.24	\$163.58	\$1,639.70
\$2,200.00	\$251.93	\$58.92	\$177.52	\$1,711.63
\$2,300.00	\$263.38	\$61.60	\$191.46	\$1,783.56
\$2,400.00	\$274.83	\$64.28	\$205.40	\$1,855.49
\$2,500.00	\$286.29	\$66.95	\$219.34	\$1,927.42
\$2,600.00	\$297.74	\$69.63	\$233.28	\$1,999.35
\$2,700.00	\$309.19	\$72.31	\$247.22	\$2,071.28
\$2,800.00	\$320.64	\$74.99	\$261.16	\$2,143.21
\$2,900.00	\$332.09	\$77.67	\$275.10	\$2,215.14
\$3,000.00	\$343.54	\$80.34	\$289.04	\$2,287.08
\$3,100.00	\$354.99	\$83.02	\$302.98	\$2,359.01
\$3,200.00	\$366.44	\$85.70	\$316.92	\$2,430.94
\$3,300.00	\$377.90	\$88.38	\$330.86	\$2,502.86
\$3,400.00	\$389.35	\$91.06	\$352.45	\$2,567.14
\$3,500.00	\$400.80	\$93.74	\$375.68	\$2,629.78
\$3,600.00	\$412.25	\$96.41	\$398.92	\$2,692.42
\$3,700.00	\$423.70	\$99.09	\$422.15	\$2,755.06
\$3,800.00	\$435.15	\$101.77	\$445.39	\$2,817.69
\$3,900.00	\$446.60	\$104.45	\$468.62	\$2,880.33
\$4,000.00	\$458.06	\$107.13	\$491.85	\$2,942.96
\$4,250.00	\$486.68	\$113.82	\$549.94	\$3,099.56
\$4,500.00	\$515.31	\$120.52	\$608.02	\$3,256.15
\$4,750.00	\$543.94	\$127.21	\$666.11	\$3,412.74
\$5,000.00	\$572.57	\$133.91	\$724.19	\$3,569.33
\$5,250.00	\$601.20	\$140.60	\$782.28	\$3,725.92
\$5,500.00	\$629.83	\$147.30	\$840.36	\$3,882.51
\$5,750.00	\$658.46	\$153.99	\$898.44	\$4,039.11
\$6,000.00	\$687.08	\$160.69	\$956.53	\$4,195.70
\$6,250.00	\$715.71	\$167.38	\$1,014.61	\$4,352.30
\$6,500.00	\$744.34	\$174.08	\$1,072.70	\$4,508.88
\$6,750.00	\$772.97	\$180.78	\$1,130.78	\$4,665.47
\$7,000.00	\$801.60	\$187.47	\$1,188.87	\$4,822.06
\$7,500.00	\$858.86	\$200.86	\$1,318.39	\$5,121.89
\$8,000.00	\$908.30****	\$214.25	\$1,449.59	\$5,427.86
\$8,500.00	\$908.30	\$227.64	\$1,587.72	\$5,776.34
\$8,820.91*****	\$908.30	\$236.24	\$1,676.37	\$6,000.00
\$9,000.00	\$908.30	\$241.03	\$1,725.84	\$6,124.83
\$9,500.00	\$908.30	\$254.42	\$1,863.97	\$6,473.31
\$10,000.00	\$908.30	\$267.82	\$2,002.09	\$6,821.79
\$10,500.00	\$908.30	\$281.21	\$2,140.22	\$7,170.27
\$11,000.00	\$908.30	\$294.60	\$2,278.34	\$7,518.76
\$11,500.00	\$908.30	\$307.99	\$2,416.47	\$7,867.24
\$12,000.00	\$908.30	\$321.38	\$2,554.59	\$8,215.73
\$12,500.00	\$908.30	\$334.77	\$2,692.72	\$8,564.21
\$13,000.00	\$908.30	\$348.16	\$2,835.19	\$8,908.35
\$13,500.00	\$908.30	\$361.55	\$2,976.20	\$9,253.95
\$14,000.00	\$908.30	\$374.94	\$3,114.07	\$9,572.69
\$14,500.00	\$908.30	\$388.33	\$3,310.27	\$9,893.10
\$15,000.00	\$908.30	\$401.72	\$3,476.47	\$10,213.51

Footnotes to Self-Employed Persons 2004 Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of \$2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$$\$2,500.00 \times 92.35\% \times 12.4\% = \$286.29$$

(ii) Hospital (Medicare) Insurance Taxes:

$$\$2,500.00 \times 92.35\% \times 2.9\% = \$66.95$$

*** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption (\$3,100.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction (\$4,850.00).

In calculating the annual Federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year. For example, monthly net earnings from self-employment of \$15,000.00 times 12 months equals \$180,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal \$10,899.60 (\$87,900.00 x 12.4% = \$10,899.60). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal \$4,820.67 (\$180,000.00 x .9235 x 2.9% = \$4,820.67). The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals \$15,720.27 (\$10,899.60 + \$4,820.67 = \$15,720.27). The deduction under Section 164(f) of the Code is equal to one-half (1/2) of \$15,720.27 or \$7,860.14.

For a single taxpayer with an adjusted gross income in excess of \$142,700.00, the deduction for the personal exemption is reduced by two percent (2%) for each \$2,500.00 or fraction thereof by which adjusted gross income exceeds \$142,700.00. The reduction is completed (i.e., the deduction for the personal exemption is eliminated) for adjusted gross income in excess of \$265,200.00. In no case is the deduction for the personal exemption reduced by more than 100%. For example, monthly net earnings from self-employment of \$15,000.00 times 12 months equals \$180,000.00. The \$180,000.00 amount is reduced by \$7,860.14 (i.e., the deduction under Section 164(f) of the Code -- see the immediately preceding paragraph of this footnote for the computation) to arrive at adjusted gross income of \$172,139.86. The excess over \$142,700.00 is \$29,439.86. \$29,439.86 divided by \$2,500.00 equals 11.78. The 11.78 amount is rounded up to 12. The reduction percentage is 24% (12 x 2% = 24%). The \$3,100.00 deduction for one personal exemption is reduced by \$744.00 ($\$3,100.00 \times 24\% = \744.00) to \$2,356.00 ($\$3,100.00 - \$744.00 = \$2,356.00$).

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above \$87,900.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2004 maximum Old-Age, Survivors and Disability Insurance tax of \$10,899.60 per person (12.4% of the first \$87,900.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals \$10,899.60). One-twelfth (1/12) of \$10,899.60 equals \$908.30.

***** This amount represents the point where the monthly gross income of a self-employed individual would result in \$6,000.00 of net resources.

* * * * *

References Relating to Self-Employed Persons 2004 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

(a) Contribution Base

(1) Social Security Administration's notice dated October 16, 2003, and appearing in 68 Fed. Reg. 60,437 (October 22, 2003)

(2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)

(b) Tax Rate

(1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(a))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(b))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

3. Federal Income Tax

(a) Revised Tax Rate Schedule for 2004 for Single Taxpayers

(1) Revenue Procedure 2003-85, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2003-49, dated December 8, 2003

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2003-85, Section 3.10(1), which appears in Internal Revenue Bulletin 2003-49, dated December 8, 2003

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

(1) Revenue Procedure 2003-85, Section 3.16, which appears in Internal Revenue Bulletin 2003-49, dated December 8, 2003

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §164(f))

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at 512-463-2110.

TRD-200400915
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: February 10, 2004



Notice of Settlement of a Texas Water Quality Control Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Chapter 26 of the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in Harris County, Texas and the State of Texas v. Precision Pipe & Excavating, L.L.C.; Cause No. 2002-55701, 190th Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Water Code at a construction site in Harris County, Texas. The Defendant is Precision Pipe & Excavating, L.L.C. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The violation concerns an unpermitted discharge of stormwater into State waters.

Nature of Settlement: The settlement awards \$2,000 in civil penalties and \$500 in attorney's fees to the State and \$2,000 in civil penalties and \$500 in attorney's fees to Harris County. The settlement also enjoins Precision Pipe & Excavating to comply with the EPA General Construction permit.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison at 512-463-2110.

TRD-200400902
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: February 10, 2004



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439

- 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 30, 2004, through February 5, 2004. The public comment period for these projects will close at 5:00 p.m. on March 12, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Bertha Griego

Location: The project is located at the 2000 block of Bay Shore Drive, Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: ROCKPORT, Texas. Approximate NAD27 UTM Coordinates: Zone 14; Easting: 694,155; Northing: 3,102,287.

Project Description: The applicant proposes to construct three groins, each approximately 18 inches wide by 60 feet long with 12-foot T-heads utilizing interlocking vinyl sheets and marine grade timbers and pilings. The structures are to provide erosion protection to the south end of South Shore Drive. No dredged or fill material will be involved.

CCC Project No.: 04-0025-F1

Type of Application: U.S.A.C.E. permit application #23251 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200400946
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: February 11, 2004



Notice of Intent to Amend Texas Coastal Impact Assistance Program Plan and Request for Public Comment

The Texas General Land Office (Land Office) seeks public comment regarding a proposed minor amendment to the Texas Coastal Impact Assistance Plan (Plan), found on the Land Office's web site at www.glo.state.tx.us/coastal/ciap/plan/index.html. The Plan is a Land Office document identifying procedures for the expenditure of federal funds awarded to Texas under the Coastal Impact Assistance Program (CIAP). The last sentence of the second paragraph in Volume I, Section IV, subsection A (i) of the Plan identifies the implementation program for the Land Office's allocation of the state portion of CIAP funding. The plan currently directs any surplus arising from projects

completed under budget toward projects that did not receive full funding. The proposed change would expand the types of projects eligible for surplus funding to include those the Land Office identifies as directly and immediately relevant to the stated goals of the Coastal Impact Assistance program, whether or not they were on the original list of eligible projects.

The Plan currently reads: "The project budgets are based on the best available information and it is anticipated that funds will be expended as budgeted; however, it is entirely possible that a project may come in under budget. In that event, remaining unused funds will be allocated to one or more of the selected projects that did not receive the full amount requested and NOAA will be notified in advance of any reallocation among the selected projects." The modified language will read "The project budgets are based on the best available information and it is anticipated that funds will be expended as budgeted; however, it is entirely possible that a project may come in under budget. In that event, remaining unused funds will be allocated to one or more of the selected projects that did not receive the full amount requested or to one or more projects identified by the Land Office as both essential to coastal resource management and directly and immediately relevant to the stated goals of the Coastal Impact Assistance Program. NOAA will be notified in advance of any reallocation among the selected projects."

The Land Office is authorized to amend or undertake minor changes to the Plan in accordance with the CIAP Legislation, Section 31(d)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a), and the Final Coastal Impact Assistance Program Administration and Plan Development Guidance, 66 Federal Register 51396-51400, October 9, 2001.

Information regarding administration of the CIAP and the Plan may be found on the Texas General Land Office web site at <http://www.glo.state.tx.us/coastal/ciap/index.html>.

Comments or questions may be submitted to Deborah Cantu, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas, 78711-2873, deborah.cantu@glo.state.tx.us, facsimile (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on March 15, 2004.

TRD-200400945

Larry L. Laine

Chief Clerk/Deputy Commissioner, General Land Office
Coastal Coordination Council

Filed: February 11, 2004

Public Meeting Notice--Coastal Management Program

The National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, is required to review and evaluate the management and implementation of the Texas Coastal Management Program (CMP) pursuant to §312 of the Coastal Zone Management Act of 1982, as amended. NOAA will host a public meeting as part of its §312 triennial review on Thursday, March 25, 2004. The public is invited to comment on the CMP during the meeting beginning at 1:00 p.m. at the Texas A&M University Corpus Christi's Natural Resources Center Conference Room 1003, 6300 Ocean Drive, Corpus Christi, Texas.

Written comments may be submitted in lieu of testimony at the meeting or may be sent by U.S. mail to L. Christine McCay, Office of Ocean and Coastal Resource Management, NOAA's National Ocean Service, N/ORM7, 1305 East West Highway, SSMC4, Silver Spring, Maryland, 20910; by facsimile transmission to (301) 713-4370; or by e-mail to chris.mccay@noaa.gov, no later than 5:00 p.m. April 9, 2004.

For more information please call Christine McCay, NOAA, at (301) 713-3155, extension 163, or Diane Garcia, Coastal Coordination Council Secretary at (512) 463-5385.

TRD-200400777

Larry L. Laine

Chief Clerk/Deputy Commissioner
Coastal Coordination Council

Filed: February 6, 2004

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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 02/16/04 -- 02/22/04 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 02/16/04 -- 02/22/04 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-200400898

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 10, 2004

Texas Commission on Environmental Quality

Enforcement Orders

A default order was entered regarding Larry Fulton dba Chopperman, Docket No. 2002-0364-MSW-E on February 4, 2004 assessing \$7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 767-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woody's Smokehouse, Inc dba Woody's Food Mart, Docket No. 2003-1040-PST-E on February 4, 2004 assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tapia Dairy #3, L.L.C., Docket No. 2002-1224-AGR-E on February 4, 2004 assessing \$7,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at (432) 620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Escalona dba Javelina Pit, Docket No. 2003-0606-MSW-E on February 4, 2004 assessing \$650 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409) 899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K & K, Inc., Docket No. 2003-0888-PST-E on February 4, 2004 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metro Suppliers, Inc. dba METRO MART 4, Docket No. 2003-1178-PST-E on February 4, 2004 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amin S. Maredia dba Gas N Stuff #4, Docket No. 2003-0321-PST-E on February 4, 2004 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GEUS, Docket No. 2002-1079-MWD-E on February 4, 2004 assessing \$6,600 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Najji Othman Ahmad dba Hopper Road Food Market, Docket No. 2002-0708-PST-E on February 4, 2004 assessing \$12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J & J Powermart LLC dab Texaco Food Mart, Docket No. 2003-1217-PST-E on February 4, 2004 assessing \$3,900 in administrative penalties with \$780 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & A Salvage, Inc., Docket No. 2003-0353-WQ-E on February 4, 2004 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200400918

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality
Filed: February 10, 2004



Notice of Deletion of Lyon Property Proposed State Superfund Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Lyon Property State Superfund Site (the site) from its proposed-for-listing status on the state Superfund registry. The state Superfund registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site was originally proposed for listing on the state Superfund registry in the July 5, 2002 issue of the *Texas Register* (27 TexReg 6126). The site, including all land, structures, appurtenances, and other improvements, is located on U.S. 385, approximately one mile north of the intersection of Farm Road 1871 and U.S. 385 near London, in Kimble County, Texas. The property covers about six acres in an area adjacent to the Llano River. The site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

A small wire burning operation was conducted at the site for metal recovery. The burn site encompassed an area approximately 75 feet by 60 feet. There are residences to the north, south, and east of the property, with the Llano River on the west. The Texas Natural Resource Conservation Commission, predecessor agency of the TCEQ, first investigated the site in 1996 after receiving a complaint about burning. Sampling of soils at the burn site indicated elevated concentrations of cadmium, lead, and total petroleum hydrocarbons.

In accordance with 30 TAC §335.344(b), the commission held a public meeting on Thursday, January 22, 2004, at the Kimble County Library, Meeting Room, 208 North 10th Street, Junction, Texas, to receive comments on the intended deletion of the site. Comments which were received into the record were addressed at the public meeting by the commission. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

In August 2003, the TCEQ removed approximately 360 cubic yards of contaminated soil from the site. In accordance with 30 TAC §335.344(c), the ED has determined that due to the removal actions that the TCEQ performed at the site, the site no longer presents an imminent and substantial endangerment to public health and safety or the environment. The site is appropriate for residential use according to the Texas Risk Reduction Program.

In accordance with Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Kimble County, Texas, stating that the site has been deleted from the state Superfund registry.

All inquiries regarding the deletion of the site should be directed to Ms. Barbara Daywood, TCEQ Community Relations, (800) 633-9363 or (512)239-2463.

TRD-200400914

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 10, 2004



Notice of District Petition

Notices mailed February 9, 2004 through February 10, 2004

TCEQ Internal Control No. 12172003-D03; The Rivers Family Limited Partnership D, (Petitioner) filed a petition for creation of Elgin Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Equity Secured Capital, L.P., on the land to be included in the proposed District; (3) the proposed District will contain approximately 154.03 acres located within Bastrop County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Elgin, Texas, and is not within the jurisdiction of any other city, town or village in Texas. The Petitioner has also provide the TCEQ with a certificate evidencing the consent of Equity Secured Capital, L.P. to the creation of the proposed District. By Resolution No. 2003-08-19-03, effective August 21, 2003, the City of Elgin, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will (1) develop an adequate waterworks system, sanitary sewer system, drainage and storm sewer system for residential and commercial purposes; (2) purchase, design, construct, acquire, own, operate, repair, improve and extend an adequate waterworks system, sanitary sewer system, drainage and storm sewer system for the health and welfare of the present and future inhabitants of the area and of the territories adjacent the proposed District; (3) purchase, design, construct, acquire, own, operate repair, improve and extend waterworks system, sanitary sewer system, drainage and storm sewer system for the promotion of the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$9,840,000.

TCEQ Internal Control No. 12172003-D02; The Rivers Family Limited Partnership D, (Petitioner) filed a petition for creation of Elgin Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Equity Secured Capital, L.P., on the land to be included in the proposed District; (3) the proposed District will contain approximately 230.38 acres located within Bastrop County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Elgin, Texas, and is not within the jurisdiction of any other city, town or village in Texas. The Petitioner has also provide the TCEQ with a certificate evidencing the consent of Equity Secured Capital, L.P. to the creation of the proposed District. By Resolution No. 2003-08-19-03, effective August 21, 2003, the City of Elgin, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will (1) develop an adequate waterworks system, sanitary sewer

system, drainage and storm sewer system for residential and commercial purposes; (2) purchase, design, construct, acquire, own, operate, repair, improve and extend an adequate waterworks system, sanitary sewer system, drainage and storm sewer system for the health and welfare of the present and future inhabitants of the area and of the territories adjacent the proposed District; (3) purchase, design, construct, acquire, own, operate repair, improve and extend waterworks system, sanitary sewer system, drainage and storm sewer system for the promotion of the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$11,460,000.

TCEQ Internal Control No. 12042003-D02; C.A. Dwyer 1962 Trust and Hannover Estates, Ltd. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 399 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there is no lienholder on the property to be included in the proposed District; (3) the proposed District will contain approximately 238.52 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2003-293, effective April 1, 2003, the City of Houston, Texas gave its consent to the creation of the proposed District and authorized the Petitioners to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire-fighting services; and (2) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing parks and recreational facilities permitted under State law. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$21,255,000.

TCEQ Internal Control No. 12222003-D02; The Castletop Capital Hays, L.P., (Petitioner) filed a petition for creation of North Hays County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is no lienholder on the property to be included in the proposed

District; (3) the proposed District will contain approximately 431.23 acres located within Hays County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: purchase, construct, acquire, maintain, own and operate a waterworks and sanitary sewer system for residential and commercial purposes. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$22,940,000.

TCEQ Internal Control No. 11132003-D01; Kenwood Investments, L.P., (Petitioner) filed a petition for creation of Galveston County Municipal Utility District No. 43 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Woodforest National Bank, on the land to be included in the proposed District; (3) the proposed District will contain approximately 435.043 acres located within Galveston County, Texas; and (4) the proposed District is within the corporate limits of the City of League City, Texas, and is not within the jurisdiction of any other city, town or village in Texas. The Petitioner has also provided the TCEQ with a certificate evidencing the consent of Woodforest National Bank to the creation of the proposed District. By Ordinance No. 2003-12, effective April 8, 2003, the City of League City, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will (1) develop an adequate waterworks system, sanitary sewer system, drainage and storm sewer system for residential and commercial purposes; (2) purchase, design, construct, acquire, own, operate, repair, improve and extend an adequate waterworks system, sanitary sewer system, drainage and storm sewer system for the health and welfare of the present and future inhabitants of the area and of the territories adjacent the proposed District; (3) purchase, design, construct, acquire, own, operate repair, improve and extend waterworks system, sanitary sewer system, drainage and storm sewer system for the promotion of the purity and sanitary condition of the State's waters and the public health and welfare of the community. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$25,596,046.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. 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) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition

and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests 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, 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.state.tx.us.

TRD-200400917

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 10, 2004



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **March 22, 2004**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 22, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Brazosport Equipment & Rental, Inc.; DOCKET NUMBER: 1999-1482-MSW-E; TCEQ ID NUMBER: 455120017; LOCATION: approximately 0.9 miles southeast of the intersection of Farm-to-Market Road 523 and State Highway 332, Oyster Creek, Brazoria County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste; RULES VIOLATED: 30 TAC §330.5(c), by failing to obtain authorization for disposing of municipal solid waste; PENALTY: \$5,500; STAFF ATTORNEY: James Biggins, Litigation

Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Ernie Pettit; DOCKET NUMBER: 2002-1216-OSS-E; TCEQ ID NUMBER: 6237; LOCATION: 4022 Farm-to-Market Road 118, Greenville, Hunt County, Texas; TYPE OF FACILITY: on-site sewage system (OSSF); RULES VIOLATED: 30 TAC §30.5(b), by representing himself to the public as a holder of an OSSF license without possessing a current license; and 30 TAC §285.61(3), by failing to provide true and accurate information on any application or any other documentation; PENALTY: \$525; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Jimmy Briscoe, Executor of the Estate of Dorothy Briscoe; DOCKET NUMBER: 2002-0101-PST-E; TCEQ ID NUMBER: 49740; LOCATION: 807 East Houston Street, Cleveland, Liberty County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §334.21, by failing to pay outstanding petroleum storage tank fees; PENALTY: \$1,100; STAFF ATTORNEY: David Green, Litigation Division, MC 175, (512) 239-5917; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Pedro Castellon dba Paca's Body Shop; DOCKET NUMBER: 2002-1410-AIR-E; TCEQ ID NUMBER: EB-0983-E; LOCATION: 2013 West 7th Street, Odessa, Ector County, Texas; TYPE OF FACILITY: auto body refinishing shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain a permit or meet the requirements of permit by rule prior to the construction and operation of the plant; PENALTY: \$2,100; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200400937

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 10, 2004



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

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. Section 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. Section 7.075 requires that notice of 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 **March 22, 2004**. Section 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 the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 22, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: BFI Waste Systems of North America, Incorporated; DOCKET NUMBER: 2002-0936-MLM-E; TCEQ ID NUMBERS: TXR050000, TXR05F277, 1447, and TH-0522-W; LOCATION: 9912 Giles Road, Austin, Travis County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §330.111, by deviating from the landfill's site operating plan by allowing the leachate head to rise more than 12 inches above the liner; 30 TAC §330.111, by deviating from the landfill's site operating plan by failing to increase the frequency with which the leachate levels were monitored after leachate levels were measured above the 12-inch limit; 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(b), by discharging one or more contaminants in such concentration and for such duration so as to interfere with the normal use and enjoyment of property; 30 TAC §305.125(11), Texas Pollutant Discharge Elimination System General Permit Number TXR050000, Part III, Section A.5.h., and TWC, §26.121, by failing to adequately conduct quarterly visual inspections of either each outfall or an outfall that is representative of the others; and TWC, §26.121(a)(2), by allowing an unauthorized discharge of waste into or adjacent to any water in the state; PENALTY: \$28,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Mr. David A. Fenoglio dba Sunset Water Systems; DOCKET NUMBER: 2003-0038-PWS-E; TCEQ ID NUMBER: 1690007; LOCATION: corner of West Front Street and Cottage Grove Avenue, near the railroad tracks, Sunset, Montague County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.46(l), by failing to provide the documentation for the flushing of dead-end mains; 30 TAC §290.46(g), by failing to provide the documentation for the disinfection of new or repaired lines; 30 TAC §290.46(m)(1), by failing to provide documentation for annual tank inspections for the three ground storage and pressure tanks; 30 TAC §290.46(f)(3)(A)(vi), by failing to provide documentation for the maintenance of the water system equipment and facilities; 30 TAC §290.41(c)(1)(F), by failing to document that it has provided sanitary easements for the system's wells; 30 TAC §290.46(i), by failing to provide documentation of the existence of a service agreement; 30 TAC §290.44(h)(1), by failing to complete an assessment of potential system hazards; 30 TAC §290.41(c)(3)(C), by failing to maintain well completion data; 30 TAC §290.110(c)(5)(A), by failing to test the chlorine residual in the distribution system at least once every seven days; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date distribution map on file at the facility; 30 TAC §290.46(h), by failing to provide a supply of calcium hypochlorite on hand at the facility for making repairs, setting meters, and disinfecting new mains; 30 TAC §290.46(t), by failing to provide a sign at the pump station; 30 TAC §290.42(i), by failing to provide approved sodium hypochlorite at the facility; 30 TAC §290.43(c)(2), by failing to provide locks on the roof hatches to all three ground storage tanks; 30 TAC §290.43(c)(3), by failing to provide an overflow; 30 TAC §290.43(c), by failing to

provide inspection ladders for all three ground storage tanks; 30 TAC §290.43(e) and TCEQ Agreed Order Number 2000-0031-PWS-E, Ordering Provision 2.c.; by failing to install a fence around the potable water tanks; 30 TAC §290.46(d)(2)(A), by failing to provide a chlorine residual of 0.02 milligrams per liter in the distribution system; 30 TAC §290.46(u), by failing to plug or to provide test results proving that the well is in a non-deteriorated condition; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallon per minute per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide a service pump capacity of 2.0 gallons per minute per connection; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing 18 inches above ground level; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block around the well casing and providing a concrete sealing block that covers a three foot radius in all directions; 30 TAC §290.41(c)(3)(K), by failing to provide a seal on the well head and well casing vent; 30 TAC §290.41(c)(3)(O), by failing to enclose the well with an intruder-resistant fence or a locked, ventilated well house; 30 TAC §290.46(v), by failing to secure electrical wiring in a mounted conduit; 30 TAC §290.121(a) and (b), by failing to have a chemical and bacteriological monitoring plan on file; 30 TAC §290.45(b)(1)(C)(ii), by failing to provide total storage capacity of 200 gallons per connection; 30 TAC §290.109(c)(2) and (g)(4) and §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and failing to provide public notice of the failure to sample; and 30 TAC §290.109(b)(2), (f)(3) and (g)(3) and §290.122(b), and THSC, §341.031(a), by failing to prevent the facility from exceeding the maximum contaminant level (MCL) for total coliform bacteria and failing to provide public notice of the MCL violation; PENALTY: \$4,725; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: Linda Byley Rushing dba Jackson Hill Marina Wastewater Treatment Plant; DOCKET NUMBER: 2003-0041-MWD-E; TCEQ ID NUMBER: 11111-001; LOCATION: approximately 500 feet southwest of Farm-to-Market (FM) Road 2851, 1.3 miles northwest of the intersection of State Highway 147 and FM Road 2851, southeast of the City of Broaddus, San Augustine County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the discharge of wastewater into or adjacent to water in the state without authorization from the Commission; TWC, §26.039(b), by failing to notify the TCEQ of an unauthorized discharge within 24 hours of the occurrence; and 30 TAC §330.4(a), by failing to prevent any waste storage, processing, or disposal activity unless such activity was authorized by permit or other authorization; PENALTY: \$49,450; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Valero Refining - Texas, L.P.; DOCKET NUMBER: 2000-1100-AIR-E; TCEQ ID NUMBER: NE-0112-G; LOCATION: 5900 Up River Road, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(c) and §101.20(3), TCEQ Air Permit Number 38754/PSD-TX-324M9, and THSC, §382.085(b), by failing to establish the actual pattern and quantities of air contaminants being emitted from all heaters and boilers within 180 days; 30 TAC §101.6(a)(1) and THSC, §382.085(b), by failing to notify the TCEQ of upsets within 24 hours after the discovery; 30 TAC §116.115(b) and §101.20(3), and TCEQ Air Permit Number 38754/PSD-TX-324M9, by allowing unauthorized emissions when operational upsets occurred; 30 TAC §101.6(b) and THSC, §382.085(b), by failing to maintain complete

records for four upsets; THSC, §382.085(a), by failing to obtain regulatory authority or meet the demonstration requirements; 30 TAC §101.6(a) and THSC, §382.085(b), by failing to report upsets within 24 hours of discovery; 30 TAC §116.715(c)(7) and §101.20(3), TCEQ Air Permit Number 38754/PSD-TX-324M9, and THSC, §382.085(b), by exceeding the emission caps for the main flare and ground flare; 30 TAC §116.715(a) and §101.20(3), and TCEQ Air Permit Number 38754/PSD-TX-324M9, Special Condition Number 11, by failing to route emissions from tank truck loading of gasoline to the vapor combustor; and THSC, §370.008, by failing to pay toxic chemical release fees; PENALTY: \$75,000; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200400936

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 10, 2004



Notice of Water Rights Application

Notices mailed February 5, 2004

APPLICATION NO. 23-952D; The City of Eagle Pass Water Works System (Eagle Pass), 415 Madison, P.O. Box 808, Eagle Pass, Texas, 78852 and Presidio Valley Farms, Inc. (Presidio), P.O. Box 822, Presidio, Texas, 79845, seek an amendment to a Certificate of Adjudication pursuant to §§11.122, 11.042, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, et seq. Certificate of Adjudication No. 23-952, as amended, authorizes Presidio to divert and use 8,059 acre-feet of water from many points on the Rio Grande, Rio Grande Basin for irrigation purposes in Presidio County. Three priority dates exist for portions of this water right. Pursuant to the terms and conditions of Water Rights Sales Agreements, Presidio has partitioned the 8,059 acre-feet of water rights authorized by Certificate of Adjudication No. 23-952, as amended, between the City of Laredo--2,818 acre-feet of water per annum (concurrent Application No. 23-952E), the City of Eagle Pass Water Works System--4,600 acre-feet of water per annum, and the County of Maverick--641 acre-feet of water per annum (concurrent Application No. 23-952F). The Agreements are made subject to the Commission's issuance of this application and concurrent Application Nos. 23-952E and 23-952F. The applicants seek to amend a 4,600 acre-foot portion of Certificate of Adjudication No. 23-952, as amended, for authorization to change the diversion point to an existing point downstream on the Rio Grande authorized by Certificate of Adjudication No. 23-3998, as amended, use the bed and banks of the Rio Grande to transport the water from the existing diversion points to the proposed diversion point, change the purpose and place of use for the water from agricultural purposes (irrigation) to municipal purposes within the City of Eagle Pass Water Works System's service area as it presently exists or is changed in the future. The water will be diverted from a point at Latitude 28.7161° N, Longitude 100.5065° W, also being located South 11° W, 5,150 feet from the northeast corner of the J. Twohig Survey 37, Abstract 835 at a maximum diversion rate of 44 cfs (19,747 gpm). It is proposed that the quantity of water that will be diverted from that point will be assessed by the Rio Grande Watermaster as an amount after deducting the carriage and transportation losses incurred between the existing diversion points located in Presidio County to the requested downstream diversion point. Furthermore, it is proposed that the water will not be stored in Amistad Reservoir in Val Verde County, but will be allowed to flow directly through the reservoir. The applicants

have proposed a means to calculate the losses which is set forth in "Report on Transfer of Rio Grande Water Rights from Upper Rio Grande Near Presidio Downstream to Water Users on the Middle Rio Grande Considering Natural Losses and Appropriate Water Accounting" dated April 11, 2003 and the Memo dated September 17, 2003 which includes the Modified Accounting Plan. The applicants have also proposed the following Special Conditions be included in the amendment if granted: The Accounting Point for determining available water for diversion from the Rio Grande by the applicant under this amendment shall be at the location of the existing IBWC streamflow gage on the Rio Grande below the City of Presidio in Presidio County, Texas that is referred to as "Rio Grande Below Rio Conchos Near Presidio, Texas and Ojinaga, Chihuahua" (Gage No. 08-3742). Diversions from the Rio Grande at the applicant's requested diversion point shall be subject to application of the Prior Appropriation Doctrine at the designated Accounting Point on the Rio Grande near the City of Presidio in Presidio County, Texas, with appropriate adjustments to account for natural channel losses along the Rio Grande from this Accounting Point downstream to the requested diversion point. The authorized diversion amount from the Rio Grande under this amendment shall be determined by the Rio Grande Watermaster in response to a request (Declaration of Intent) from the Applicant for a specified amount of water over a specified period of time and such authorized diversion amount from the Rio Grande at this location shall be calculated as 75 percent of the corresponding amount of water determined by the Rio Grande Watermaster to be available for diversion under at the designated Accounting point. To provide the authorized diversion amount, an amount equal to 87 percent of the amount of water determined by the Rio Grande Watermaster to be available at the designated Accounting Point shall be passed through and released from Amistad Reservoir. The commission may or may not include these special conditions in any permit issued, and may include different special conditions in any permit issued. This application in combination with concurrent Application Nos. 23-952E and 23-952F does not contemplate an additional appropriation of State water or an increased rate of diversion. The application was received on April 16, 2003. Additional information was received on September 19, 2003. The application was declared administratively complete on October 15, 2003. Written public comments and requests for a public meeting should be submitted to 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.

APPLICATION NO. 23-952E; The City of Laredo (Laredo), P.O. Box 2950, Laredo, Texas, 78044-2950 and Presidio Valley Farms, Inc. (Presidio), P.O. Box 822, Presidio, Texas, 79845, seek an amendment to a Certificate of Adjudication pursuant to §§11.122, 11.042, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, et seq. Certificate of Adjudication No. 23-952, as amended, authorizes Presidio to divert and use 8,059 acre-feet of water from many points on the Rio Grande, Rio Grande Basin for irrigation purposes in Presidio County. Three priority dates exist for portions of this water right. Pursuant to the terms and conditions of Water Rights Sales Agreements, Presidio has partitioned the 8,059 acre-feet of water rights authorized by Certificate of Adjudication No. 23-952, as amended, between the City of Laredo--2,818 acre-feet of water per annum, the City of Eagle Pass Water Works System--4,600 acre-feet of water per annum (concurrent Application No. 23-952D), and the County of Maverick--641 acre-feet of water per annum (concurrent Application No. 23-952F). The Agreements are made subject to the Commission's issuance of this application and concurrent Application Nos. 23-952D and 23-952F. The applicants seek to amend a 2,818 acre-foot portion of Certificate of Adjudication No. 23-952, as amended, for authorization to change the diversion point to an existing point downstream on the Rio Grande authorized by Certificate of Adjudication No. 23-3997, as

amended, use the bed and banks of the Rio Grande to transport the water from the existing diversion points to the proposed diversion point, change the purpose and place of use for the water from agricultural purposes (irrigation) to municipal purposes within the City of Laredo's service area as it presently exists or is changed in the future. The water will be diverted from a point at Latitude 27.523° N and Longitude 99.524° W, also being located S 7.750° W, 6,350 feet from the northwest corner of the Laredo Town Tract Survey; and northwest approximately 1.75 miles from the former City Hall of Laredo in Block 41-A, W.D., Webb County at a maximum diversion rate of 24 cfs (10,771 gpm). It is proposed that the quantity of water that will be diverted from that point will be assessed by the Rio Grande Watermaster as an amount after deducting the carriage and transportation losses incurred between the existing diversion points located in Presidio County to the requested downstream diversion point. Furthermore, it is proposed that the water will not be stored in Amistad Reservoir in Val Verde County, but will be allowed to flow directly through the reservoir. The applicants have proposed a means to calculate the losses which is set forth in "Report on Transfer of Rio Grande Water Rights from Upper Rio Grande Near Presidio Downstream to Water Users on the Middle Rio Grande Considering Natural Losses and Appropriate Water Accounting" dated April 11, 2003 and the Memo dated September 17, 2003 which includes the Modified Accounting Plan. The applicants have also proposed the following Special Conditions be included in the amendment if granted: The Accounting Point for determining available water for diversion from the Rio Grande by the applicant under this amendment shall be at the location of the existing IBWC streamflow gage on the Rio Grande below the City of Presidio in Presidio County, Texas that is referred to as "Rio Grande Below Rio Conchos Near Presidio, Texas and Ojinaga, Chihuahua" (Gage No. 08-3742). Diversions from the Rio Grande at the applicant's requested diversion point shall be subject to application of the Prior Appropriation Doctrine at the designated Accounting Point on the Rio Grande near the City of Presidio in Presidio County, Texas, with appropriate adjustments to account for natural channel losses along the Rio Grande from this Accounting Point downstream to the requested diversion point. The authorized diversion amount from the Rio Grande under this amendment shall be determined by the Rio Grande Watermaster in response to a request (Declaration of Intent) from the Applicant for a specified amount of water over a specified period of time and such authorized diversion amount from the Rio Grande at this location shall be calculated as 65 percent of the corresponding amount of water determined by the Rio Grande Watermaster to be available for diversion under at the designated Accounting point. To provide the authorized diversion amount, an amount equal to 87 percent of the amount of water determined by the Rio Grande Watermaster to be available at the designated Accounting Point shall be passed through and released from Amistad Reservoir. The commission may or may not include these special conditions in any permit issued, and may include different special conditions in any permit issued. This application in combination with concurrent Application Nos. 23-952D and 23-952F does not contemplate an additional appropriation of State water or an increased rate of diversion. The application was received on April 16, 2003. Additional information was received on September 19, 2003. The application was declared administratively complete on October 15, 2003. Written public comments and requests for a public meeting should be submitted to 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.

APPLICATION NO. 23-952F; The County of Maverick (Maverick), P.O. Box 955, Eagle Pass, Texas, 78853 and Presidio Valley Farms, Inc. (Presidio), P.O. Box 822, Presidio, Texas, 79845, seek an amendment to a Certificate of Adjudication pursuant to §§11.122, 11.042, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, et seq. Certificate of Adjudication No. 23-952, as

amended, authorizes Presidio to divert and use 8,059 acre-feet of water from many points on the Rio Grande, Rio Grande Basin for irrigation purposes in Presidio County. Three priority dates exist for portions of this water right. Pursuant to the terms and conditions of Water Rights Sales Agreements, Presidio has partitioned the 8,059 acre-feet of water rights authorized by Certificate of Adjudication No. 23-952, as amended, between the City of Laredo--2,818 acre-feet of water per annum (concurrent Application No. 23-952E), the City of Eagle Pass Water Works System--4,600 acre-feet of water per annum (concurrent Application No. 23-952D), and the County of Maverick--641 acre-feet of water per annum. The Agreements are made subject to the Commission's issuance of this application and concurrent Application Nos. 23-952D and 23-952E. The applicants seek to amend a 641 acre-foot portion of Certificate of Adjudication No. 23-952, as amended, for authorization to change the diversion point to an existing point downstream on the Rio Grande authorized by Certificate of Adjudication No. 23-2671, as amended, use the bed and banks of the Rio Grande to transport the water from the existing diversion points to the proposed diversion point, change the purpose and place of use for the water from agricultural purposes (irrigation) to municipal purposes within the County of Maverick's service area as it presently exists or is changed in the future. The water will be diverted from a point at Latitude 29.184° N and Longitude 100.766° W in Kinney County, Texas, and the diversion point of Maverick County on the main canal located at Latitude 28.847° N and Longitude 100.549° W in Maverick County, Texas at a maximum combined diversion rate of 7 cfs (10,771 gpm). It is proposed that the quantity of water that will be diverted from that point will be assessed by the Rio Grande Watermaster as an amount after deducting the carriage and transportation losses incurred between the existing diversion points located in Presidio County to the requested downstream diversion point. Furthermore, it is proposed that the water will not be stored in Amistad Reservoir in Val Verde County, but will be allowed to flow directly through the reservoir. The applicants have proposed a means to calculate the losses which is set forth in "Report on Transfer of Rio Grande Water Rights from Upper Rio Grande Near Presidio Downstream to Water Users on the Middle Rio Grande Considering Natural Losses and Appropriate Water Accounting" dated April 11, 2003 and the Memo dated September 17, 2003 which includes the Modified Accounting Plan. The applicants have also proposed the following Special Conditions be included in the amendment if granted: The Accounting Point for determining available water for diversion from the Rio Grande by the applicant under this amendment shall be at the location of the existing IBWC streamflow gage on the Rio Grande below the City of Presidio in Presidio County, Texas that is referred to as "Rio Grande Below Rio Conchos Near Presidio, Texas and Ojinaga, Chihuahua" (Gage No. 08-3742). Diversions from the Rio Grande at the applicant's requested diversion point shall be subject to application of the Prior Appropriation Doctrine at the designated Accounting Point on the Rio Grande near the City of Presidio in Presidio County, Texas, with appropriate adjustments to account for natural channel losses along the Rio Grande from this Accounting Point downstream to the requested diversion point. The authorized diversion amount from the Rio Grande under this amendment shall be determined by the Rio Grande Watermaster in response to a request (Declaration of Intent) from the Applicant for a specified amount of water over a specified period of time and such authorized diversion amount from the Rio Grande at this location shall be calculated as 83 percent of the corresponding amount of water determined by the Rio Grande Watermaster to be available for diversion under at the designated Accounting point. To provide the authorized diversion amount, an amount equal to 87 percent of the amount of water determined by the Rio Grande Watermaster to be available at the designated Accounting Point shall be passed through and released from Amistad Reservoir. The commission may or may not include these special conditions in any permit issued,

and may include different special conditions in any permit issued. This application in combination with concurrent Application Nos. 23-952E and 23-952F does not contemplate an additional appropriation of State water or an increased rate of diversion. The application was received on April 16, 2003. Additional information was received on September 19, November 6, November 7, and November 10, 2003. The application was declared administratively complete on November 13, 2003. Written public comments and requests for a public meeting should be submitted to 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

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

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 in the information section 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.state.tx.us.

TRD-200400916

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 10, 2004



Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on February 5, 2004, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. City of La Villa; SOAH Docket No. 582-04-0382; TCEQ Docket No. 2001-1374-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against City of La Villa, on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The

comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-1455.

TRD-200400919
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 10, 2004



Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on February 5, 2004, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Navarro Pecan Company Inc; SOAH Docket No. 582-04-0383; TCEQ Docket No. 2001-0578-IHW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Navarro Pecan Company Inc on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, PO Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-1455.

TRD-200400920
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 10, 2004



General Land Office

Invitation for Offers for Consulting Services

The Commissioner of the Texas General Land Office (GLO) as the chairman of the School Land Board (Board), is responsible for the management of all public lands constitutionally or legislatively appropriated to the Permanent School Fund (PSF). The PSF is a constitutionally created multi-billion-dollar endowment fund established under Article VII of the Texas Constitution to finance public education in the State of Texas. The PSF is comprised of two main components, real property interests and investment securities. The Commissioner and the Board with the assistance of the GLO, manage the acquisition, disposition and leasing of real property interests including mineral leases for oil and gas for the benefit of the PSF. The Commissioner and the Board are mandated to maximize income and capital appreciation within the real estate portion of the PSF, while protecting the integrity of the PSF's corpus. The Texas Education Agency (TEA) manages the remainder of the PSF's investments.

Pursuant to Texas Government Code, §2254.021 et seq., the GLO is inviting offers for real estate investment consulting services to provide advice and counsel to the Board regarding the development and implementation of a comprehensive investment framework that provides the policies and procedures necessary to ensure the proper analysis, evaluation, and structuring of real estate investment transactions for the PSF in accordance with the Board's Strategic Plan.

It is the GLO's intent acting of behalf of the Board to award a contract to a firm that has demonstrated experience in comparable engagements with similar endowments, foundations, or pension funds that control a large portfolio of real estate assets.

The closing date for the receipt of offers is March 5, 2004 at 3:00 P.M. Central Standard Time. The entire solicitation may be viewed at: <http://esbd.tbpc.state.tx.us/1380/sagency.cfm>. Further information may be obtained by contacting Debby French, Purchaser, General Land Office, 1700 North Congress Ave., Austin Texas 78701-1485, phone 1-800.998.4GLO.

TRD-200400785
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: February 6, 2004



Notice of Approval of Coastal Boundary Survey - Galveston County

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, Galveston County NRC Art. 33.136 Sketch No. 24, submitted by Sidney Bouse, a Licensed State Land Surveyor, conducted in October 2003, locating the following shoreline boundary:

The mean higher high water line of a portion of the Samuel C. Bundick League, Abstract No. 7 Survey, Chambers County, Texas.

For a copy of this survey, contact Archives & Records, Texas General Land Office at 512-463-5277.

TRD-200400784
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: February 6, 2004



Golden Crescent Regional Planning Commission

Job Announcement

Golden Crescent Regional Planning Commission (GCRPC) is accepting resumes for the position of Executive Director.

General Statement of Duties: The Executive Director is the chief administrative officer of GCRPC, performing highly responsible managerial and supervisory work in planning, organizing and directing the operations of the Commission.

Acceptable Experience and Training: A master's degree in urban regional planning, business administration or public administration with significant emphasis on planning, quantitative analysis and research, plus one year's experience in planning or research; **or**

A bachelor's degree in planning, business administration, social sciences, or a related field with significant emphasis on quantitative analysis and research plus two year's experience in planning or research; **or**

A combination of ten year's experience and training which provides the required knowledge, skills, and abilities.

Starting Biweekly Salary: Commensurate with qualifications and experience

Closing Date: Resumes must be post marked no later than March 31, 2004

Send resumes to: Golden Crescent Regional Planning Commission, Attention: Search Committee, Post Office Box 4085, Victoria, Texas 77903-4085; telephone: (361) 578-1587; web site: <http://www.gcrpc.org/>

TRD-200400782

Cynthia Skarpa

Acting Executive Director

Golden Crescent Regional Planning Commission

Filed: February 6, 2004

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Office of the Governor

Request for Grant Applications (RFA) for the Juvenile Accountability Block Grant (JABG) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting statewide discretionary applications for projects that promote greater accountability in the juvenile justice system for the federal fiscal year 2005 grant cycle.

Purpose: The purpose of the JABG Program is to reduce juvenile offending through accountability-based programs focused on the juvenile offender and the juvenile justice system.

Available Funding: Federal funding is authorized under the Department of Justice Authorization Act 2003 for Fiscal Year 2003 Appropriations Act, Public Law 107-273. All grants awarded from this fund source must comply with the requirements contained in the Act and the guidelines and regulations applicable to this funding source.

Required Match: Grantees, other than Native American Tribes, must provide matching funds of at least ten percent (10%) of total project expenditures. Native American Tribes must provide a five percent (5%) match. This requirement must be met through cash contributions only.

Eligible Applicants:

- (1) State agencies;
- (2) Units of local government including crime control and prevention districts;
- (3) Universities;
- (4) Colleges;
- (5) Native American Tribal Governments; and
- (6) Nonprofit corporations/faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Requirements: Projects must address one or more of the following JABG Purpose Areas:

JABG Purpose Area 2: developing and administering accountability-based sanctions for juvenile offenders.

JABG Purpose Area 7: providing funding to enable juvenile courts and juvenile probation departments to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism.

JABG Purpose Area 10: establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice systems, schools, and social service agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts.

JABG Purpose Area 11: establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or that are designed, in cooperation with law enforcement officials, to protect student and school personnel from drug, gang, and youth violence.

Nonprofit organizations, including faith-based organizations, are eligible to apply under JABG Purpose Area Number 2 only.

Project Period: Grand-funded projects must begin on or after August 1, 2004, and will expire on or before July 31, 2005.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site address located at <http://www.governor.state.tx.us>.

Preferences: Preference will be given to those applicants that can demonstrate needs using verifiable data; establishing an overall goal; implementing research-based or promising approaches/activities, and establishing appropriate and obtainable outcome measures through an evaluation plan.

Closing Date for Receipt of Applications: All applications must be submitted electronically directly to the Office of the Governor, Criminal Justice Division via e-mail at cjdapps@governor.state.tx.us on or before April 15, 2004. Applicants must also submit the Grant Application Certification Form signed by the Authorized Official via facsimile at (512) 475-2440 to the Office of the Governor, Criminal Justice Division on or before April 15, 2004.

The mailing address is: Post Office Box 12428, Austin, Texas 78711; and the physical address is: 1100 San Jacinto Boulevard, 2nd Floor, Austin, Texas 78701.

Selection Process: Applications are reviewed by CJD for eligibility. A Determine Eligibility Form is included with the application kit and must be completed in its entirety in order to be considered for funding.

Contact Person: If additional information is needed, contact Sanzanna Lolis at slolis@governor.state.tx.us or (512) 463-1919.

TRD-200400736

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: February 5, 2004

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Texas Department of Health

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on HBC Terracon, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to HBC Terracon, Inc. (licensee-L05268) of Houston. A total penalty of \$5,000 is proposed to be assessed the licensee for alleged violations of radioactive materials license conditions and 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200400959

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 11, 2004

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Michael Shane McPherson

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Michael Shane McPherson (Texas Radiographer Identification Number 002130) of La Porte. A total penalty of \$5,000 is proposed to be assessed the radiographer for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200400960
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 11, 2004

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Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

The Health and Human Services Commission (HHSC) announces the award of contract #529-04-089 to International Biometric Group, L.L.C. (IBG), an entity with a principal place of business at One Battery Park Plaza, New York, New York, 10004. The contractor will provide independent evaluation services relating to the planning, development and implementation of a front-end authentication and fraud prevention pilot program, which will use biometric identification to verify services for Medicaid recipients. This is the second contract awarded pursuant to HHSC Request for Proposals #529-04-083. HHSC awarded a separate contract for project management services to MTG Management Consultants (MTG) on November 3, 2003. Notice of the MTG award appeared in the November 21, 2003, issue of the *Texas Register* (28 TexReg 10559).

The total value of the contract with IBG is \$1,717,200.00. The contract was executed on January 27, 2004, and will expire on March 31, 2005, unless extended or terminated sooner by the parties. IBG will produce numerous documents and reports during the term of the contract, with the final reporting due by March 31, 2005.

TRD-200400947
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: February 11, 2004

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Bristol Apartments) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Conley Elementary School, 3345 W. Greens Road, Houston, Texas 77066-4920, at 6:00 p.m. on March 9, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$13,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Bristol Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located southeast of the intersection of Sharmon Road and Greens Parkway and northwest of the intersection of Ella Boulevard and Grand Plaza, at approximately the 1200 block of Greens Parkway, Houston, Harris County, Texas 77067. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200400961
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 11, 2004

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Creekside Manor Apartments) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Northline Elementary School, 821 Witcher, Houston, Texas 77076-4818, at 6:00 p.m. on March 24, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$12,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Creekside Affordable Housing, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 246-unit multifamily residential rental development to be located on the north

side of the Highway 610 and to the east of I-45 on the south side of Tidwell, at approximately the 500 block of Tidwell Road, Houston, Harris County, Texas 77022. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200400963
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 11, 2004



Notice of Public Hearing

Multifamily Housing Revenue Bonds (Pinnacle Apartments) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Millsap Elementary School, 12424 Huffmeister Road, Cypress, Texas 77429, at 6:00 p.m. on March 10, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Pinnacle Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located on the west side of Huffmeister Road and to the north of Highway 290, at approximately the 10500 block of Huffmeister Road, Houston, Harris County, Texas 77429. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200400962
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 11, 2004



Houston-Galveston Area Council

Public Meeting Notice

Federal Certification Review

Houston-Galveston Area Council

3555 Timmons Lane

Houston, Texas 77027

Wednesday, March 3, 2004

2nd Floor, Conference Room A

6 p.m.

On Wednesday, March 3, 2004, the Houston-Galveston Area Council (H-GAC) will host a public meeting on the federal certification review of H-GAC's transportation planning process. The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) conduct the federal certification review. FTA and FHWA will be reviewing H-GAC's planning process for compliance with federal regulations and guidelines and are interested in hearing public feedback on the H-GAC transportation planning process. The public is encouraged to attend this important meeting and provide comments to the Federal Transit Administration and the Federal Highway Administration.

For more information about the public meeting, contact Ashby Johnson, H-GAC Program Manager for Policy Coordination, at (713) 993-2474 or ashby.johnson@h-gac.com. Written comments can be submitted to Mr. Jose Campos, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, TX 78701 or Mr. Jesse Balleza, Federal Transit Administration, 819 Taylor, Suite 8A36, Fort Worth, TX 76102.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Ashby Johnson at (713) 993-2474 to make arrangements.

TRD-200400940
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: February 11, 2004



Texas Department of Insurance

Company License

Application to change the name of GERLING NCM CREDIT INSURANCE, INC., to ATRADIUS TRADE CREDIT INSURANCE, INC. a foreign fire and/or casualty company. The home office is in Baltimore, Maryland.

Application to change the name of HOUSING AUTHORITY PROPERTY INSURANCE, INC. to HOUSING AUTHORITY PROPERTY INSURANCE, A MUTUAL COMPANY, a foreign fire and or casualty company. The home office is in South Burlington, Vermont.

Application to change the name of ARKWRIGHT INSURANCE COMPANY to COFACE NORTH AMERICA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Boston, Massachusetts.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200400958
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 11, 2004

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by GEICO General Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages -29 to +160 by coverage, classification, and tier. The overall rate change is 0.0%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by March 3, 2004.

TRD-200400808
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 9, 2004

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Notice of Public Meeting

The Windstorm Building Code Advisory Committee on Specifications and Maintenance will hold a meeting of the advisory committee on April 21, 2004, at 1:00 p.m. in Room 102 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas. The topics to be discussed include the election of a chairman and vice-chairman of the advisory committee, proposed adoption of the 2003 edition of the International Residential Code and 2003 International Building Code, and proposed changes to the 2003 edition of the International Residential Code and 2003 International Building Code.

The Committee, appointed by the Commissioner of Insurance, operates pursuant to Article 21.49, §6C of the Insurance Code. The purpose of the Committee is to advise and make recommendations to the Commissioner on windstorm building code specifications that are required for structures to be certified by the Department for insurability by the Texas Windstorm Insurance Association (TWIA). All interested

parties, including members of the general public, are invited to attend. Persons interested in additional information may contact Sam Nelson in the Engineering Section of the Texas Department of Insurance at 512/322-2212.

TRD-200400778
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 6, 2004

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Legislative Budget Board

Budget Execution Proposal

Pursuant to Texas Government Code §317.002 this budget execution order is hereby proposed for the following actions affecting items of appropriation made in House Bill No. 1, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003, as amended by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session:

We find that a lack of sufficient qualified instructors, personnel and other resources for certain facilities charged with educating health care professionals and protecting public health creates an emergency. We therefore propose that:

1. From appropriations made in House Bill 1, Section 11.28(c), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003, as added by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session, the amount of \$9,000,000 from the general revenue fund for fiscal year 2004 be transferred to The University of Texas Health Science Center at San Antonio, for operating costs for the Regional Academic Health Center in Harlingen and Edinburg for the biennium ending August 31, 2005, for the purposes necessary to meet this emergency.
2. From appropriations made in House Bill 1, Section 11.28(c), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003, as added by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session, the amount of \$2,000,000 from the general revenue fund for fiscal year 2004 be transferred to the Texas Tech University Health Sciences Center for start-up funds for a new medical school in El Paso for the biennium ending August 31, 2005, for the purposes necessary to meet this emergency.

We further find that a lack of sufficient funding to address the risks of wildlife-borne diseases and other wildlife damage creates an emergency. We therefore propose that the amounts of \$3,000,000 for fiscal year 2004 and \$3,000,000 for fiscal year 2005 be transferred to the Texas Cooperative Extension from general revenue appropriations made in House Bill 1, Section 11.28(c), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, as added by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session, for the purpose of Item 1: Educational and General State Support for wildlife damage management and control activities to meet this emergency.

We further find that the possibility of reduced access to polling places as a result of increased costs of elections creates an emergency. We therefore propose that:

1. From general revenue appropriations made in House Bill 1, Section 11.28(c), Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, as added by House Bill 28, Article V, Acts of the 78th Legislature, Third Called Session, an amount not to exceed \$1,000,000 for fiscal year 2004 be transferred to the Secretary of State, Item B.1.2. Election/Voter Registration Funds, for the biennium ending August 31, 2005, for the purposes necessary to meet this emergency.

2. From appropriations made in House Bill 1, Article I, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003, to the Secretary of State, the Secretary of State is authorized to transfer from any and all such appropriation items, an amount not to exceed \$1,500,000 to Item B.1.2. Election/Voter Registration Funds for the biennium ending August 31, 2005, for the purposes necessary to meet this emergency.

If approved by the Governor, this budget execution order expires on August 31, 2005.

Signed by David Dewhurst

Lieutenant Governor

Joint Chair, Legislative Budget Board

Signed by Tom Craddick

Speaker of the House

Joint Chair, Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on February 9, 2004, by the following vote:

On the part of the Senate:

YEAS: 5 NAYS: 0

On the part of the House:

YEAS: 5 NAYS: 0

Signed by John Keel

Director

Legislative Budget Board

Approved: _____

Date: _____

Rick Perry

Governor of Texas

TRD-200400903

John Keel

Director

Legislative Budget Board

Filed: February 10, 2004



Texas State Board of Plumbing Examiners

Administrative Penalty Procedure and Schedule

At its January 12, 2004, meeting, The Texas State Board of Plumbing Examiners (Board) adopted a standardized Administrative Penalty Schedule, as a part of the procedures developed by the Board for imposing administrative penalties on a person who violates Title 8, Chapter 1301, Occupations Code (the Plumbing License Law), or a rule adopted under the Plumbing License Law. The adoption of a standardized administrative penalty schedule, either by rule or procedure, is required under §1301.702(c) of the Plumbing License Law, as amended

by Senate Bill 282, 78th Legislature, Regular Session. As required by §1301.702(b) of the Plumbing License Law, the amount of the penalties are based on, but not limited to:

(1) the seriousness of the violation, including:

(A) the nature, circumstance, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

The schedule is divided into two classes of violations. Class "A" violations are those violations with greater potential to jeopardize public health, safety, welfare, property, or environment. Class "B" violations are those with less immediate potential to jeopardize public health, safety, welfare, property, or environment. The schedule lists a brief description of each violation, followed by the Section number of the Plumbing License Law or Board Rules referencing the violation. The schedule is established for standard violations under normal circumstances and does not necessarily include every possible violation of the Plumbing License Law or Board Rules. In any particular case, the Board may also consider the harm created to the health, safety, property, environment or economic welfare of the public caused by the violation and any other matter that justice may require when determining administrative penalties and additional disciplinary actions allowed by law, including action on a person's license or registration.

It is the policy of the Board to pursue expeditious resolution of complaints through voluntary agreed settlement, whenever appropriate. The schedule sets forth two possible base penalty amounts. The first base penalty is a "Settlement" amount, which indicates the amount of penalty to be paid for an uncontested case where the respondent and the Board choose to settle the case without a hearing before the State Office of Administrative Hearings (SOAH). The second base penalty is a "Hearing" amount, which indicates the amount of penalty that will be pursued by the Board if the respondent or the Board chooses to have the case heard at the SOAH. The "hearing" amount is larger, due to the additional costs incurred to the State when pursuing a case through the administrative hearing process. The schedule also sets forth additional amounts for failing to correct a violation and for any previous violations of a similar nature. §1301.702(a) of the Plumbing License Law, provides that the maximum penalty may not exceed \$5,000.00 for each violation. §1301.702(a) also states that each day a violation continues or occurs may be counted as a separate violation for the purposes of imposing a penalty.

Administrative Penalty Schedule

The following schedule is established for standard violations under usual circumstances. The Board may also consider the harm created to the health, safety, property, environment or economic welfare of the public caused by the violation and any other matter that justice may require when determining the administrative penalties and additional disciplinary actions allowed by law in any particular case. The maximum penalty may not exceed \$5000 per violation. Each day a violation occurs or continues may be counted as a separate violation. Note: "Settlement" indicates the amount of penalty to be paid in an uncontested case where the respondent and the Board choose to settle the case without a hearing before the State Office of Administrative Hearings (SOAH). "Hearing" indicates the amount of penalty that will be pursued by the Board if the respondent or the Board chooses to have the case heard at the SOAH.

Class A Violations - Violations with greater potential to jeopardize public health, safety, welfare, property, or environment	Base penalty	Additional amount for failing to correct violation	Additional amount for previous violation of similar nature
Contract for or offer to perform plumbing work without the proper license Plumbing License Law Sec. 1301.351(a) and Board Rule Sec. 367.3(a)	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000
Contract for or offer to install medical gas or medical vacuum piping without the proper endorsement/license Plumbing License Law Sec.1301.351(a), Board Rule 367.3(b) and 367.2(a)(2)	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000
Claim through advertising or by producing another's plumbing license or license number, or by other means claiming that a person is a licensed plumber when in fact that person is not a licensed plumber; claiming that a company has secured the services of a master plumber when in fact the company has not Board Rule 367.7(a) and 367.7(b)(4)	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000
False, misleading or deceptive advertising Plumbing License Law Sec.1301.452(a)(4) and Board Rule 367.2(c)(1)	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000
Misrepresentation of services provided or to be provided Plumbing License Law Sec. 1301.452(a)(3)	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000
Nonperformance of services contracted for or agreed to Plumbing License Law Sec.1301.452(a)(3) and Board Rule 367.6	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000
Allow illegal use of Master Plumber License Board Rule 367.3(a)(1-4)	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000
Failure to obtain insurance Plumbing License Law Sec. 1301.3576 and Board Rule 367.3(a)(5)	Settlement	\$2000	+\$ 500 each
	Hearing	\$4000	+\$1000

Class A Violations - Violations with greater potential to jeopardize public health, safety, welfare, property, or environment	Base penalty		Additional amount for failing to correct violation	Additional amount for previous violation of similar nature
	Settlement	Hearing		
Violation of a state plumbing code or municipal ordinance by falsifying a test of any portion of a plumbing system that is required by code Plumbing License Law Sec.1301.255, 1301.452(a)(2) and Board Rule 367.2(e)	Settlement	\$2000	+\$ 500	+\$ 500 each
	Hearing	\$4000	+\$1000	+\$1000
Employ an unlicensed or unregistered person for work requiring a license or registration Plumbing License Law Sec.1301.351(a)(2), 1301.508(a)(3), Board Rule 367.7(a) and 367.7(b)(3)	Settlement	\$1500	+\$ 500	+\$ 500 each
	Hearing	\$3000	+\$1000	+\$1000 each
Employ a person to perform medical gas work without the proper endorsement/license Plumbing License Law Sec. 1301.351(a)(2), 1301.508(a)(3), Board Rule 367.7(a) and 367.7(b)(3)	Settlement	\$1500	+\$ 500	+\$ 500 each
	Hearing	\$3000	+\$1000	+\$1000 each
Perform plumbing inspections without the proper license Plumbing License Law Sec.1301.351(b), 1301.551(d) and Board Rule 367.7(b)(5)	Settlement	\$1500	+\$ 500	+\$ 500 each
	Hearing	\$3000	+\$1000	+\$1000 each
Misrepresentation of costs and completion time Plumbing License Law Sec. 1301.452(a)(3) and Board Rule 367.2(c)(3)	Settlement	\$1500	+\$ 500	+\$ 500 each
	Hearing	\$3000	+\$1000	+\$1000 each
Evade responsibility to a client Board Rule 367.2(a)(3)	Settlement	\$1500	+\$ 500	+\$ 500 each
	Hearing	\$3000	+\$1000	+\$1000 each
Failure to train or manage a person engaged in plumbing in an unincorporated area of the state; or fail to review or inspect the person's work Plumbing License Law Sec. 1301.351(c) and Board Rule Sec. 361.1(20)	Settlement	\$1000	+\$ 500	+\$ 500 each
	Hearing	\$2000	+\$1000	+\$1000 each
Violate a state plumbing code or municipal ordinance including: improper installation, use of unapproved materials, or failure to request an inspection Plumbing License Law Sec.1301.255, 1301.452(a)(2) and Board Rule 367.2(e)	Settlement	\$1000	+\$ 500	+\$ 500 each
	Hearing	\$2000	+\$1000	+\$1000 each
Supply false information to the Board to obtain or renew a license, registration or endorsement Plumbing License Law Sec.1301.452(a)(1) and Board Rule 363.10	Settlement	\$1000	+\$ 500	+\$ 500 each
	Hearing	\$2000	+\$1000	+\$1000 each
Engage in plumbing without a license Plumbing License Law Sec. 1301.351(a) and Board Rule 367.7(b)(2)	Settlement	\$ 500	+\$ 250	+\$ 250 each
	Hearing	\$1000	+\$ 500	+\$ 500 each

Class A Violations - Violations with greater potential to jeopardize public health, safety, welfare, property, or environment	Base penalty	Additional amount for failing to correct violation	Additional amount for previous violation of similar nature
Perform medical gas work without the proper license or endorsement Plumbing License Law Sec. 1301.356(a)	Settlement	\$ 500	+\$ 250 each
	Hearing	\$1000	+\$ 500 each
Evade responsibility to an employer Board Rule 367.2(a)(3)	Settlement	\$ 500	+\$ 250 each
	Hearing	\$1000	+\$ 500 each
Class B Violations - Violations with less immediate potential to jeopardize public health, safety, welfare, property, or environment			
Failure to provide the Board with a Certificate of Insurance (if required insurance was effective) Plumbing License Law Sec.1301.3576 and Board Rule 367.3(a)(5)	Settlement	\$ 500	+\$ 250 each
	Hearing	\$1000	+\$ 500 each
Failure to display Master Plumber License number and company name on service vehicle Board Rule 367.4(b)	Settlement	\$ 500	+\$ 250 each
	Hearing	\$1000	+\$ 500 each
Failure to provide the Board's name, telephone number and Master Plumber License number on documents used to conduct the business of plumbing Plumbing License Law Sec.1301.302 and Board Rule 361.26(b)	Settlement	\$ 500	+\$ 250 each
	Hearing	\$1000	+\$ 500 each
Failure to provide Responsible Master Plumber License number in advertisement Board Rule 367.2(c)(1)	Settlement	\$ 500	+\$ 250 each
	Hearing	\$1000	+\$ 500 each
Failure to obtain a plumbing permit according to the requirements of a political subdivision Plumbing License Law Sec.1301.255, 1301.452(a)(2), and Board Rule 367.2(e)	Settlement	\$ 500	+\$ 250 each
	Hearing	\$1000	+\$ 500 each
Failure to register as a Plumber's Apprentice (while working with proper supervision) Plumbing License Law Sec. 1301.351(a)(1) and Board Rule 367.7(b)(2)	Settlement	\$ 200	+\$ 100 each
	Hearing	\$ 400	+\$ 200 each

TRD-200400722
Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Filed: February 4, 2004

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Texas Board of Professional Engineers

**Notice of Additional Comment Information Concerning
Continuing Education Rules**

The Texas Board of Professional Engineers is publishing additional comment information relating to the recent adoption of §131.139, concerning Continuing Education Program, in the February 5, 2004, issue of the *Texas Register* (29 TexReg 958). Elsewhere in this issue of the *Texas Register*, the Texas Board of Professional Engineers proposes the repeal of §131.139 and replacing it as new §137.17. Comments will be accepted concerning this new proposal for 30 days from date of publication in the *Texas Register*.

The following comments are being published again in order to comply with Texas Government Code §2001.033(a)(1)(A).

The board has received numerous comments during the public comment period regarding the board's adoption of the amended section. The board has received comments from several interested groups or associations. Texas Society of Professional Engineers (TSPE) is in favor of the rule and requested clarification of several issues. Staff responded to TSPE requests with no need for substantial changes of the rule. Texas Department of Transportation is in favor of the rule and requested clarification of several sections in the rule. Staff responded to TXDOT requests with no need for substantial changes of the rule. The South Texas Section of the American Institute of Chemical Engineers (AIChE) is in favor of the rule and requested clarification of several sections in the rule. Staff responded to AIChE requests with no need for substantial changes of the rule. The Structural Engineers Association of Texas (SEA) is in favor of the rule and requested clarification of several sections in the rule. Staff responded to SEA requests with no need for substantial changes of the rule.

The Texas Council of Engineering Companies (CEC) is in favor of the rule and submitted several proposed changes to the rule, including clarification of engineering vs. technical activities and clarification of the hours counted for activities and self study hours. The "technical" language used in the rule is directly from the statute (SB277, §17(c)). CEC commented that the statute does not limit participation in societies or associations to 5 hours as limited in the rule. The language of the rule was developed from NCEES model law (2 PDH per association) and expanded by the board to 5 PDH to encourage and reward active participation in societies and associations. Language in the rule was changed to clarify that presentations or other activities at society or association meetings count on an hour to hour basis with no upper limit and the rule in question is only for service as an officer or appointed official of the society or association. CEC also commented on the timing of awarding PDH's for society or association membership. The rule language was developed and accepted from standard language concerning awarding of hours.

TRD-200400954
Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 11, 2004

Texas Department of Protective and Regulatory Services

Public Hearing - Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs, is preparing the final report for the current five-year Child and Family Services Plan (CFSP) for Texas. Under regulations issued by the U. S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review and report on the progress made toward accomplishing the goals and objectives identified in the current five-year CFSP. This year the agency is also required to develop a new five-year plan for providing child welfare services in Texas for the period from October 1, 2004, through September 30, 2009.

These activities are required for the State to receive its federal allocation for fiscal year 2005 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, the Child Abuse Prevention and Treatment Act (CAPTA), the Chafee Foster Care Independence Program (CFCIP) and the Education and Training Vouchers (ETV) program. The final report and the new CFSP referenced above must be submitted to the federal government by June 30, 2005.

This notice is to solicit input for the final report on the current five-year CFSP and also for the development of the new CFSP. A wide range of input is important to enable the agency to ensure coordination of the full range of child and family services to meet the goals and objectives established for the five-year operational period of the plan. For that purpose, a public hearing will be held on March 4, 2004, from 1:30 - 4:00 p.m. at the John H. Winters Building, Public Hearing Room, 701 W. 51st Street, Austin, TX, where oral testimony will be heard.

In addition, written comments regarding the final report and the new five-year CFSP may be faxed or mailed to: Texas Department of Family and Protective Services, Attn: Max Villarreal, P. O. Box 149030, MC E-557, Austin, TX 78714- 9030, telephone: (512) 438-5443; fax: (512) 438-3782. Written comments, whether faxed or mailed, must be received by March 22, 2004, to ensure their consideration. Members of the public can obtain more detailed information regarding the CFSP from the DFPS web site at: <http://www.dfps.state.tx.us>. The web site includes a copy of the current CFSP, last year's annual progress report, and an outline of the State's proposed goals and objectives for the new five-year CFSP.

TRD-200400950
C. Ed Davis
Director of Legal Services
Texas Department of Protective and Regulatory Services
Filed: February 11, 2004

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Public Utility Commission of Texas

**Notice of Application for Service Provider Certificate of
Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 6, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Superior Phone Company, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 29302 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon 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 1-888-782-8477 no later than February 25, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 29302.

TRD-200400894
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 9, 2004



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 6, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Spectrotel, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 29308 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, SDSL, T1-Private Line, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Verizon and SBC Texas.

Persons who wish to comment upon 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 1-888-782-8477 no later than February 25, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 29308.

TRD-200400895
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 9, 2004



Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on February 2, 2004, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend Electric Utility Certificated Service Area Boundaries. Docket Number 29267.

The Application: The application encompasses an undeveloped area situated within the singly certificated area of American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request to provide electric utility service to a planned subdivision in north Brownsville on the south side of FM 3248 and southwest of Briarwick Subdivision. There are no electric distribution facilities within the proposed area. The estimated cost to BPUB to provide service to this proposed area is \$97,155.03. If the application is approved, the area would be dually certificated to AEP and BPUB.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than March 1, 2004, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 29267.

TRD-200400739
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Notice of Petition for Declaratory Order

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) a petition on January 23, 2004, for a declaratory order.

Docket Style and Number: Petition of Great Plains Windpower, LLC for Declaratory Order Interpreting Public Utility Regulatory Act §39.904, and Commission Substantive Rule §25.242. Docket Number 29218.

The Application: The petition requests a declaration that pursuant to the subsequently enacted Senate Bill 7, the commission's rule interpretation in Docket Number 19715- that a utility is not obligated to purchase Qualifying Facility (QF) energy until the QF is able to provide energy within 90 days after notifying the utility that the energy would be available- does not apply to QF's utilizing renewable energy technologies such as wind, and that accordingly the utility is obligated to enter into a written agreement to purchase the renewable energy from a QF even if the renewable energy will not be available within 90 days after notice from the QF.

Persons wishing to 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 1-888-782-8477. A person has until 3:00 p.m. on March 8, 2004 to file a petition to intervene as a party in this proceeding. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 29218.

TRD-200400955
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2004



Notice of Petition for Exemption from Integrated Service Digital Network Notice and Reporting Requirements

Notice is given to the public that a petition was filed with the Public Utility Commission of Texas (commission) on January 30, 2004, by Alenco Communications, Incorporated, doing business as A.C.I. (or the Company), requesting exemption from the documentation, customer notice, and reporting requirements required by the order granting its waiver of the requirements to provide integrated service digital network (ISDN) service in its territory.

Docket number and title: Docket Number 29260, *Petition of Alenco Communications, Incorporated, doing business as A.C.I., for Exemption from Integrated Services Digital Network Reporting and Customer Notification Requirements.*

Summary of petition: A.C.I. was granted an exemption of the requirements to provide ISDN service in Docket Number 16837, *Petition of Alenco Communications, Incorporated for Exemption from the Integrated Services Digital Network (ISDN) Requirements of P.U.C. Subst. R. 23.69(d)(3) and (d)(5)*, on May 2, 1997. The commission granted A.C.I. an ongoing exemption from the requirements of former substantive rule §23.69(d)(3) and (d)(5) (currently found in §26.142(c)(3)); however, in granting the exemption, the commission required A.C.I. to provide annual notice to its customers describing ISDN service and the exemption granted, to solicit inquiries regarding ISDN service, and to describe its documentation and reporting procedures. In addition, the Company is required to document and provide the commission with an annual report detailing customer inquiries regarding ISDN service. The Company stated that it now offers an alternative to ISDN service (i.e., digital subscriber line (DSL) service) that is more reliable and cost effective than ISDN; therefore it believes that ISDN is not an attractive service to its customers. The Company stated that it incurs substantial costs to provide annual customer notice and reports. In addition, the Company stated that since 1997 it has had zero customer inquiries regarding ISDN service; therefore exemption from the notice and reporting requirements would alleviate regulatory costs no longer appropriate given the absence of customer demand or interest in ISDN.

Comments: Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29260.

TRD-200400754
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Notice of Petition for Exemption from Integrated Service Digital Network Notice and Reporting Requirements

Notice is given to the public that a petition was filed with the Public Utility Commission of Texas (commission) on January 30, 2004, by Blossom Telephone Company (Blossom or the Company) requesting exemption from the documentation, customer notice, and reporting requirements required by the order granting its waiver of the requirements to provide integrated service digital network (ISDN) service in its territory.

Docket number and title: Docket Number 29261, *Petition of Blossom Telephone Company for Exemption from Integrated Services Digital Network Reporting and Customer Notification Requirements.*

Summary of petition: Blossom was granted an exemption of the requirements to provide ISDN service in Docket Number 16835, *Petition of Blossom Telephone Company for Exemption from the Integrated Services Digital Network (ISDN) Requirements of P.U.C. Subst. R. 23.69(d)(3) and (d)(5)*, on May 2, 1997. The commission granted Blossom an ongoing exemption from the requirements of former substantive rule §23.69(d)(3) and (d)(5) (currently found in §26.142(c)(3)); however, in granting the exemption, the commission required Blossom to provide annual notice to its customers describing ISDN service and the exemption granted, to solicit inquiries regarding ISDN service, and to describe its documentation and reporting procedures. In addition, the Company is required to document and provide the commission with an annual report detailing customer inquiries regarding ISDN service. The Company stated that it incurs substantial costs to provide annual customer notice and reports. In addition, the Company stated that since 1997 it has had zero customer inquiries regarding ISDN service; therefore exemption from the notice and reporting requirements would alleviate regulatory costs no longer appropriate given the absence of customer demand or interest in ISDN.

Comments: Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29261.

TRD-200400755
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Notice of Petition for Exemption from Integrated Service Digital Network Notice and Reporting Requirements

Notice is given to the public that a petition was filed with the Public Utility Commission of Texas (commission) on January 30, 2004, by Cap Rock Telephone Cooperative, Incorporated (Cap Rock or the Company) requesting exemption from the documentation, customer notice, and reporting requirements required by the order granting its waiver of the requirements to provide integrated service digital network (ISDN) service in its territory.

Docket number and title: Docket Number 29262, *Petition of Cap Rock Telephone Cooperative, Incorporated for Exemption from Integrated Services Digital Network Reporting and Customer Notification Requirements.*

Summary of petition: Cap Rock was granted an exemption of the requirements to provide ISDN service in Docket Number 16839, *Petition of Cap Rock Telephone Cooperative, Incorporated for Exemption from the Integrated Services Digital Network (ISDN) Requirements of P.U.C. Subst. R. 23.69(d)(3) and (d)(5)*, on May 2, 1997. The commission granted Cap Rock an ongoing exemption from the requirements of former substantive rule §23.69(d)(3) and (d)(5) (currently found in §26.142(c)(3)); however, in granting the exemption, the commission required Cap Rock to provide annual notice to its customers describing ISDN service and the exemption granted, to solicit inquiries regarding ISDN service, and to describe its documentation and reporting procedures. In addition, the Company is required to document and provide

the commission with an annual report detailing customer inquiries regarding ISDN service. The Company stated that it now offers an alternative to ISDN service (i.e., digital subscriber line (DSL) service) that is more reliable and cost effective than ISDN; therefore it believes that ISDN is not an attractive service to its customers. The Company stated that it incurs substantial costs to provide annual customer notice and reports. In addition, the Company stated that since 1997 it has had minimal customer inquiries regarding ISDN service; therefore exemption from the notice and reporting requirements would alleviate regulatory costs no longer appropriate given the absence of customer demand or interest in ISDN.

Comments: Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29262.

TRD-200400756
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Notice of Petition for Exemption from Integrated Service Digital Network Notice and Reporting Requirements

Notice is given to the public that a petition was filed with the Public Utility Commission of Texas (commission) on January 30, 2004, by Lipan Telephone Company (Lipan or the Company) requesting exemption from the documentation, customer notice, and reporting requirements required by the order granting its waiver of the requirements to provide integrated service digital network (ISDN) service in its territory.

Docket number and title: Docket Number 29263, *Petition of Lipan Telephone Company for Exemption from Integrated Services Digital Network Reporting and Customer Notification Requirements.*

Summary of petition: Lipan was granted an exemption of the requirements to provide ISDN service in Docket Number 16838, *Petition of Lipan Telephone Company for Exemption from the Integrated Services Digital Network (ISDN) Requirements of P.U.C. Subst. R. 23.69(d)(3) and (d)(5)*, on May 2, 1997. The commission granted Lipan an ongoing exemption from the requirements of former substantive rule §23.69(d)(3) and (d)(5) (currently found in §26.142(c)(3)); however, in granting the exemption, the commission required Lipan to provide annual notice to its customers describing ISDN service and the exemption granted, to solicit inquiries regarding ISDN service, and to describe its documentation and reporting procedures. In addition, the Company is required to document and provide the commission with an annual report detailing customer inquiries regarding ISDN service. The Company stated that it now offers an alternative to ISDN service (i.e., digital subscriber line (DSL) service) that is more reliable and cost effective than ISDN; therefore it believes that ISDN is not an attractive service to its customers. The Company stated that it incurs substantial costs to provide annual customer notice and reports. In addition, the Company stated that since 1997 it has had minimal customer inquiries regarding ISDN service; therefore exemption from the notice and reporting requirements would alleviate regulatory costs no longer appropriate given the absence of customer demand or interest in ISDN.

Comments: Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29263.

TRD-200400757
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Notice of Petition for Exemption from Integrated Service Digital Network Notice and Reporting Requirements

Notice is given to the public that a petition was filed with the Public Utility Commission of Texas (commission) on January 30, 2004, by Mid-Plains Rural Telephone Cooperative, Incorporated (Mid-Plains or the Company) requesting exemption from the documentation, customer notice, and reporting requirements required by the order granting its waiver of the requirements to provide integrated service digital network (ISDN) service in its territory.

Docket number and title: Docket Number 29264, *Petition of Mid-Plains Rural Telephone Cooperative, Incorporated for Exemption from Integrated Services Digital Network Reporting and Customer Notification Requirements.*

Summary of petition: Mid-Plains was granted an exemption of the requirements to provide ISDN service in Docket Number 16836, *Petition of Mid-Plains Rural Telephone Cooperative, Incorporated for Exemption from the Integrated Services Digital Network (ISDN) Requirements of P.U.C. Subst. R. 23.69(d)(3) and (d)(5)*, on May 2, 1997. The commission granted Mid-Plains an ongoing exemption from the requirements of former substantive rule §23.69(d)(3) and (d)(5) (currently found in §26.142(c)(3)); however, in granting the exemption, the commission required Mid-Plains to provide annual notice to its customers describing ISDN service and the exemption granted, to solicit inquiries regarding ISDN service, and to describe its documentation and reporting procedures. In addition, the Company is required to document and provide the commission with an annual report detailing customer inquiries regarding ISDN service. The Company stated that it incurs substantial costs to provide annual customer notice and reports. In addition, the Company stated that since 1997 it has had minimal customer inquiries regarding ISDN service; therefore exemption from the notice and reporting requirements would alleviate regulatory costs no longer appropriate given the absence of customer demand or interest in ISDN.

Comments: Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29264.

TRD-200400758
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Notice of Petition for Exemption from Integrated Service Digital Network Notice and Reporting Requirements

Notice is given to the public that a petition was filed with the Public Utility Commission of Texas (commission) on January 30, 2004, by North Texas Telephone Company (North Texas or the Company) requesting exemption from the documentation, customer notice, and reporting requirements required by the order granting its waiver of the requirements to provide integrated service digital network (ISDN) service in its territory.

Docket number and title: Docket Number 29265, *Petition of North Texas Telephone Company for Exemption from Integrated Services Digital Network Reporting and Customer Notification Requirements.*

Summary of petition: North Texas was granted an exemption of the requirements to provide ISDN service in Docket Number 16831, *Petition of North Texas Telephone Company for Exemption from the Integrated Services Digital Network (ISDN) Requirements of P.U.C. Subst. R. 23.69(d)(3) and (d)(5)*, on May 2, 1997. The commission granted North Texas an ongoing exemption from the requirements of former substantive rule §23.69(d)(3) and (d)(5) (currently found in §26.142(c)(3)); however, in granting the exemption, the commission required North Texas to provide annual notice to its customers describing ISDN service and the exemption granted, to solicit inquiries regarding ISDN service, and to describe its documentation and reporting procedures. In addition, the Company is required to document and provide the commission with an annual report detailing customer inquiries regarding ISDN service. The Company stated that it incurs substantial costs to provide annual customer notice and reports. In addition, the Company stated that since 1997 it has had zero customer inquiries regarding ISDN service; therefore exemption from the notice and reporting requirements would alleviate regulatory costs no longer appropriate given the absence of customer demand or interest in ISDN.

Comments: Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29265.

TRD-200400759
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Notice of Petition for Exemption from Integrated Service Digital Network Notice and Reporting Requirements

Notice is given to the public that a petition was filed with the Public Utility Commission of Texas (commission) on January 30, 2004, by Riviera Telephone Company, Incorporated (Riviera or the Company) requesting exemption from the documentation, customer notice, and reporting requirements required by the order granting its waiver of the requirements to provide integrated service digital network (ISDN) service in its territory.

Docket number and title: Docket Number 29266, *Petition of Riviera Telephone Company, Incorporated for Exemption from Integrated Services Digital Network Reporting and Customer Notification Requirements.*

Summary of petition: Riviera was granted an exemption of the requirements to provide ISDN service in Docket Number 16832, *Petition of Riviera Telephone Company, Incorporated for Exemption from the Integrated Services Digital Network (ISDN) Requirements of P.U.C. Subst. R. 23.69(d)(3) and (d)(5)*, on May 2, 1997. The commission granted Riviera an ongoing exemption from the requirements of former substantive rule §23.69(d)(3) and (d)(5) (currently found in §26.142(c)(3)); however, in granting the exemption, the commission required Riviera to provide annual notice to its customers describing ISDN service and the exemption granted, to solicit inquiries regarding ISDN service, and to describe its documentation and reporting procedures. In addition, the Company is required to document and provide the commission with an annual report detailing customer inquiries regarding ISDN service. The Company stated that it now offers an alternative to ISDN service (i.e., digital subscriber line (DSL) service) that is more reliable and cost effective than ISDN; therefore it believes that ISDN is not an attractive service to its customers. The Company stated that it incurs substantial costs to provide annual customer notice and reports. In addition, the Company stated that since 1997 it has had zero customer inquiries regarding ISDN service; therefore exemption from the notice and reporting requirements would alleviate regulatory costs no longer appropriate given the absence of customer demand or interest in ISDN.

Comments: Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All comments should reference Docket Number 29266.

TRD-200400760
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 5, 2004



Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of Wes-Tex Telephone Cooperative, Inc. for Suspension of Wireless Number Portability Implementation. Docket Number 29278.

The Petition: Wes-Tex Telephone Cooperative, Inc. (Wes-Tex) seeks to suspend until July 31, 2004, the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP). Wes-Tex's certified service area is outside the top 100 MSAs. Under the FCC's rules, Wes-Tex has a current wireless local number portability implementation date of May 24, 2004. Based upon agreements with the parties in Docket Number 28723 et al., the instant petition is filed to address petitioner's need for a further extension of the May 24, 2004 compliance date. Petitioner is requesting an extension until July 31, 2004 because petitioner is not technically capable of implementing wireless LNP by May 24, 2004.

Persons wishing to 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 1-888-

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) 1-800-735-2989. All comments should reference Docket Number 29278.

TRD-200400922
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004

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Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of Wes-Tex Telecommunications, Inc. for Suspension of Wireless Number Portability Implementation. Docket Number 29281.

The Petition: Wes-Tex Telecommunications, Inc. (Petitioner) seeks to suspend until July 31, 2004, the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP). Petitioner's certified service area is outside the top 100 MSAs. Under the FCC's rules, Petitioner has a current wireless local number portability implementation date of May 24, 2004. Based upon agreements with the parties in Docket Number 28723 et al., the instant petition is filed to address petitioner's need for a further extension of the May 24, 2004 compliance date. Petitioner is requesting an extension until July 31, 2004 because petitioner is not technically capable of implementing wireless LNP by May 24, 2004.

Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 29281.

TRD-200400923
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004

◆ ◆ ◆
Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of Livingston Telephone Company for Suspension of Wireless Number Portability Implementation. Docket Number 29282.

The Petition: Livingston Telephone Company (Petitioner) seeks a suspension of the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP) until specific technical and economic issues regarding number portability have

been resolved. Petitioner's certified service area is outside the top 100 MSAs. Under the FCC's rules, Petitioner has a current wireless local number portability implementation date of May 24, 2004. Petitioner stated a belief that there are important intermodal porting issues that still need to be addressed. Petitioner stated a suspension will ensure an orderly implementation of wireless LNP and will ensure that Petitioner's rural customers are not burdened with unnecessary expenditures to meet intermodal porting requirements that can only be considered uncertain at the present time.

Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 29282.

TRD-200400924
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004

◆ ◆ ◆
Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of Brazos Telecommunications, Inc. for Suspension of Wireless Number Portability Implementation. Docket Number 29283.

The Petition: Brazos Telecommunications, Inc. (Petitioner) seeks a suspension of the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP) until specific technical and economic issues regarding number portability have been resolved. Petitioner's certified service area is outside the top 100 MSAs. Under the FCC's rules, Petitioner has a current wireless local number portability implementation date of May 24, 2004. Petitioner stated a belief that there are important intermodal porting issues that still need to be addressed. Petitioner stated a suspension will ensure an orderly implementation of wireless LNP and will ensure that Petitioner's rural customers are not burdened with unnecessary expenditures to meet intermodal porting requirements that can only be considered uncertain at the present time.

Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 29283.

TRD-200400925
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004

Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of West Plains Telecommunications, Inc. for Suspension of Wireless Number Portability Implementation. Docket Number 29284.

The Petition: West Plains Telecommunications, Inc. (Petitioner) seeks to suspend until July 31, 2004, the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP). Petitioner's certified service area is outside the top 100 MSAs. Under the FCC's rules, Petitioner has a current wireless local number portability implementation date of May 24, 2004. Based upon agreements with the parties in Docket Number 28723 et al., the instant petition is filed to address petitioner's need for a further extension of the May 24, 2004 compliance date. Petitioner is requesting an extension until July 31, 2004 because petitioner is not technically capable of implementing wireless LNP by May 24, 2004.

Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 29284.

TRD-200400926
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004



Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of North Texas Telephone Company for Suspension of Wireless Number Portability Implementation. Docket Number 29285.

The Petition: North Texas Telephone Company (Petitioner) seeks to suspend until November 1, 2004, the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP). Petitioner's certified service area is outside the top 100 MSAs. Under the FCC's rules, Petitioner has a current wireless local number portability implementation date of May 24, 2004. Based upon agreements with the parties in Docket Number 28723 et al., the instant petition is filed to address petitioner's need for a further extension of the May 24, 2004 compliance date. Petitioner is requesting an extension until November 1, 2004 because petitioner is not technically capable of implementing wireless LNP by May 24, 2004.

Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use

Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 29285.

TRD-200400927
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004



Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of Five Area Telephone Cooperative, Inc. for Suspension of Wireless Number Portability Implementation. Docket Number 29286.

The Petition: Five Area Telephone Cooperative, Inc. (Petitioner) seeks to suspend until July 31, 2004, the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP). Petitioner's certified service area is outside the top 100 MSAs. Under the FCC's rules, Petitioner has a current wireless local number portability implementation date of May 24, 2004. Based upon agreements with the parties in Docket Number 28723 et al., the instant petition is filed to address petitioner's need for a further extension of the May 24, 2004 compliance date. Petitioner is requesting an extension until July 31, 2004 because petitioner is not technically capable of implementing wireless LNP by May 24, 2004.

Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 29286.

TRD-200400928
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004



Petition for Suspension of Wireless Number Portability Implementation

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition filed on February 3, 2004, for suspension of the Federal Communications Commission requirement to implement wireless local number portability.

Docket Style and Number: Petition of Brazos Telephone Cooperative, Inc. for Suspension of Wireless Number Portability Implementation. Docket Number 29287.

The Petition: Brazos Telephone Cooperative, Inc. (Petitioner) seeks a suspension of the Federal Communications Commission's (FCC) requirement to implement wireless local number portability (LNP) until specific technical and economic issues regarding number portability have been resolved. Petitioner's certified service area is outside the

top 100 MSAs. Under the FCC's rules, Petitioner has a current wireless local number portability implementation date of May 24, 2004. Petitioner stated a belief that there are important intermodal porting issues that still need to be addressed. Petitioner stated a suspension will ensure an orderly implementation of wireless LNP and will ensure that Petitioner's rural customers are not burdened with unnecessary expenditures to meet intermodal porting requirements that can only be considered uncertain at the present time.

Persons wishing to 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 29287.

TRD-200400929

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 10, 2004



Public Notice of Amendment to Interconnection Agreement

On February 3, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and New Access Communications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29275. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29275. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 8, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29275.

TRD-200400710

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 4, 2004



Public Notice of Amendment to Interconnection Agreement

On February 3, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Western Communications, Incorporated, doing business as Logix Communications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29276. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29276. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 8, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or

- c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29276.

TRD-200400711
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2004



Public Notice of Amendment to Interconnection Agreement

On February 3, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Wes- Tex Telecommunications, doing business as Westex Telecom, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29277. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29277. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 8, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or

- b) is not consistent with the public interest, convenience, and necessity; or

- c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29277.

TRD-200400712
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2004



Public Notice of Amendment to Interconnection Agreement

On February 4, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and NationNet Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29279. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29279. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 8, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:

- a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29279.

TRD-200400771
 Adriana Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: February 6, 2004



Public Notice of Amendment to Interconnection Agreement

On February 4, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and 877-Ring Again, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29280. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29280. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 8, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29280.

TRD-200400772
 Adriana Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: February 6, 2004



Public Notice of Amendment to Interconnection Agreement

On February 4, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Preferred Carrier Services, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29289. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29289. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 8, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29289.

TRD-200400773

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 6, 2004



Public Notice of Amendment to Interconnection Agreement

On February 4, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and A- Tech Telecom, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29290. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number

29290. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 8, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29290.

TRD-200400774

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 6, 2004



Public Notice of Amendment to Interconnection Agreement

On February 5, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Cellco Partnership, doing business as Verizon Wireless, Dallas TA, LP, doing business as Verizon Wireless, San Antonio MTA, LP, doing business as Verizon Wireless, Southern & Central Wireless, LLC, doing business as Verizon Wireless, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29299. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29299. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 9, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29299.

TRD-200400775
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2004



Public Notice of Amendment to Interconnection Agreement

On February 5, 2004, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Excel Telecommunications, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29300. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29300. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 9, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29300.

TRD-200400776
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2004



Public Notice of Amendment to Interconnection Agreement

On February 9, 2004, Southwestern Bell Telephone, LP d/b/a SBC Texas and Lone Star Telephone, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29313. The joint application and the underlying interconnection

agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29313. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 12, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29313.

TRD-200400949
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2004



Public Notice of Amendment to Interconnection Agreement

On February 9, 2004, Southwestern Bell Telephone, LP d/b/a SBC Texas and NationNet Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon

1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29314. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29314. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 12, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29314.

TRD-200400948
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2004



Public Notice of Interconnection Agreement

On February 6, 2004, Valor Telecommunications of Texas, LP d/b/a Valor Telecom and Buy-Tel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47

United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2004) (PURA). The joint application has been designated Docket Number 29310. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29310. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 10, 2004, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29310.

TRD-200400896
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 9, 2004



Public Notice of Workshop and Request for Comments Regarding Rulemaking on Disaggregation of Texas Universal Service Funds (TUSF)

The Public Utility Commission of Texas (commission) will hold a workshop to consider adopting a rule to provide for disaggregation

of Texas Universal Service Funds (TUSF) for telecommunications carriers on Thursday, March 18, 2004 at 9:30 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 29250, *Rulemaking Proceeding Regarding Disaggregation of Texas Universal Service Funds (TUSF)*, has been established for this proceeding.

Prior to the workshop, the commission requests that interested persons file comments on the questions below. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for open discussion of related issues of general interest to attendees.

Scope of Rule

1. Should a TUSF disaggregation rule mirror the federal USF (FUSF) disaggregation rule, set forth in P.U.C. Substantive Rule 26.418(k)? Why or why not?
2. Should a TUSF disaggregation rule contain requirements in addition to those that apply to federal USF? If so, please describe the requirement and provide suggested rule language.
3. Should a TUSF disaggregation rule contain specific notice requirements for the TUSF administrator (currently, NECA)? If so, please provide suggested rule language.
4. Would disaggregation of TUSF be addressed solely through amendments to P.U.C. Substantive Rule 26.417, or would other commission rules be impacted? Please identify the rule that may require amendment or revision, state the reason that the amendment or revision would be required, and provide suggested amended rule language, if applicable.
5. Which carriers, non-rural or rural incumbent local exchange carriers (ILECs) or all, should be eligible to disaggregate their TUSF support? Which support areas should be disaggregated?
6. Which TUSF funds should be subject to disaggregation?

Impact on Competition

7. What impact, if any, will disaggregation have upon competitive local exchange carriers (CLECs) in an affected study area?
8. What impact, if any, will disaggregation have upon competitive eligible telecommunications carriers (ETCs) or competitive eligible telecommunications providers (ETPs) in an affected study area?
9. Should a telecommunications provider with more than one ETC and/or ETP designated in its study area be required to disaggregate TUSF? In responding to this question, please address the FCC's recent decision in *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338, Memorandum Opinion and Order at paragraph 35 (rel. Jan. 22, 2004).
10. If a disaggregation rule were adopted, should there be a window during which carriers can elect to disaggregate, followed by a period of time in which further disaggregation will not be allowed?
11. Should the amount of TUSF funding for a disaggregated area be frozen at the time that disaggregation is implemented?

Calculation of Support Amounts

12. Should the commission adopt a cost model for TUSF disaggregation? If so please identify the cost model, explain why it should be used for disaggregation, and provide an example of how it would distribute support in a rural ILEC study area or rural exchange, or both, including specific per line support amounts.
13. If not, how would disaggregation be effectuated, and how would per-line support be calculated? For example, should the commission

adopt another form of quantification of support per access line, such as loop length or population density, or a combination of both factors?

14. Should the disaggregation mechanism (whether cost model and/or other) be forward-looking? Or should it allow for embedded and/or historical inputs (including loop length and population density)?

15. Under either a cost model and/or other disaggregation mechanism, please provide an example of the practical impact of zone-specific TUSF disaggregation in a rural ILEC's study area (or rural exchange, or both), including a before-and-after snapshot of how TUSF support is distributed in the study area at present (include the support amount per line), and how it would be distributed after disaggregation (include support amounts per line for each zone).

16. If a carrier disaggregates its study area, should a UNE-sharing mechanism apply to that study area? If so, please describe the UNE-sharing mechanism and provide an example of how it would be applied.

17. Should the manner of disaggregation be limited to a specific number of zones?

Other

18. How would disaggregation impact the size of the TUSF, if at all? Please provide an estimate of the financial impact, if applicable.

19. Should the commission consider a process to enforce the commission's audit capabilities to ensure that TUSF funds are being used consistent with PURA Chapter 56, Subchapter B?

20. Please describe any policy goals that would be furthered or hindered by the adoption of a TUSF disaggregation mechanism.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 21 days of the date of publication of this notice. All responses should reference Project Number 29250. The commission requests that comments be limited to 20 pages (not including attachments). Parties are urged to include everything they wish to discuss in their comments, however the commission requests that parties identify the question for which a response is being provided, and to respond to the questions in sequential order. If parties wish to present anything at the workshop that was not included with the comments, it must be filed in Central Records no later than 3:00 p.m. on March 16, 2003.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 29250 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Mike Grable, Policy Development Division at (512) 936-7234 or Rosemary McMahill, Policy Development Division at (512) 936-7244. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200400935
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2004

Public Notice of Workshop on Evaluation of the Readiness of the El Paso Area for Retail Competition in Electricity

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the readiness of the El Paso area for retail competition in electricity. The workshop will be held on Thursday,

March 4, 2004, at 1:00 p.m. in the El Paso City Hall, 2 Civic Center, 2nd Floor, El Paso, Texas 79901. Project Number 28971, *PUC Evaluation of the Readiness of the El Paso Area for Retail Competition in Electricity*, has been established for this proceeding.

Under amendments to the Public Utility Regulatory Act (PURA) that were adopted in 1999, retail competition in the sale of electricity began in much of Texas in 2002. Retail competition did not begin in the El Paso area at that time because another provision of PURA, §39.102(c), delayed the start of retail competition for a utility that was under a system-wide rate freeze that extended beyond 2001. Under this section of the statute, retail competition is not to begin until the freeze expires. El Paso Electric Company is currently under a rate freeze that extends beyond 2001, and that rate freeze is scheduled to expire in 2005. Because the El Paso area will be eligible for retail electric competition in 2005, the commission has initiated this project to evaluate the conditions in the El Paso area and to determine whether it is appropriate to adopt more specific standards to assess whether the El Paso area is able to offer fair competition and reliable service for all retail customer classes. Under other sections of Chapter 39 of PURA, the commission may delay the start of retail competition in a region, if it concludes that the region is not able to offer fair competition and reliable service for all retail customer classes. The commission has scheduled this workshop to inform the public of the procedures for implementing retail competition and to receive comments from interested persons concerning the prospects for introducing retail competition in the El Paso area.

Questions concerning the workshop or this notice should be referred to Jess Totten, Director, Electric Division, 512-936-7235. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200400807
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 9, 2004

Office of Rural Community Affairs

Extension of the Comment Period for Proposed Amendments to 10 TAC, Part 4, Chapter 255, Section 255.7 (Texas Capital Fund)

The Office of Rural Community Affairs announces that the comment period for the proposed amendments to 10 TAC, Part 4, Chapter 255, Subchapter A, Section 255.7, (Texas Capital Fund) has been extended to March 15, 2004. The proposed amendments appeared in the Proposed Rules section of the December 26, 2003, edition of the *Texas Register* (28 TexReg 11451) (TRD-200308487). As stated in the Proposed Rules section of the December 26, 2003, edition of the *Texas Register*, the comment period on the proposed amendments was scheduled to end on January 25, 2004.

The amendments are being proposed to establish the standards and procedures by which the Office and the Texas Department of Agriculture will allocate and distribute funds under the Texas Capital Fund and to create a new program under the Texas Capital Fund called the Downtown Revitalization Program. The amendments are proposed under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

Comments on the proposal may be submitted to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877, Austin,

Texas 78711, telephone : (512) 936-6701. Comments will be accepted until March 15, 2004.

TRD-200400938

Robt. J. "Sam" Tessen

Executive Director

Office of Rural Community Affairs

Filed: February 11, 2004

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Sam Houston State University

Notice of Invitations for Proposals

Comprehensive Campaign Feasibility Study Contract Specifications

The requirements and specifications of this proposal remain as was published in the November 28, 2003, issue of the *Texas Register* (28 TexReg 10830). The finding of fact has been included in this notice.

In compliance with the provisions of Texas Government Code, Chapter 2254, Sam Houston State University in Huntsville, Texas solicits proposals for a campaign feasibility study in preparation of the University's first major comprehensive fund raising campaign. The President of Sam Houston State University finds there is a substantial need for consulting services. The President finds that the University does not have the resources to conduct the feasibility study.

The chosen firm will be able to provide or demonstrate the following:

1. A proven track record in assisting and preparing university development programs for a major comprehensive campaign with a special emphasis on public, doctoral or comprehensive universities.
2. A list of current and previous clients that includes colleges and universities.
3. An experienced staff with expertise in fund raising, alumni relations, public relations, media relations, foundation and corporate funding, volunteer management, donor relations and major gift cultivation and solicitation.
4. A compatibility with members of the Sam Houston State University Advancement staff.
5. A written proposal which outlines the services to be provided, a timetable for accomplishing the feasibility study, and the cost for such services.
6. On-site services with assigned personnel to provide the following:
 - A. An examination of the University's development program, including organized efforts that reside outside the administrative structure of the Division of University Advancement.
 - B. Examination of the current funding of the University's development program, and recommendations for the funding of the development program throughout and beyond the life of the campaign.

Sam Houston State University Advancement Staff, Vice President for University Advancement in cooperation with the President will review the proposals based on the above listed criteria and will make a recommendation to the Board of Regents.

Proposals should be submitted to:

Mr. Frank R. Holmes

Vice President for University Advancement

Sam Houston State University

Huntsville, Texas 77341-2537

Closing Date: March 12, 2004

TRD-200400741

James F. Gaertner

President

Sam Houston State University

Filed: February 5, 2004

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South East Texas Regional Planning Commission

Request for Proposal

The SETRPC is seeking proposals to conduct an Access to Jobs Transit Study. The study will identify and recommend transit service options to serve those who are low-income clients and those that receive Temporary Assistance to Needy Families (TANF). The study will also focus on non traditional work schedules and the disabled population in relation to the transit barriers to employment that exist. Findings from this study will determine if the existing transportation network is or is not meeting the current needs of the targeted population. If refinement is needed, a plan will be formed to address these needs and identify partners, funding streams and persons for whom the transit service is to accommodate.

Task 1: Organization

With the assistance of SETRPC, a Project Oversight Committee (referred to as "Committee") will be formed to guide this project. This Committee will meet with the **Consultant** to review the project scope of work and refine the project schedule. The Committee will be composed of representatives from SETRPC, Southeast Texas Workforce Centers, local governments and other relevant organizations. This task will include a kick-off meeting to discuss the approach to the subsequent tasks.

Task 2: Employer Survey

The Committee will provide the **Consultant** with a list of employers who utilize entry-level employees on traditional and non-traditional work schedules for the **Consultant** to survey. This survey will determine the level and extent to which potential employers and employees would be interested in participating in alternative transportation programs. The results from this Task will be submitted in electronic format to the Committee for data manipulation and analysis.

As part of this task, the Committee will also provide the staff of the SETRPC with a list of zip codes of clients currently receiving TANF. These addresses will be used to pinpoint population locations that currently receive services from the Southeast Texas Workforce Development Board. The results from this Task will be submitted to the **Consultant** in electronic format for data manipulation and analysis.

Task 3: Micro Study

The Workforce Centers in the study area will select a representative sample of participants in the TANF Choices job readiness program. The **Consultant** will interview them and identify individual work-related transportation needs and issues which may impact the existing service assessment in Task 5 and the design of potential transportation programs in Task 6. Particular emphasis will be made to include persons with disabilities to determine the special needs for that population. Follow up interviews will be performed as a subtask of Task 6.

Task 4: Transit Service Assessment

Using data collected in Tasks 2 and 3, and bus route and schedule information provided by the Committee, the **Consultant** will determine the extent to which transit service does or does not meet the work-related

transportation needs of entry-level employees (and potential employees) in jobs requiring non-traditional and traditional work schedules. The Task 4 findings will be presented to the Committee for review and possible refinement.

Task 5: Transit Service Initiatives

Based on Task 4 findings, a review of "Welfare-to-Work" transportation literature, and existing transit programs in other JARC funded cities, the **Consultant** will identify and describe suitable transit initiatives to connect Task 3, employees to Task 2 potential employment sites using traditional and non-traditional work hours. Descriptions will include preliminary estimates of capital and operating requirements, fare and level-of-service (e.g., headways) elasticities, and ridership. The findings will be presented to the Committee for refinement in Task 6.

Task 6: Refinement

The Committee will select two or three initiatives from among those presented at Task 5 for refinement. The **Consultant** will then prepare detailed estimates of ridership, revenue and expenses for each initiative, to include level-of-service options and implementation schedules. This work will be presented to the Committee for final review.

Task 7: Final Report

A report documenting Task 1 through Task 6 activities will be prepared and printed (minimum 30 copies) and will be presented and described to the Committee. Presentation will include charts, maps and related materials.

Please forward your interest to submit a proposal by e-mail to Bridgett Hlavinka, bhlavinka@setrpc.org, by 12:00 noon CST, March 5, 2004. You may download a copy of the complete request for proposals package from our website at <http://www.setrpc.org>. If you are not able to access the on-line document please call (409) 899-8444 ext. 290 to have a copy mailed to you. Final proposals will be due in the SETRPC offices by 12:00 noon CST, March 26, 2004.

TRD-200400824

Chester R. Jourdan
Executive Director

South East Texas Regional Planning Commission
Filed: February 9, 2004

Stephen F. Austin State University

Notice of Consulting Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254. The University's President finds that the consulting services are necessary in order to achieve strategic goals of the University.

The University's strategic plan establishes the need for a research, branding and integrated marketing communications campaign in order to 1) establish a brand identity; and 2) increase undergraduate enrollment. SFA intends to contract with a higher education integrated marketing firm to help it accomplish its goals. The university desires to begin the consulting agreement in March 2004 and end it at the completion of the outlined services, tentatively November 2004. All services are to be provided during the 2004 fiscal year, except for Web Consultation. The total cost for all phases of this agreement, including consultant travel and other expenses, is not to exceed \$125,000. The SFA Board of Regents has approved this integrated marketing proposal and has authorized the university president to sign a consulting contract for up to this amount.

The University seeks a firm to conduct one-on-one interviews via telephone with prospective students and conduct a Marketplace and Competitor Audit. The consultant must present SFA with a comprehensive brand portfolio that includes: 1) brand promise; 2) brand rationale; 3) brand attributes; 4) Institutional/brand identity; and 5) a University tagline. The firm will be required to provide art direction in connection with and design a travel brochure to be used by the Office of Admissions in recruiting students, design two publication design templates, design a new logo, develop new creative/campaign concepts, and provide web consultation regarding the SFA Web site and Graphic Manual

The consultant must be a fully integrated, higher education marketing services firm that offers comprehensive research, marketing, interactive media and publications services and must be recognized as an expert in this regard. The consultant must have at least a 20-year track record of serving educational institutions nationwide and must have provided services to at least 100 institutions. All services must be provided by the consultant with no outsourcing.

Proposals must be received in the office of Susan Hammons, Director of Public Affairs, P. O. Box 9100, 1936 North Street, Nacogdoches, Texas 75962 by February 27, 2004 in order to be considered. Please contact Ms. Hammons at (936) 468-2605 for further information.

TRD-200400742

R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: February 5, 2004

Request for Proposal

The purpose of this Request for Proposal is to solicit proposals from attorneys interested in entering into a contract for outside counsel services with Stephen F. Austin State University (SFASU) concerning a NCAA matter.

SFASU requires a specialized attorney with experience in handling a NCAA infractions investigation and appearing before the NCAA Committee on Infractions. The term of the contract is to be for a period of one year from the date of award, or until the matter is resolved. The estimated amount of the contract exceeds \$25,000.00, which is the required threshold for posting under the outside counsel procedures stipulated by the Office of the Attorney General.

Interested parties are invited to contact the Office of the General Counsel for SFASU prior to March 5, 2004, to express their interest and describe their capabilities. Further information may be obtained from Yvette Clark, General Counsel at (936) 468-4305, or by mail at Office of the General Counsel, Stephen F. Austin State University, P. O. Box 13065, SFA, Nacogdoches, Texas 75962-3065.

Prospective outside counsel must be prepared to provide any evidence of experience and performance ability which SFASU deems necessary to accomplish the task of NCAA infractions representation. Outside counsel will be required to sign the outside counsel contract formulated by the Office of the Attorney General.

TRD-200400921

R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: February 10, 2004

Texas A&M University, Board of Regents

Notice of Sale

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C. A., Education Code, Chapter 85, as amended, and subject to all rules and regulations promulgated by the Board of Regents, offers for sale at public auction in Suite 1151, System Real Estate Office, The Texas A&M University System, A&M System Building, 200 Technology Way, College Station, Texas, at 10:00 a.m., Wednesday, March 17, 2004, an oil, gas and sulphur lease on the following described land in Dickens County, Texas. The property offered for lease contains 338.62 mineral acres, more or less, of land and more particularly described as follows:

Being 338.62 acres, more or less, being the North one-half (N/2) of Survey 222, in Block 1, H&GN RR Company Survey, Abstract No. 661, Dickens County, Texas.

The minimum lease terms, which applies to this tract, are as follows:

- (1) Bonus: \$150 per net mineral acre
- (2) Royalty: 25%
- (3) Delay Rental: \$10.00 per net mineral acre.
- (4) Primary term: Three (3) years
- (5) Commitment to Drill: Within first year
- (6) Continuous Drilling Commitment 120 days
- (7) Net Mineral Acres: 338.62 (More or Less)

Highest bidder shall pay to the Board of Regents on the day of the sale 25% of the bonus bid, and to balance of the bid shall be paid to the Board within twenty-four (24) hours after notification that the bid has been accepted. All payments, shall be in cashier's check as, the Board may direct. Failure to pay the balance of the amount bid will result in forfeiture to the Board of the 25% paid. The Board of Regents of The Texas A&M University System, **RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.** The successful bidder will be required to pay all advertising expenses and administrative costs.

Further inquiries concerning oil, gas and sulphur leases on System land should be directed to:

Dan K. Buckley

Assistant Vice Chancellor and Director of Real Estate

System Real Estate Office

The Texas A&M University System

A&M System Building, Suite 1151

200 Technology Way

College Station, Texas 77845-3424

(979) 458-6350

TRD-200400779

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University, Board of Regents

Filed: February 6, 2004

Texas Department of Transportation

Public Notice - Public Transportation Funding Allocation
Listening Sessions

The Texas Department of Transportation (the department) will hold public listening sessions regarding the allocation of state and federal funding for public transportation in accordance with House Bill 3184, 78th Texas Legislature, Regular Session, 2003.

The listening sessions will be held as follows:

Monday, February 23, 2004, from 5:30 p.m.- 7:30 p.m. (CST) at The Waco Transit Intermodal Facility, 301 S. 8th Street, Waco, Texas.

Monday, February 23, 2004, from 5:30 p.m.- 7:30 p.m. (CST) at the Tyler Chamber of Commerce, 315 North Broadway, Genecove Room in the Blackstone Building, Tyler, Texas.

Tuesday, February 24, 2004, from 5:30 p.m.- 7:30 p.m. (CST) at the TxDOT District Training Room, 4502 Knickerbocker Rd., Bldg. 5-A, San Angelo, Texas.

Wednesday, February 25, 2004, from 5:30 p.m.- 7:30 p.m. (CST) at the Intermodal Transportation Center, 1001 Jones Street, Fort Worth, Texas.

Monday, March 1, 2004, from 5:30 p.m.- 7:30 p.m. (CST) at the International Trade and Technology Center, University of Texas-Pan American, 1201 W. University Drive, Edinburg, Texas.

Public input will assist the department in developing the state and federal formulas used to allocate funding for public transportation in rural and small urbanized areas of the state. Citizens of Texas are encouraged to join the department at the listening session to express comments on this topic.

Questions concerning the meetings or this notice should be referred to Don Henderson, Public Transportation Division, (512) 416-2820 or Ginnie Grayson, Public Transportation Division, (512) 416-2867.

Persons with disabilities who plan to attend a meeting and who need auxiliary aids or services (such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille) are required to contact Ginnie Grayson at 512-416-2867 at least two work days prior to the meeting so that appropriate arrangements can be made.

TRD-200400951

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: February 11, 2004

Request for Proposal for Intercity Bus Mobility Projects

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) for intercity bus mobility projects funded through the Federal Transit Administration (FTA) §5311(f) intercity bus program. It is anticipated that multiple projects will be selected. Project selection will be administered by the Public Transportation Division. Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. The proposer will become a subrecipient of TxDOT.

Purpose: The RFP invites proposals for services to develop, promote, or support intercity bus mobility. The objectives for these proposals are to support the connection between nonurbanized areas and the larger regional or national system of intercity bus service, to support services to meet the intercity travel needs of residents in nonurbanized areas, or to support the infrastructure of the intercity bus network through planning, marketing assistance, and capital investment in facilities. In the process of meeting these objectives, projects are also to support and promote the coordination of public transportation services across geographies, jurisdictions, and program areas. Coordination between

nonurbanized and urbanized areas and between client transportation services and other types of public transportation are particular objectives.

Eligible Projects: Eligible types of projects have been defined by TxDOT in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation and the intercity bus industries. These include projects for facilities, vehicle capital, planning, marketing, and operating assistance.

Eligible Applicants: Proposers shall be required to enter into a grant agreement as a subrecipient of TxDOT. Eligible subrecipients include state agencies, local public bodies and agencies thereof, private-non-profit organizations, operators of public transportation services, and private for-profit operators.

Availability of Funds: In accordance with the Transportation Code, Chapter 455, the Texas Department of Transportation (TxDOT) currently provides funding for intercity bus mobility projects, funded through the Federal Transit Administration (FTA) §5311(f) intercity bus program. The current balance of carryover funds available for projects is approximately 3.4 million dollars. Additional FTA §5311(f) funding is expected to become available with the reauthorization of the Federal transit appropriations bill.

Work Package: All proposals must demonstrate how they address intercity bus mobility needs. To aid proposers in documenting these needs and developing proposals in response, TxDOT has prepared a work package of intercity bus inventory data, demographics, and thematic maps. The work package is available on the Public Transportation Division website at:

<http://www.dot.state.tx.us/ptn/geninfo.htm>

The work package represents the best available data compiled with professional judgment. Data is derived from multiple sources, some of which are known to be incomplete and inaccurate. Part of the reason for publishing this work package is to provide the intercity bus industry with an opportunity to evaluate the accuracy of this compiled data, propose projects to improve or extend the inventories, and to note discrepancies and suggest corrections. Documentation of needs must be based on the TxDOT work package unless an alternative source of data can be demonstrated to be superior.

Review and Award Criteria: Proposals will be evaluated against a matrix of criteria and then prioritized. Project cost will not be an evaluation factor. Subject to available funding, TxDOT is placing no pre-conditions on the number or on the types of projects to be selected for funding. However, an approximate balance in funding awarded to the five types of projects, or an approximate geographic balance to selected projects, may be seen as appropriate, depending on the proposals which are received. TxDOT may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

Key Dates and Deadlines:

March 19, 2004 Written questions for the pre-proposal conference are due.

March 26, 2004 Pre-proposal conference.

April 9, 2004 Written responses to questions raised in pre-proposal conference posted on the Public Transportation Division's website and mailed to all those who submitted questions or attended the conference.

April 30, 2004 Deadline for receipt of proposals.

May 21, 2004 Target date for TxDOT to complete the evaluation and prioritization of proposals.

June 24, 2004 Presentation of project selection recommendations to the Texas Transportation Commission for their action.

July 23, 2004 Target date for all project grant agreements to be executed, with approved scopes of work and calendars of work.

To Obtain a Copy of the RFP: The RFP will be posted on the Public Transportation Division website at:

<http://www.dot.state.tx.us/ptn/geninfo.htm>

Proposers with questions relating to the RFP should contact Charlie Sullivan at:

csulliva@dot.state.tx.us

or by phone at (512) 416-2811.

TRD-200400952

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: February 11, 2004

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WorkSource of the South Plains

Publication Requirement for Program Year 2004/Fiscal Year 2005 Integrated Plan Modification

The **WorkSource of the South Plains Board (WDB)** issues this public notice of its annual strategic and operational Plan Modification. The WorkSource of the South Plains is responsible for the implementation of workforce development programs throughout the South Plains area, which includes the following 15 counties: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lynn, Lubbock, Motley, Terry, and Yoakum. The Board's Integrated Plan Modification for program year 2004 and fiscal year 2005 will be submitted to the Texas Workforce Commission no later than **April 2, 2004**. At a minimum, the Integrated Plan Modification will include detailed information about current labor market conditions and training and employment opportunities for jobseekers. Additionally, innovative strategies provide area businesses with a network of information and services that assist with their unique employment needs. Workforce programs and services covered in this strategic and operational Plan Modification include: child care, TANF/Choices, Workforce Investment Act, Project RIO, Veteran's Services, Unemployment Insurance and several other workforce programs.

The WorkSource of the South Plains will make available to the public a draft of its strategic and operational Plan Modification for the plan year of July 1, 2004 through June 30, 2005. The public comment period will begin on **February 6** and will end at the close of business on: **March 26, 2004**. The general public may access the document on the Board's website at www.worksourceonline.net or interested parties may receive a copy of the draft Plan Modification document at the following physical address: 1301 Broadway, Ste. 201, Lubbock, Texas 79401.

Public comments must be submitted in writing to the above address, emailed at Jessica.adams@twc.state.tx.us, or faxed to the following number (806) 744-5378. The deadline for receipt of comments is **5:00 p.m. on March 26, 2004**. All comments will be submitted to the Texas Workforce Commission and incorporated as part of the Board's Plan Modification. The WorkSource of the South Plains is an equal opportunity organization. Auxiliary aids or services are available upon request to those individuals with disabilities. For extra assistance, please contact us at (806) 744-1987.

TRD-200400900

Mary Ann Rojas
Executive Director
WorkSource of the South Plains
Filed: February 10, 2004



How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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