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Thomas Estrada

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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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 November 24, 2004

Appointed to the Gulf States Marine Fisheries Commission for a term to expire March 17, 2005, Ralph Rayburn of College Station (replacing Don Perkins of Houston whose term expired).

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Sharon Swift Butterworth of El Paso.

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Jean L. Freeman, Ph.D. of Galveston.

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Gilberto Aguirre, M.D. of San Antonio.

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Frances Ann Brown of Carrollton.

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Thomas E. Oliver of Baytown.

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, David E. Young of Grand Prairie.

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Teresa Durkin Wilkinson of Midland.

Appointed to the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Abigail Rios Barrera, M.D. of San Antonio.

Designating Teresa Wilkinson of Midland as Presiding Officer of the Aging and Disability Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term at the pleasure of the Governor.

Appointed to the Texas State Board of Dietitians for a term to expire September 1, 2009, Georgiana S. Gross of San Antonio (replacing Amy Scott of Humble whose term expired).

Appointed to the Texas State Board of Dietitians for a term to expire September 1, 2009, Linda Whitnell Dickerson of Lake Jackson (replacing Elizabeth Blakely of San Angelo whose term expired).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2006, Carl A. Montoya, Ed.D. of Ingleside (replacing James Boyle of Temple who resigned).

Appointed to the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, James G. Springfield of Harlingen.

Appointed to the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2005, Jaime A. Davidson of Dallas.

Appointed to the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Jeffrey A. Ross, D.P.M. of Bellaire.

Appointed to the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Beverly Barron of Odessa.

Appointed to the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Rudy Arredondo, Ed.D. of Lubbock.

Appointed to the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Lewis E. Foxhall, M.D. of Houston.

Appointed to the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Glenda R. Kane of Corpus Christi.

Designating Rudy Arredondo, Ed.D. of Lubbock as Presiding Officer of the State Health Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term at the pleasure of the Governor.

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2007, Howard Keith Karnes of Dallas (replacing Terry Boyd who is deceased).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2009, John W. Luna of Euless (Reappointment).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2009, Floyd Glen Self, Jr. of Dripping Springs (replacing Paul Calapa whose term expired).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2009, Wanda White Stovall of Fort Worth (replacing Bobbie Templeton whose term expired).

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders, for a term to expire August 31, 2009, Deborah S. Hanna of Austin (replacing Ellen MacDonald of Houston whose term expired).

Designating Sandra Paret of Dallas as Presiding Officer of the Texas Military Facilities Commission for a term at the pleasure of the Governor. Ms. Paret is replacing Gary McClure as presiding officer. Mr. McClure no longer serves on the board.

Appointed to the Texas Economic Development Corporation, pursuant to SB 275, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Sada Cumber of Austin

Appointed to the Texas Economic Development Corporation, pursuant to SB 275, 78th Legislature, Regular Session, for a term at the pleasure of the Governor, Jane F. Juett of Amarillo.

Appointed to the Veteran's Land Board for a term to expire December 29, 2006, Cephus S. "Dusty" Rhodes of El Paso (replacing Ladd Pattillo of Austin whose term expired.

TRD-200407029



Rick Perry, Governor

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-0295-GA

Requestor:

The Honorable Carole Keeton Strayhorn

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether the Texas Treasury Safekeeping Trust Company may enter into repurchase investment contracts that contemplate the possibility of cash as collateral (Request No. 0295-GA)

Briefs requested by December 30, 2004

RQ-0296-GA

Requestor:

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002-1700

Re: Whether a county's self-funded medical insurance plan is subject to certain provisions of the Texas Insurance Code (Request No. 0296-GA)

Briefs requested by December 30, 2004

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

TRD-200407050

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: December 1, 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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§101.5, 101.7, 101.9, 101.11

The State Board of Education (SBOE) proposes amendments to §§101.5, 101.7, 101.9, and 101.11, concerning student assessment. The sections address provisions relating to student testing requirements, testing requirements for graduation, grade advancement requirements, and remediation. The proposed amendments would update and revise the rules to align with current statute.

The goal of the Texas assessment program is to measure and support student progress toward achieving academic success. The primary purpose of the state student assessment program is to provide an accurate measure of student achievement in the areas of reading, writing, mathematics, social studies, and science. The major components of the program are the Texas Assessment of Knowledge and Skills (TAKS) tests, the Reading Proficiency Tests in English (RPTE), and the State-Developed Alternative Assessment (SDAA). Based on the requirements of the Texas Education Code (TEC), the assessment program evaluates the degree to which students have mastered the state-mandated curriculum, the Texas Essential Knowledge and Skills (TEKS).

First administered in 2002 - 2003, the TAKS is administered to students in mathematics in Grades 3 - 11; reading in Grades 3 - 9; writing in Grades 4 and 7; English language arts in Grades 10 and 11; science in Grades 5, 10, and 11; and social studies in Grades 8, 10, and 11.

The RPTE is administered to limited English proficient (LEP) students in Grades 3 - 12. Along with the TAKS in English and Spanish, the RPTE provides a comprehensive system for assessing LEP students. The RPTE, designed specifically for second language learners, provides useful data on these students' current reading levels, and serves as a measure of growth in students' English reading proficiency.

As specified by the TEC, §39.023, the SDAA measures the academic performance of special education students in reading and mathematics enrolled in Grades 3 - 8 and writing in Grades 4 and 7 who are being instructed in the TEKS but who are exempted from the TAKS test by their admission, review, and dismissal (ARD) committee. In 2004 - 2005, the SDAA will be expanded to incorporate students in Grades 9 and 10. The SDAA is administered on the same schedule as TAKS and is designed

to measure annual growth based on appropriate expectations for each student as decided by the student's ARD committee.

Proposed amendments include the following proposals to update rules and align with current statute.

Section 101.5, Student Testing Requirements, would be amended to extend the SDAA to incorporate Grades 9 and 10 in the 2004 - 2005 school year. Section 101.5 would also be amended by adding language from §101.7(a)(3) to extend the policy on waiving the testing requirements for foreign exchange students to include Grades 9 and 10 as well as exit level. It will be more appropriate for this provision to be included in §101.5 rather than §101.7 since it no longer applies solely to exit-level students beginning with school year 2004 - 2005.

Section 101.7, Testing Requirements for Graduation, would be amended to delete subsection (a)(3) relating to foreign exchange students since the provision would be included in §101.5.

Section 101.9, Grade Advancement Requirements, and §101.11, Remediation, would be amended to correct the references to the TEC.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Dr. Barnes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be the update of provisions relating to the Texas student assessment program. This program provides Texas students, schools, and the public with an accurate gauge of students' academic progress in learning the key components of the state-mandated curriculum. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments 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*.

The amendments are proposed under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The amendments implement the Texas Education Code, Chapter 39, Subchapter B.

§101.5. Student Testing Requirements.

(a) (No change.)

(b) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades ~~3 - 10~~ [3-8] and who is receiving instruction in the essential knowledge and skills, shall take the assessment of academic skills unless the student's admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's individualized education program (IEP). If the student's ARD committee determines that the assessment of academic skills is an inappropriate measure of the student's academic progress in whole or part, the student shall take the alternative assessment of academic skills in whole or part. Each testing accommodation shall be documented in the student's IEP in accordance with 34 Code of Federal Regulations (CFR) §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments. ~~[Beginning with the 2004-2005 school year when alternative assessment of academic skills is available for Grades 9-10, this subsection also applies to students enrolled in these grades.]~~

(c) - (d) (No change.)

(e) A foreign exchange student who has waived in writing his or her intention to receive a Texas high school diploma may be excused from the testing requirement as specified in the TEC, Chapter 39, Subchapter B.

§101.7. Testing Requirements for Graduation.

(a) To be eligible to receive a high school diploma, a student must demonstrate satisfactory performance as determined by the State Board of Education (SBOE) on the assessments required for graduation as specified in the Texas Education Code (TEC), Chapter 39, Subchapter B.

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

~~{(3) A foreign exchange student who has waived in writing his or her intention to receive a Texas high school diploma may be excused from the exit level testing requirement as specified in the TEC, Chapter 39, Subchapter B.}~~

(b) - (d) (No change.)

§101.9. Grade Advancement Requirements.

Each school district and charter school shall test eligible students in accordance to the grade advancement requirements as specified in the Texas Education Code (TEC), §28.0211(a). These requirements pertain to the reading test at Grade 3, beginning in the 2002 - 2003 school year; the reading and mathematics tests at Grade 5, beginning in the 2004 - 2005 school year; and the reading and mathematics tests at Grade 8, beginning in the 2007 - 2008 school year.

(1) The Texas Education Agency (TEA) shall provide three opportunities for the tests required for grade advancement as specified in the TEC, ~~§28.0211(b) [§28.0211(a)]~~. The commissioner of education shall specify the dates of these administrations in the assessment calendar.

(2) A school district or charter school shall provide accelerated instruction for students who fail to demonstrate satisfactory performance as specified in the TEC, ~~§28.0211(c) [§28.0211(a)]~~.

(3) (No change.)

§101.11. Remediation.

(a) Each school district and charter school shall provide remediation for students who fail to demonstrate satisfactory performance

on any section of the assessments of academic skills, as required by the Texas Education Code (TEC), ~~§28.0213 [§39.024(b)]~~.

(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 November 23, 2004.

TRD-200406983

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: January 9, 2005

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

◆ ◆ ◆
TITLE 22. EXAMINING BOARDS

PART 4. TEXAS COSMETOLOGY COMMISSION

CHAPTER 89. GENERAL RULES AND REGULATIONS

22 TAC §89.5

The Texas Cosmetology Commission proposes an amendment to §89.5, concerning License Fees. The proposed amendment will increase the original and renewal amount for Individual Facialist, Manicurist, Shampoo Technician, Hair Weaving, Wig Specialist and Operator license fees by \$2 and the original and renewal amount for the Manicure, Facial and Operator Instructor license fees by \$6 in order to pay for Texas Online Service.

Antoinette Humphrey, Executive Director, Texas Cosmetology Commission, has determined for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of the increased fees.

Ms. Humphrey has also determined that for each year of the first five years this fee is in effect, the public benefit anticipated will be to allow licensees and salon owners to renew online. There will be no cost to small businesses and the cost to licensees will be limited to the increased fees listed above.

Comments on the proposed amendment may be submitted to Dyna Lang, Texas Cosmetology Commission, P.O. Box 26700, Austin, Texas 78755-0700. Comments may also be submitted electronically to dyna.lang@txcc.state.tx.us or faxed to (512) 374-1564.

The amendment is proposed under Texas Occupations Code, Chapter 1602, §1602.151, which provides the commission with the authority to "adopt rules consistent with this chapter."

There are no other statutes, articles, or codes affected by the amendment.

§89.5. License Fees.

(a) The fees pertain to the following licensees at all times:

(1) Individual Licenses: ~~§55 [§53]~~

(2) Instructor Licenses: ~~§76 [§70]~~

(3) - (5) (No change.)

(b) - (c) (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 November 30, 2004.

TRD-200407033

Antoinette Humphrey

Executive Director

Texas Cosmetology Commission

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 380-7691



PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §§100.1 - 100.5, 100.10, 100.20

The Texas State Board of Dental Examiners (Board) proposes new 22 TAC Chapter 100, titled "General Provisions," containing §§100.1 - 100.5, 100.10, and 100.20. The new sections are proposed to provide rules governing basic operations of the Board, pursuant to the recommendation of the Texas Sunset Advisory Commission.

Section 100.1, defines the name, location, legal authority, composition, and fiscal year of the Board.

Section 100.2 delineates the purpose and functions of the Board, as mandated by the Dental Practice Act.

Section 100.3 describes the organization and structure of the Board, pursuant to the Dental Practice Act.

Section 100.4 describes the officers of the Board.

Section 100.5 provides guidelines and requirements for Board meetings.

Section 100.10 describes the powers and responsibilities of the executive director.

Section 100.20 discusses final board decisions in contested cases.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering these sections.

The public benefit anticipated as a result of enforcing or administering these sections will be negligible.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering these sections.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental

Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that these sections are published in the *Texas Register*.

The sections are proposed 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.

The proposed sections affect Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Chapter 101 - 125.

§100.1. Introduction.

(a) Name. The State Board of Dental Examiners, referred to as the "board," is a decision-making board appointed by the governor of the State of Texas in compliance with Chapter 252 of the Occupations Code, and the Texas Constitution.

(b) Location. The administrative offices shall be located in Austin, Texas.

(c) Legal authority. The board is established pursuant to Occupations Code, Chapter 252.

(d) Composition. The board shall be composed of those persons appointed by the Governor with the advice and consent of the senate.

(e) Fiscal year. For all fiscal and administrative purposes, the reporting year of the board shall be identical to that of the State of Texas.

§100.2. Purpose and Functions.

(a) Purpose. The purpose of the board is to safeguard the health and safety of Texans by developing and maintaining programs to:

(1) Ensure that only qualified persons are licensed to provide dental care; and

(2) Ensure that violators of law and rules regulating dentistry are appropriately sanctioned.

(b) Functions. The board shall perform the following functions, as outlined in Occupations Code, Chapter 254:

(1) Establish standards of dental practice and regulate the practice of dentistry;

(2) Interpret and enforce the Dental Practice Act and other statutes relating to the practice of dentistry, and implement the Act's intent through the promulgation and enforcement of rules, as necessary to protect the public health and safety;

(3) Receive complaints and investigate possible violations of the Dental Practice Act, other statutes relating to the practice of dentistry, and board rules;

(4) Discipline licensees for violations of the Dental Practice Act, other statutes relating to the practice of dentistry, and board rules through appropriate legal action;

(5) Investigate infection control in the dental profession and adopt and enforce rules to control the spread of infection in the practice of dentistry as necessary to protect the public health and safety;

(6) Adopt and enforce rules placing reasonable restrictions on advertising relating to the practice of dentistry;

(7) Adopt rules to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment;

§100.3. Organization and Structure.

(a) General. The board shall consist of 15 members appointed by the governor with the advice and consent of the senate, as follows:

(1) eight reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) two reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and,

(3) five members who represent the public.

(b) Privileges of office. Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.

(c) Terms of office. Members of the board serve staggered six-year terms. The terms of one-third of the members shall expire on February 1 of each odd-numbered year. A member may serve only one six-year term.

(d) Eligibility. Refer to Occupations Code §252.002.

(e) Membership and employee restrictions. Refer to Occupations Code §252.003.

(f) Compensation. Each member of the board is entitled to receive a per diem set by legislative appropriation for each day the member engages in board business, and may receive reimbursement for travel expenses in accordance with the travel policies of the state of Texas and the Board of Dental Examiners.

§100.4. Officers.

(a) Presiding officer.

(1) 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.

(2) The presiding officer must be a dentist.

(3) The presiding officer shall:

(A) Preside over all meetings of the board;

(B) Represent the board in legislative matters and in meetings with related groups;

(C) Appoint standing, ad hoc, and advisory committees;

(D) Perform other such duties as pertain to the position of presiding officer; and,

(E) Designate a member of the board to coordinate the annual performance reviews of the executive director and evaluation of the agency.

(b) Secretary. The board shall elect a secretary from its members to serve for a one-year term.

§100.5. Meetings.

(a) Frequency and location. The board shall hold meetings at least twice a year at times and places the board determines.

(b) Agenda. An agenda for each meeting shall be posted in accordance with the Open Meetings Act and copies shall be sent to each board member.

(c) Quorum. A majority of the members of the board shall constitute a quorum for the transaction of all business at any regular or special meeting.

(d) Voting. The board may act only by majority vote of its members present and voting, with each member entitled to one vote, unless a conflict of interest exists.

(e) Presiding officer. In the absence of the appointed presiding officer, the secretary shall act as presiding officer. In the absence of both the appointed presiding officer and the secretary, an acting presiding officer shall be chosen by a majority of the board members present, to preside over that meeting only.

(f) Parliamentary procedure. Board and committee meetings shall be conducted pursuant to the protocols contained in Robert's Rules of Order Newly Revised.

(g) Minutes. Minutes of all board meetings shall be prepared and supplied to board members for their review at or prior to the next subsequent board meeting, and shall be filed with the Legislative Reference Library and the Texas State Library.

§100.10. Executive Director.

(a) The board may determine qualifications for and retain an executive director who shall be the chief executive officer of the agency.

(b) The executive director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the board. As chief executive of the agency, the executive director shall manage all aspects of the agency, including personnel, financial and other resources, in support of the Dental Practice Act, board rules and policies, the board's mission and strategic plan.

(c) The executive director shall attend all meetings of the board and may offer recommendations to the board, but shall not vote on matters brought before the board.

(d) The executive director, with the board's consent, may employ an assistant executive director to perform the executive director's duties when the executive director is absent or unable to act.

§100.20. Final Board Decisions in Contested Cases.

(a) The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act.

(b) The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations.

(c) Sanctions should be consistent with sanctions imposed in similar cases and should reflect the board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law.

(d) This section shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board 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.

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Bobby D. Schmidt, M.Ed.

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 475-0972



CHAPTER 101. DENTAL LICENSURE

22 TAC §101.2

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 101, §101.2, concerning Dental Licensure by Examination. The amendments are proposed to establish standards for reexamination, as required by Occupations Code §256.006. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Subsection (e) has been added to establish remediation requirements for applicants for Texas dental licensure that fail three general dentistry clinical examination attempts, and another elevated level of requirements for those that fail four or more attempts. The section as amended also requires that all programs of remediation be approved in advance by the State Board of Dental Examiners, and that reexamination be accomplished within 18 months of the approval of a program of remediation for the applicant.

There are no other substantive changes to the section.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amended section.

The public benefit anticipated as a result of enforcing or administering the amended section will be an increase in the assurance of the clinical competency of applicants for dental licensure.

There will be little to no impact on large, small or micro-businesses.

The anticipated economic cost to persons as a result of enforcing or administering the amended section is primarily in the time and expense incurred by enrolling and participating in a required program of remediation.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendments are proposed 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.

The proposed amendments affect Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Chapters 101 - 125.

§101.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter, an applicant for licensure by examination who is a graduate of an accredited school must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) Has taken and passed the examination for dentists in its entirety given by the American Dental Association Joint Commission on National Dental Examinations; and,

(3) Has taken and passed in its entirety the appropriate general dentistry clinical examination administered by a regional examining board designated by the SBDE [Board].

(b) In addition to the general qualifications for licensure contained in §101.1 of this chapter, an applicant for licensure by examination who is a graduate of a non-accredited school must present proof that the applicant:

(1) Has graduated from a dental school that is not accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) Has successfully completed training in an American Dental Association-approved specialty in an education program that is accredited by the Commission on Dental Accreditation and that consists of at least two years of training as specified by the Council on Dental Education;

(3) Has taken and passed the examination for dentists in its entirety given by the American Dental Association Joint Commission on National Dental Examinations; and,

(4) Has taken and passed in its entirety the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board. Many regional testing boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the SBDE [Board].

(c) Licensure by specialty examination. Applicants for licensure by specialty examination must present proof that the applicant:

(1) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional testing service;

(2) Has taken and passed a specialty examination administered by a regional examining board designated by the SBDE [Board]. Many regional examining boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the SBDE [Board]; and,

(3) Has either:

(A) successfully completed training in an American Dental Association-approved specialty in an education program that is accredited by the Commission on Dental Accreditation of the American Dental Association; or

(B) been currently or previously certified as "Board Eligible" by an American Dental Association-approved specialty board.

(d) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the SBDE [Board] as of the effective dates shown:

- (A) Western Regional Examining Board, January 1, 1994;
- (B) Central Regional Dental Testing Service, January 1, 2002;
- (C) Northeast Regional Board, January 1, 2005;
- (D) Southern Regional Testing Agency, January 1, 2005; and,

(2) Examination results will be accepted for five years from the date of the examination.

(3) Only results from examinations taken after the indicated acceptance date will be accepted.

(e) Remediation.

(1) If an applicant for Texas dental licensure fails three general dentistry clinical examination attempts, the applicant must complete eighty (80) hours of clinical remediation through a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more general dentistry clinical examination attempts, the applicant will be required to complete one of the following before approval will be issued to take another clinical examination:

(A) the repetition of the 4th year of an undergraduate clinical program; or,

(B) a clinical remediation course offered by a CODA-accredited dental school, consisting of no less than 1,000 clinical hours.

(3) All programs of clinical remediation require prior approval by the SBDE. Applicants will be responsible for locating, identifying and obtaining approval from the SBDE prior to registration for any program.

(4) Re-examination must be accomplished within 18 months following the date the SBDE approves a remediation program for the applicant.

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.

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Bobby D. Schmidt, M.Ed.

Executive Director

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.1

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 103, §103.1, concerning general qualifications for dental hygienist licensure. The amendments are proposed to clarify and standardize language, and to improve organization.

The proposed amendment would specifically remove subsection (g), which addresses designated regional examining boards. There is a concurrent proposal to amend 22 TAC Chapter 103, §103.2, which addresses licensure by examination, to relocate the language of subsection (g).

There are no other substantive changes to the section.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amended section.

There is no public benefit anticipated as a result of enforcing or administering the amended section.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the amended section.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendments are proposed 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.

The proposed amendments affect Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Chapters 101 - 125.

§103.1. General Qualifications for Licensure.

(a) Any person desiring to practice dental hygiene in the State of Texas must possess a license issued by the Texas State Board of Dental Examiners (SBDE [Board]) as required by law.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a form approved by the SBDE [Board] proof satisfactory to the SBDE [Board] that the applicant:

(1) Is at least 18 years of age;

(2) Has graduated from an accredited high school or holds a certificate of high school equivalency, General Equivalency Diploma (GED);

(3) Has graduated from a recognized dental school or college of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the SBDE [Board] with a degree in dentistry or a degree or certificate in dental hygiene, or has graduated from a recognized school or college of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board with a degree in dental hygiene;

(4) Has taken and passed the examination for dental hygienists in its entirety given by the American Dental Association Joint Commission on National Dental Examinations;

(5) Has successfully completed a current course in basic life support;

(6) Has taken and passed the jurisprudence examination administered by the SBDE [Board] or an entity designated by the SBDE [Board] within one year immediately prior to application; and,

(7) Has paid all application, examination and licensing fees required by law and SBDE [Board] rules and regulations.

(d) Applications for licensure must be delivered to the office of the State Board of Dental Examiners.

(e) An application for licensure is filed with the SBDE [Board] when it is actually received, date-stamped, and logged-in by the SBDE [Board] along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant within three working days with an explanation of additional documentation or information needed.

(f) In the event an applicant is uncertain whether he/she is qualified according to rule and law for licensure as a dental hygienist, prior to taking the clinical examination a written request may be submitted by the applicant with all proof required other than clinical examination scores. The SBDE [Board] will review the information and advise the applicant whether he or she is qualified for licensure pending successful completion of the clinical examination. The qualifying clinical examination must be taken within one year of the date of being so advised by the SBDE [Board].

~~{(g) Designated regional examining boards.}~~

~~{(1) The following regional examining boards have been designated as acceptable by the State Board of Dental Examiners as of the effective dates shown:}~~

~~{(A) Western Regional Examining Board, January 1, 1994;}~~

~~{(B) Central Regional Dental Testing Service, January 1, 2002;}~~

~~{(C) Northeast Regional Board, January 1, 2005;}~~

~~{(D) Southern Regional Testing Agency, January 1, 2005; and,}~~

~~{(2) Examination results will be accepted for five years from the date of the examination.}~~

~~{(3) Only results from examinations taken after the indicated acceptance date will be accepted.}~~

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.

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22 TAC §103.2

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 103, §103.2, concerning dental hygienist licensure by examination. The amendments are proposed to establish standards for reexamination, as required by Occupations Code §256.006. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Subsection (b) has been added to accommodate the relocation of language concerning designated regional examining boards, that currently resides in §103.1(g). That language would more appropriately be located in §103.2. No changes were made to the language itself.

Subsection (c) has been added to establish remediation requirements for applicants for Texas dental hygienist licensure that fail three general dentistry clinical examination attempts, and another elevated level of requirements for those that fail four or more attempts. The section as amended also requires that all programs of remediation be approved in advance by the State Board of Dental Examiners, and that reexamination be accomplished within 18 months of the approval of a program of remediation for the applicant.

There are no other substantive changes to the section.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amended section.

The public benefit anticipated as a result of enforcing or administering the amended section will be an increase in the assurance of the clinical competency of applicants for dental hygienist licensure.

There will be little to no impact on large, small or micro-businesses.

The anticipated economic cost to persons as a result of enforcing or administering the amended section is primarily in the time and expense incurred by enrolling and participating in a required program of remediation.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendments are proposed 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.

The proposed amendments affect Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Chapter 101 - 125.

§103.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter, an applicant for dental hygienist licensure by examination must present proof that the applicant has taken and passed in its entirety the appropriate clinical examination administered by a regional examining board designated by the SBDE [Board].

(b) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the State Board of Dental Examiners as of the effective dates shown:

(A) Western Regional Examining Board, January 1, 1994;

(B) Central Regional Dental Testing Service, January 1, 2002;

(C) Northeast Regional Board, January 1, 2005;

(D) Southern Regional Testing Agency, January 1, 2005; and,

(2) Examination results will be accepted for five years from the date of the examination.

(3) Only results from examinations taken after the indicated acceptance date will be accepted.

(c) Remediation.

(1) If an applicant for Texas dental hygienist licensure fails three dental hygiene clinical examination attempts, the applicant must complete forty (40) hours of clinical remediation through a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more dental hygiene clinical examination attempts, the applicant must complete eighty (80) hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another clinical examination.

(3) All programs of clinical remediation require prior approval by the SBDE. Applicants will be responsible for locating, identifying and obtaining approval from the SBDE prior to registration for any program.

(4) Reexamination must be accomplished within 18 months following the date the SBDE approves a remediation program for the applicant.

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.

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.101

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 107, §107.101, concerning guidelines for the conduct of investigations. The amendments are proposed to alter the process by which investigations are tracked for possible consideration of emergency suspension proceedings. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Subsection (c) currently requires the director of enforcement to determine "upon receipt" of a complaint whether temporary suspension of the licensee should be considered. The language as amended would allow that determination to be made at any point in an investigation of a complaint. This would allow for that determination to be made with the benefit of some level of supporting evidence. The proposed amendment also links this determination to the next steps of the temporary emergency suspension process, by reference to §107.102(c). The Board is concurrently proposing amendments to §107.102.

There are no other substantive changes to the section.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amended section.

The public benefit anticipated as a result of enforcing or administering the amended section will be an increase in the efficiency and success rate of the emergency temporary suspension process in cases where that measure is necessary to safeguard public health and safety.

The anticipated impact on large, small or micro-businesses is limited to those businesses dependent on a licensee who may be temporarily suspended under this process. However, there is no anticipated increase in the number of temporary emergency suspensions sought under the process delineated by the proposed amendments.

The anticipated economic cost to persons as a result of enforcing or administering the amended section is limited to those licensees who may be temporarily suspended under this process. However, there is no anticipated increase in the number of temporary emergency suspensions sought under the process delineated by the proposed amendments.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendments are proposed 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.

The proposed amendments affect Title 3, Subtitle D of the Occupations Code and Texas Administrative Code, Title 22, Chapters 101 - 125.

§107.101. Guidelines for the Conduct of Investigation.

(a) Every complaint shall be classified into one or more of the following categories:

(1) Quality of Care [eare]: failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.

(2) Sanitation: failure to maintain the dental office in a sanitary condition.

(3) Professional Conduct: violations arising out of the day-to-day practice of dentistry, not including administrative requirements.

(4) Administration: failure to follow the administrative requirements of the Dental Practice Act/and or the board's rules and regulations [~~Board's Rules and Regulations~~].

(5) Dental Laboratories: violations of the Dental Practice Act and/or the board's [~~Board's~~] rules and regulations pertaining to the operation of dental laboratories.

(6) Business Promotion: violations arising out of efforts to obtain business, such as advertising and referral schemes.

(b) Every complaint shall be assigned a priority classification. Priority 1 represents more serious allegations of violations, including Patient Mortality, Patient Morbidity, Practicing Without a License, and Sanitation. Priority 2 represents less serious threats to the public welfare, including records-keeping violations and Advertising.

(c) Every investigation [~~Upon receipt, every complaint~~] shall be evaluated by the director of enforcement [~~Director of Enforcement~~] to determine whether or not temporary suspension, in compliance with the Occupations Code, Chapter 263, §263.004 should be considered, in accordance with §107.102(c) of this chapter.

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.

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22 TAC §107.102

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 107, §107.102, concerning procedures for the conduct of investigations. The amendments are proposed to alter the process by which investigations are submitted for possible consideration of emergency suspension proceedings. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Specifically, the proposed amendments to subsection (c) would allow for the referral of a case for consideration of emergency temporary suspension proceedings at any point in the investigation, rather than upon the initial review, as mandated by the current language.

The proposed amendment also changes the standard for consideration of such cases from "possible threat" to the more specific "imminent threat", which more accurately mirrors the "clear, imminent, or continuing threat" requirement of Occupations Code, Chapter 263, §263.004.

Finally, the proposed amendment routes those cases in which the investigation has revealed an imminent threat to the executive director, who then determines whether or not the case should

be referred to the chairperson of the executive committee of the board, which ultimately bears the responsibility under Occupations Code, Chapter 263, §263.004 of determining whether or not to temporarily suspend the license involved. The introduction of this intermediate step would help to ensure proper controls over the use and efficacy of temporary emergency suspensions.

The Board is concurrently proposing amendments to §107.101.

There are no other substantive changes to the section.

Mr. Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The public benefit anticipated as a result of enforcing or administering the section will be an increase in the efficiency and success rate of the emergency temporary suspension process in cases where that measure is necessary to safeguard public health and safety.

The anticipated impact on large, small or micro-businesses is limited to those businesses dependent on a licensee who may be temporarily suspended under this process. However, there is no anticipated increase in the number of temporary emergency suspensions sought under the process delineated by the proposed amendment.

The anticipated economic cost to persons as a result of enforcing or administering the section is limited to those licensees who may be temporarily suspended under this process. However, there is no anticipated increase in the number of temporary emergency suspensions sought under the process delineated by the proposed amendment.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed. Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The section is proposed 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.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

§107.102. Procedures in Conduct of Investigation.

(a) An investigative file accounting for each complaint filed with the SBDE[~~Board~~] shall be maintained under the supervision of the director of enforcement [~~Director of Enforcement~~].

(b) Every complaint shall be reviewed by the director of enforcement [~~Director of Enforcement~~] to determine jurisdiction. If jurisdiction exists, a complaint shall be investigated to determine the facts concerning the complaint. All investigators shall be state employees.

(c) If, upon [~~initial~~] review, the investigation [~~complaint~~] reveals an imminent [~~a possible~~] threat to a person's welfare, the case [~~complaint~~] shall be referred to the executive director [~~Board or~~] who shall determine whether or not to refer the case to the chairperson of the [~~an~~] executive committee of the board [~~Board~~] for consideration

of temporary suspension, pursuant to the Occupations Code, Chapter 263, §[Section]263.004.

(d) - (j) (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.

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Bobby D. Schmidt, M.Ed.

Executive Director

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CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.6

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 108, §108.6, concerning the required reporting of dental patient death or hospitalization. The amendments are proposed to more clearly delineate what patient hospitalizations must be reported by a dentist. The section as amended also contains revisions to clarify and standardize language, and to improve organization.

Specifically, the section as amended defines hospitalization as "an examination at a hospital or emergency medical facility that results in an in-patient admission for the purpose(s) of treatment and/or monitoring." The proposed language also allows for reporting within 30 days of such time as the dentist becomes aware or reasonably should have become aware of a qualifying hospitalization, to address instances in which the dentist has no knowledge of a patient's hospitalization.

There are no other substantive changes to the section.

Mr. Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The public benefit anticipated as a result of enforcing or administering the section will be an increase in the efficiency of investigations of hospitalizations that occur as a possible consequence of receiving dental services from licensees.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed. Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The section is proposed 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.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

§108.6. Report of Patient Death or Injury Requiring Hospitalization.

A dentist must submit a written report to the SBDE[Board] as provided below:

(1) The death of a dental patient which may have occurred as a consequence of the receipt of dental services from the reporting dentist must be reported within 72 hours of the death, or such time as the dentist becomes aware or reasonably should have become aware of the death;

(2) The hospitalization of a dental patient, as a possible consequence of receiving dental services from the reporting dentist, must be reported within 30 days of the hospitalization or such time as the dentist becomes aware of or reasonably should have become aware of the hospitalization. For purposes of this section, "hospitalization" shall be defined as an examination at a hospital or emergency medical facility that results in an in-patient admission for the purpose(s) of treatment and/or monitoring.

~~{(2) An injury to a dental patient requiring admission to a hospital, as a possible consequence of receiving dental services from the reporting dentist must be reported within 30 days of the injury.}~~

(3) In the evaluation of sedation/anesthesia morbidity or mortality, the SBDE[State Board of Dental Examiners] shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the 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 November 29, 2004.

TRD-200407021

Bobby D. Schmidt, M.Ed.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 475-0972



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.6

The Texas Optometry Board proposes amendments to §277.6, concerning administrative fines and penalties, in order to raise the maximum amount for administrative penalties for violations of specific sections of the Texas Optometry Act and Rules. The amendments add a maximum penalty for failing to respond to the Board's inquiry in the time period permitted by §277.1.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments

are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments, other than additional administrative penalty collections by the agency.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments is that licensees and persons regulated by the Board, knowing the specific penalties for violating the specific statutory and rule provisions, will be more likely to fully comply with the requirements of the law. It has also been determined that the amendments will not impose any additional costs to the persons affected by the rule, unless the persons violate the Texas Optometry Act or Board Rules. No disparity in the imposition of penalties is foreseen for small or micro businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.551 and 351.552. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §§351.551 and §351.552 as authorizing the imposition of administrative penalties by the Board according to provisions set out in the Act.

No other sections are affected by the amendments.

§277.6. *Administrative Fines and Penalties.*

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

(d) Based upon the criteria in subsection (b), the Board may assess a penalty up to the maximum amount listed in each category below for a first violation of the identified prohibited action:

(1) Category 1 Violations: \$1,000 [~~\$500~~] maximum penalty

(A) - (G) (No change.)

(H) Failure of the subject of a complaint to respond within 14 days of receipt to a request letter from the Board regarding the complaint as required by §277.1 of this title.

(2) Category 2 Violations: \$2,000 [~~\$1,000~~] maximum penalty

(A) - (D) (No change.)

(3) - (4) (No change.)

(e) (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 November 29, 2004.

TRD-200407017

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 305-8502

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CHAPTER 279. INTERPRETATIONS

22 TAC §279.10

The Texas Optometry Board proposes new §279.10, concerning professional identification, to clarify the statutory requirements for professional identification of an optometrist's practice. The new section distinguishes between temporary relief or fill-in doctors and doctors who practice at a location on a regular basis.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the section. Any additional enforcement activity should be offset by increased compliance.

Chris Kloeris also has determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the new section is that patients will be able to identify the optometrist practicing at a particular location. The public will also benefit from increased compliance from optometrists since the rule will remove the confusion caused by conflicting statutes. Most persons affected by the new section, optometrists, already comply with the identification requirements, whether in a large, small or micro business. Those optometrists who will be required to post identification may comply by placing and maintaining a hand lettered sign in the window at a very negligible expense. The negligible expense will be required for some small or micro businesses in the same manner as larger businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.362, and 351.458. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. Section 351.362 requires an optometrist to post his or her name so that it is visible prior to the entry into the optometrist's office. The agency interprets §351.458 as prohibiting an optometrist from posting his or her name if the optometrist does not regularly practice in that office.

No other sections are affected by the new section.

§279.10. Professional Identification.

(a) To protect the public health and provide a means for the patient to identify a licensee in a complaint filed with the Board, §351.362 of the Act requires an optometrist or therapeutic optometrist to display the doctor's name so that the name is visible to the public before entry into the office reception area. This requirement does not apply to an optometrist or therapeutic optometrist practicing at a location on a temporary basis, as defined in subsection (b) of this section.

(b) Temporary basis is defined as the practice of optometry or therapeutic optometry at an office for no more than two consecutive months. For example, an optometrist or therapeutic optometrist practicing at a location one day per week during a three month period is not at that location on a temporary basis, and the doctor's name must be displayed as required in §351.362 of the Act.

(c) Section 351.458 of the Act prohibits the display of an optometrist or therapeutic optometrist's professional designation if the intent of the display is to mislead the public that the named optometrist or therapeutic optometrist owner regularly practices at that location. Therefore an optometrist or therapeutic optometrist practicing at an office in which the doctor has no ownership interest, must display the doctor's name as licensed by the Board, regardless of the percentage of time spent at that office, unless the doctor's practice meets the definition of temporary basis in 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 November 29, 2004.

TRD-200407013

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 305-8502



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.76

The Texas Department of Public Safety proposes new §35.76, concerning General Administration and Examinations. New §35.76 provides that private businesses investigating persons or the affairs of a person, not an employee of the private business must be licensed as an investigations company or hire a licensed investigations company to conduct the investigations.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the new section is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the new section is in effect the anticipated public benefit resulting from adoption of the section will be that any investigation of non-employees will be required to be done by a licensed investigations company. It is possible that small businesses, micro-businesses and individuals who are required to comply with the section as proposed may incur a cost if they hire an outside licensed investigations company to conduct investigations of non-employees, however, the department has no way to determine this cost.

Comments on the proposal may be submitted to Cliff Grumbles, Manager, Texas Department of Public Safety, Regulatory Licensing Service, P.O. Box 4143, MSC-0241, Austin, Texas 78765-4143.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§35.76. Investigations by Security Department of Private Businesses.

All private businesses that conduct investigations involving persons or the affairs of a person, not an employee of the private business are required to be licensed as an investigations company or hire a licensed investigations company to conduct the investigation into the affairs of the person not employed by the private business.

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 November 24, 2004.

TRD-200407006

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 424-2135



SUBCHAPTER U. LOCKSMITH

37 TAC §35.313

The Texas Department of Public Safety proposes new §35.313, concerning Locksmith. New §35.313 provides for an exception from licensing as an Electronic Access Control Device Company for manufacturers, manufacturers' distributors or installers of automatic pedestrian doors used solely as a convenience for the public.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the new section is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the new section is in effect the anticipated public benefit resulting from adoption of the section will be to provide an exception for companies and individuals that install electronic access control devices intended only for the unrestricted access and convenience to the general public such as automatic pedestrian doors. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses. There is no anticipated cost to individuals.

Comments on the proposal may be submitted to Cliff Grumbles, Manager, Texas Department of Public Safety, Regulatory Licensing Service, P.O. Box 4143, MSC-0241, Austin, Texas 78765-4143.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§35.313. Electronic Access Control Device.

This chapter does not apply to manufacturers, manufacturers' distributors or installers of electronic access control devices whose sole intended purpose is to provide the public with convenient and unrestricted access, such as automatic pedestrian doors.

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 November 24, 2004.

TRD-200407007

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 424-2135



PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER B. SPECIAL NEEDS

OFFENDER PROGRAMS

37 TAC §87.81

(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 Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (TYC) proposes the repeal of §87.81, concerning Special Management and Treatment Programs. The repeal of the section will eliminate duplicate information regarding disciplinary consequence and treatment interventions in a highly secure and structured environment for youth who have engaged in certain high-risk behaviors, which exist in §95.17 of this title (relating to Behavior Management Program).

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will allow for one publication regarding youth who have engaged in certain high-risk behaviors. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the

authority to make rules appropriate to the proper accomplishment of its function.

The proposed rule implements the Human Resources Code, §61.034.

§87.81. Special Management and Treatment 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 November 29, 2004.

TRD-200407018

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 424-6301



CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.94

The Texas Youth Commission (TYC) proposes new §91.94, concerning Automated External Defibrillators. The new section will establish procedures for the operation, storage, maintenance, and training associated with the use of automated external defibrillators at TYC facilities.

Terry Graham, Director of Budget, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be the provision of immediate emergency response to a sudden cardiac arrest occurring at a TYC facility. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.045, which provides TYC with the authority to adopt rules that provide for the welfare of children in its care, and §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed section affects the Human Resources Code, §61.034.

§91.94. Automated External Defibrillators.

(a) Purpose. The purpose of this policy is to establish procedures and guidelines for the operation, storage, and maintenance, and training requirements associated with the use of Automated External Defibrillators (AEDs). It is Texas Youth Commissions (TYC's) objective to provide immediate emergency response to a sudden cardiac

arrest that occurs at a TYC-operated facility, designated TYC district offices, and Central Office/Annex.

(b) Applicability.

(1) This rule applies to employees at TYC-operated facilities, designated district offices, and Central Office/Annex.

(2) The use of AEDs applies to TYC youth, staff, volunteers, visitors, and contractors.

(c) Explanation of Terms Used.

(1) Automated External Defibrillator (AED)--a United States Food and Drug Administration (FDA) approved electronic device, about the size of a laptop computer, which is programmed to analyze the heart's rhythm for any abnormalities and, if necessary, directs the rescuer to deliver an electrical shock (defibrillation) to assist the heart in reestablishing a normal rhythm.

(2) Cardiac Arrest--a malfunction in the heart's electrical system (ventricular fibrillation or rapid ventricular tachycardia) that may cause the heart to stop suddenly.

(3) Myocardial Infarction--death of heart muscle tissue caused by lack of blood supply to the heart due to plaque or blood clot.

(d) The TYC Medical Director authorizes the acquisition of AEDs at TYC-operated facilities, designated District offices, and Central Office/Annex.

(e) Upon acquiring an AED, the chief local administrator or designee shall notify the local EMS provider of the existence, location, and type of AED.

(f) Cardiac Chain of Survival. Cardiac chain of survival is the current treatment for sudden cardiac arrest that includes the following four steps:

(1) Call 911 or facility gatehouse/control center and include notification that an AED will be used;

(2) begin Cardiopulmonary Resuscitation (CPR);

(3) provide early defibrillation; and

(4) provide Advanced Cardiac Life Support (EMS).

(g) Restrictions for Use.

(1) The AED is to be used only if the person is unresponsive and has no pulse.

(2) The AED is to be used only on persons over the age of eight (8) years old.

(3) The AED will provide "voice prompts" giving further instructions if it cannot read the cardiac rhythm due to improper electrode placement, motion of the person, low battery, or electromagnetic interference, etc.

(4) The AED voice prompt will not instruct the user to shock the person if the person's cardiac rhythm does not warrant a shock or if the person's cardiac rhythm suddenly changes and shock is no longer indicated.

(5) The AED voice prompts will not advise the user to shock the person if the person is experiencing a myocardial infarction.

(h) AED Training.

(1) AED training is incorporated into the American Red Cross CPR/First Aid training required for all TYC direct care staff. All TYC direct care staff are required to be trained annually by a qualified CPR/First Aid/AED TYC trainer or a qualified contracted trainer.

(2) All TYC non-direct care staff working in TYC facilities that house youth, designated district offices, and Central Office/Annex are required to watch the AED training video at least once annually, and the training will be documented and maintained by the local training officer.

(3) The AED training program is approved by the TYC Medical Director and the Department of State Health Services in accordance with the Health and Safety Code, Chapter 779.

(i) General Requirements.

(1) At no time shall a TYC youth be accessible to the AED.

(2) Each TYC-operated facility that houses youth, designated TYC district offices, and Central Office/Annex will have an AED on-site. Al Price State Juvenile Correctional Facility, Ron Jackson State Juvenile Correctional Complex, and McLennan County State Juvenile Correctional Facility will have two AEDs on-site (one for each unit and one for the medical dorm).

(3) The AED should be stored in a protective case at all times. The storage area is free from water, dirt, extreme cold (less than 32 degrees F), and extreme heat (over 100 degrees F).

(4) The following equipment should be stored with each AED:

(A) carrying case;

(B) scissors;

(C) defibrillation pads (2 sets; each facility/district office will keep on hand an additional set of AED replacement pads);

(D) razor;

(E) towel;

(F) pocket mask; and

(G) latex disposable gloves.

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 November 23, 2004.

TRD-200406981

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: January 9, 2005

For further information, please call: (512) 424-6014



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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 5. RAIL SAFETY RULES

SUBCHAPTER C. RAIL SAFETY PROGRAM

16 TAC §5.301

The Railroad Commission of Texas adopts amendments to §5.301, relating to Rail Safety Program Fee, without changes to the version published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9485). The purpose of the amendments is to provide a reasonable basis to calculate a fee to be assessed annually against railroads operating within the state, as required by Section 11, House Bill (HB) 3442, 78th Legislature, Regular Session (2003), which added new Section 2 to Article 6448a, Revised Statutes.

The statute provides that the Commission shall by rule establish the method by which the fees will be calculated and assessed and that the Commission may consider, but is not limited to, using gross ton miles for railroad operations in the state to provide for the equitable allocation among railroads of the cost of administering the Commission's rail safety program. The current rule requires that each railroad operating within the state report its actual or estimated annual gross ton miles to the Commission. The three largest railroads in the state are required to report their annual gross ton miles to the United States Surface Transportation Board (USSTB). For these railroads, it is not a significant burden to report their gross ton miles for operations within the state. Because a fee based on gross ton miles will ensure that each of these large railroads will pay a fee in proportion to each railroad's annual gross ton miles, the Commission finds that assessing the fee based on gross ton miles will assure that the fees are equitably allocated among the three large railroads that document their gross ton miles.

However, the smaller railroads in the state do not document or calculate their gross ton miles, and estimating their gross ton miles, as required by the current rule, is a burdensome task. Commission staff has determined that out of 39 reports filed by the smaller railroads for the calendar year 2002, only two of those railroads indicated that they compile annual gross ton mile data and the remaining 37 small railroads indicate that they do not. To determine an equitable method for calculating the fee to be paid by the smaller railroads, the Commission submitted a questionnaire to the smaller railroads in 2003. Of the 26 small railroads that responded to the questionnaire, all indicated that they document the number of rail cars that they interchange and all 26 were able to report the number of car interchanges they performed in a calendar year. For the smaller railroads, assessing

a fee based on rail car interchanges will assure that the fees are equitably allocated among the smaller railroads according to the size of each railroad's operations within the state.

The Commission is required by Section 2 of Article 6448a, Revised Statutes, to provide for the equitable allocation among the railroads of the cost of administering the commission's rail safety program. Commission staff has determined that it allocates 95% of its rail resources to those larger railroads which report their gross ton miles to the USSTB. The Commission allocates 5% of its rail resources to the smaller railroads which do not document their gross ton miles but document their number of rail car interchanges. As proposed, the Commission allocates 95% of the fees to be collected from the railroads reporting their gross ton miles to the USSTB and 5% of the fees to be collected from the railroads reporting the number of rail cars interchanged, in compliance with the statutory mandate to provide for the equitable allocation among the railroads of the cost of administering the commission's rail safety program.

Section 5.301(a) is not changed by the amendments. It provides that each railroad operating within the state must pay an annual fee.

Adopted §5.301(b)(1) defines the term "gross ton miles" to mean either the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or, if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the USSTB, that portion of the reported gross ton miles that are for operations within the state.

Adopted §5.301(b)(2) defines the term "interchanged" to mean transferred from one railroad to another. The amendment deletes the requirement currently in §5.301(b) that each railroad operating within the state must report its gross ton mileage to the Commission no later than July 1 of each calendar year.

Adopted §5.301(c) provides that each railroad operating within the state that is required to report its gross ton miles to the USSTB must report to the Commission, no later than July 1 of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report must be in writing, signed by a duly authorized officer of the railroad, and verified. Adopted §5.301(c) deletes the definition of "gross ton mileage" in the current rule, including that portion of the definition that would authorize a railroad to report a good faith estimate of its gross ton miles.

Adopted §5.301(d) provides that each railroad operating within the state that is not required to report its gross ton miles to the USSTB must report to the Commission, no later than July 1 of each calendar year, the railroad's total number of rail cars interchanged for the preceding calendar year. The report must be in writing, signed by a duly authorized officer of the railroad, and verified. Adopted §5.301(d) deletes the requirement that the

Commission determine the fee for all railroads based on gross ton miles.

Section 5.301(e) provides that the Commission will determine the annual fee for each railroad operating in the state.

Adopted new §5.301(e)(1) provides that the Commission will determine the annual fee for each railroad that is required to report its gross ton miles to the Commission as follows:

(A) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads required to report their gross ton miles to the Commission; and

(B) the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

New §5.301(e)(2) provides that the Commission will determine the annual fee for each railroad that is required to report its total cars interchanged to the Commission as follows:

(A) each railroad's total number of rail cars interchanged will be divided by the total number of rail cars interchanged by all railroads required to report rail car interchanges to the Commission; and

(B) the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

Adopted §5.301(f) is a re-designation of current §5.301(e). It provides that the Commission will, no later than September 1 of each calendar year, notify each railroad operating in the state of the amount of that railroad's fee that is due and payable.

Adopted §5.301(g) is a re-designation of current §5.301(f) and provides that each railroad operating in the state must, no later than November 1 of each calendar year, pay its assessed fee to the Commission. The payment must be made payable to the State of Texas and will be considered by the Commission to be timely made if it is received by the Commission on or before November 1 of the same calendar year in which notice has been given pursuant to §5.301(f), or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before November 1 of the same calendar year in which notice has been given pursuant to §5.301(f), and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

Adopted §5.301(h) is a redesignation of current §5.301(g).

Adopted new §5.301(h)(1) provides that if a railroad does not timely report its gross ton miles, as required by §5.301(c), the Commission may make a good-faith estimate of the railroad's gross ton miles and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its gross ton miles will constitute a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

Adopted new §5.301(h)(2) provides that if a railroad does not timely report its total rail cars interchanged, as required by §5.301(d), the Commission may make a good-faith estimate of the railroad's total cars interchanged and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its total cars interchanged will constitute a waiver by the railroad

to object to both the Commission's estimate and the fee based on the estimate.

Adopted new §5.301(h)(3) provides that if the Commission has a rational basis for questioning either the gross ton miles or the total cars interchanged reported by a railroad, the Commission may, by letter, fax, or electronic mail, request the railroad to provide documentation or other evidence demonstrating how the railroad determined its reported gross ton miles or total cars interchanged. The request must state the Commission's rational basis for questioning the reported gross ton miles or the reported total cars interchanged, and will inform the railroad that it may deliver such documentation or evidence to the Commission by hand delivery, mail, fax, electronic mail or private carrier. If the Commission determines that a railroad has not provided sufficient documentation or other evidence within 14 calendar days of the request, the Commission may proceed as if the railroad did not timely report its gross ton miles or the total cars interchanged. The Commission will inform a railroad whether it accepts the railroad's documentation or evidence or whether it is proceeding under paragraph (1) or (2) of §5.301(h).

Adopted §5.301(i) is a redesignation of current §5.301(h) and provides that fees collected under this section must be deposited to the credit of the general revenue fund to be used for the rail safety program.

The Commission deletes current §5.301(i), which is a temporary provision providing for the assessment of rail safety fees for the calendar year 2002 and which is ineffective by its terms after May 10, 2004.

As a result of the adopted amendments, each railroad operating in the State of Texas will be required to report either its annual gross ton miles or annual total of rail cars interchanged to the Commission and to pay a fee based on the reported totals. The Commission has determined that the three largest railroads operating in Texas, which are neither small businesses nor micro-businesses, will pay 95% of the total fees. These railroads currently report their national gross ton miles annually to the federal government; they also break out their annual gross ton miles for Texas. The smaller railroads currently document the number of rail cars they interchange. The smaller railroads will pay a significantly smaller fee; the Commission has determined that the 39 smaller railroads will together pay only 5% of the total fees.

The Commission considered establishing a flat fee for the smaller railroads, but due to the diversity in size of the smaller railroads, the Commission determined that a flat fee would be unduly burdensome on the smallest railroads. The Commission considered a complete exemption for the smaller railroads from §5.301, but determined that an exemption would not comply with Section 2 of Article 6448a, Revised Statutes, which calls for an equitable allocation among the railroads of the cost of the rail safety program.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under Section 2, Article 6448a, Revised Statutes, as enacted by Section 11, HB 3442, 78th Legislature, Regular Session, 2003, which requires the Commission by rule to adopt reasonable fees to be assessed annually against railroads operating within the state and further requires that the total amount of fees estimated to be collected may not exceed the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program. The legislation provides that the

Commission may consider gross ton miles for railroad operations within the State of Texas to provide for the equitable allocation among railroads of the cost of administering the rail safety program and that collected fees be deposited to the credit of the general revenue fund to be used for the rail safety program.

Statutory authority: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003; Texas Government Code, §2001.006.

Cross reference to statute: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003.

Issued in Austin, Texas, on November 23, 2004.

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 November 23, 2004.

TRD-200406980

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: December 13, 2004

Proposal publication date: October 8, 2004

For further information, please call: (512) 475-1295



CHAPTER 20. ADMINISTRATION

SUBCHAPTER A. CONTRACTS AND PURCHASES

DIVISION 1. BID PROTESTS, HUBS, AND BID OPENINGS

16 TAC §20.5

The Railroad Commission of Texas (Commission) adopts amendments to §20.5, relating to Historically Underutilized Businesses, with one change (in subsection (a)(16)) to the version published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9490). The rule adopts by reference the rules of the Texas Building and Procurement Commission (TBPC) in 1 Texas Administrative Code, §§111.11 - 111.28, relating to historically underutilized business program, and promotes full and equal business opportunity for all businesses in state contracting.

The Commission amends each paragraph in subsection (a) to add the title of each TBPC rule; amends subsection (a)(4) to incorporate TBPC's recent amendments to 1 Texas Administrative Code §111.14, effective September 1, 2004; amends subsection (a)(16) to incorporate TBPC's recent proposal to amend 1 Texas Administrative Code §111.27; and deletes subsection (a)(13) based on TBPC's recent proposal to repeal 1 Texas Administrative Code §111.23. By changing the date of the TBPC rule which the Commission adopts by reference, the changes described in the following paragraphs will become part of the Commission's rules on HUBs.

TBPC's amendments to §111.14, relating to Subcontracts, adopted by reference in §20.5(a)(4), outline the steps to

determine whether subcontracting opportunities are probable under a contract; the good faith required in developing a HUB subcontracting plan, submission, and review during contract performance; and contract compliance.

TBPC's proposed amendments to §111.27, relating to HUB Forum Program for State Agencies, adopted by reference in §20.5(a)(17) (which was renumbered to (16) due to the deletion of subsection (a)(13)), change the requirements for advertising HUB forums, allow the forums to be offered at various locations, and administer the forums cooperatively with other agencies. TBPC published this proposal in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7583). In its proposal, this Commission stated a November 10, 2004, effective date for this TBPC amendment, based on the likely schedule for TBPC to act on the proposal. The actual effective date was November 9, 2004, so this date is corrected in the adoption.

TBPC proposed the repeal of §111.23, relating to Graduation Procedures, because the process no longer served its intended purpose. This repeal became effective on September 19, 2004; therefore, current subsection (a)(13) is deleted and the subsequent paragraphs renumbered in subsection (a).

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under Texas Government Code, §2161.003, which requires the Commission to adopt the rules of the Texas Building and Procurement Commission promulgated under Texas Government Code, §2161.002, as the Commission's own rules; and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government and proceedings.

Statutory authority: Texas Government Code, §2161.003 and Chapters 2155, 2158, 2162, 2166, 2252, and 2254; and Texas Civil Statutes, Article 6447.

Cross-reference to statute: Texas Government Code, §2161.003 and Texas Civil Statutes, Article 6447.

Issued in Austin, Texas, on November 23, 2004.

§20.5. *Historically Underutilized Businesses.*

(a) The Commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 TAC Chapter 111, Subchapter B, concerning historically underutilized business program, as effective on the following dates:

- (1) §111.11, Policy and Purpose, amended effective May 5, 2003;
- (2) §111.12, Definitions, amended effective May 5, 2003;
- (3) §111.13, Annual Procurement Utilization Goals, amended effective April 19, 2000;
- (4) §111.14, Subcontracts, adopted effective September 1, 2004;
- (5) §111.15, Agency Planning Responsibilities, amended effective February 16, 2000;
- (6) §111.16, State Agency Reporting Requirements, amended effective June 13, 2000;
- (7) §111.17, Certification Process, amended effective May 5, 2003;
- (8) §111.18, Protests, adopted effective October 4, 1995;

(9) §111.19, Recertification, amended effective May 5, 2003;

(10) §111.20, Revocation, amended effective May 5, 2003;

(11) §111.21, Certification and Compliance Reviews, amended effective December 7, 1997;

(12) §111.22, Texas Historically Underutilized Business Certification Directory, amended effective February 16, 2000;

(13) §111.24, Program Review, amended effective February 16, 2000;

(14) §111.25, Memorandum of Understanding between the Texas Department of Economic Development and the Texas Building and Procurement Commission, adopted effective May 5, 2003;

(15) §111.26, HUB Coordinator Responsibilities, adopted effective April 19, 2000;

(16) §111.27, HUB Forum Program for State Agencies, amended effective November 9, 2004; and

(17) §111.28, Mentor Protege Program, amended effective May 8, 2002.

(b) Copies of the rule are filed in the Railroad Commission's Administration Division, located at the Commission's offices at 1701 North Congress, 9th floor, Austin, Texas 78701, and at all Commission district offices.

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 November 23, 2004.

TRD-200406979

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: December 13, 2004

Proposal publication date: October 8, 2004

For further information, please call: (512) 475-1295



SUBCHAPTER B. ACCESS TO AND CHARGES FOR RECORDS

The Railroad Commission of Texas (Commission) adopts the repeal of §§20.101, 20.103 - 20.105, 20.110, 20.111, 20.114, 20.115, and 20.120, relating to Charges for Commission Records; Information in an Electronic or Magnetic Medium; Requests for Information That Require Programming or Manipulation of Data; Charges for Providing Copies of Public Information; Inspection of Paper Records Where Copies Are Not Requested; Inspection of Electronic Record If Copy Not Requested; Information Excepted from Disclosure; Estimates and Waivers of Public Information Charges; and Charge Schedule, and adopts new §20.101, relating to Access to and Charges for Commission Records, without changes from the proposal published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9491).

The Commission adopts the repeal and new rule pursuant to the Texas Building and Procurement Commission's (TBPC's) rules

regarding charges for copies of public information. The new rule adopts by reference the rules of the TBPC in 1 Texas Administrative Code §§111.61 - 111.71, relating to the cost of copies of public information, and lists the most recent effective date for each TBPC rule.

The Commission received no comments on the proposal.

16 TAC §§20.101, 20.103 - 20.105, 20.110, 20.111, 20.114, 20.115, 20.120

The Commission adopts the repeal under Texas Government Code, §2161.003, which requires the Commission to adopt the rules of the Texas Building and Procurement Commission promulgated under Texas Government Code, §2161.002, as the Commission's own rules; and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government and proceedings.

Statutory authority: Texas Government Code, §2161.003 and Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254; and Texas Civil Statutes, Article 6447.

Cross-reference to statute: Texas Government Code, §2161.003 and Texas Civil Statutes, Article 6447.

Issued in Austin, Texas, on November 23, 2004.

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 November 23, 2004.

TRD-200406978

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: December 13, 2004

Proposal publication date: October 8, 2004

For further information, please call: (512) 475-1295



16 TAC §20.101

The Commission adopts the new rule under Texas Government Code, §2161.003, which requires the Commission to adopt the rules of the Texas Building and Procurement Commission promulgated under Texas Government Code, §2161.002, as the Commission's own rules; and Texas Civil Statutes, Article 6447, which authorizes the commissioners to make all rules necessary for their government and proceedings.

Statutory authority: Texas Government Code, §2161.003 and Chapters 2155, 2158, 2161, 2162, 2166, 2252, and 2254; and Texas Civil Statutes, Article 6447.

Cross-reference to statute: Texas Government Code, §2161.003 and Texas Civil Statutes, Article 6447.

Issued in Austin, Texas, on November 23, 2004.

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 November 23, 2004.

TRD-200406977
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 13, 2004
Proposal publication date: October 8, 2004
For further information, please call: (512) 475-1295



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.1

The Texas Optometry Board adopts amendments to §277.1 with the following technical changes to the proposed text published in the September 10, 2004, issue of the *Texas Register* (29 TexReg 8767).

The amending language is moved from subsection (c)(3)(B) to subsection (c)(4). The original subsection (c)(4) is renumbered subsection (c)(5). A sentence clarifying the meaning of "request" is added to the beginning of subsection (c)(4), which states, "The committee may request that the subject of a complaint respond in writing to the allegations in the complaint."

The amendment sets a time limit for a response to an inquiry from the Board concerning a complaint, and therefore insures that complaints are resolved quickly.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.205. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.205 as requiring the agency to timely resolve complaints and to adopt rules concerning the investigation of a complaint.

No other sections are affected by the amendments.

§277.1. *Complaint Procedures.*

(a) Filing complaints. Complaints may be filed with the agency in person at the board's office, or in any written form, including submission of a completed complaint form. The board shall adopt a form as its official complaint form which shall be maintained at the board's office for use at the request of any complainant. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:

- (1) complainant's name, address, and phone number;
 - (2) name, address, and phone number of the optometrist, therapeutic optometrist, or other person, firm, or corporation, if known;
 - (3) date, time, and place of occurrence of alleged violation;
- and
- (4) complete description of incident giving rise to the complaint.
- (b) Complaint investigation and disposition.

(1) All complaints received shall be sent to the executive director. The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against optometrists and therapeutic optometrists regarding alleged violations of the Texas Optometry Act or duly promulgated rules or orders;

(B) alleged unauthorized practice of optometry or therapeutic optometry by unlicensed individuals, or by a licensee while a suspension order or restrictive sanction by the board is in effect;

(C) licensure or reinstatement applications;

(D) alleged advertising violations by optometrists, therapeutic optometrists, persons, firms, or corporations; and

(E) licensee complaints regarding violations of the Act resulting in economic harm.

(2) A complaint shall not be dismissed without appropriate consideration. The board and complainant shall be advised of complaint dismissals.

(c) Investigation-Enforcement Committee.

(1) The chair shall appoint a committee to consider all complaints filed with board. The committee shall be known as the investigation-enforcement committee and shall be composed of board members who are licensed optometrists or therapeutic optometrists. The executive director shall divide the state into geographic areas, with each member of the investigation-enforcement committee being assigned areas of responsibility within such geographic areas. Each member shall be charged with the responsibility of enforcing the provisions of the Act within the assigned area and is authorized to initiate investigations. The executive director shall supervise all investigations. If, as a result of an investigation within a geographic area, a complaint is filed against a licensed optometrist, therapeutic optometrist, or other person, firm, or corporation by the investigator, the member from whose area the complaint originated shall be the member designated to assist in the handling of the prosecution of such complaint and disciplinary proceeding, if any.

(2) The executive director shall forward the complaint to the member in charge of enforcement in the area of the complaint unless in the judgment of the executive director, unusual circumstances exist such that it is more appropriate that the complaint be under province of another member. The investigation-enforcement committee, or any member thereof, shall have the power to issue subpoenas and subpoenas deuces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction. In addition to subpoena power, each member of the committee may authorize the executive director to investigate an alleged violation.

(3) On receipt of a complaint, the member in charge shall determine:

(A) whether to dismiss the matter and take no further action;

(B) whether to send a letter to the person charged reciting that a complaint has been received and that while the investigating member cannot determine or pass upon the merits of the complaint without conducting further investigation that the subject of the complaint be asked to review the complaint to ensure that the Act is being complied with, and that if the allegations are true, to cease and desist from the alleged violations or words to that effect;

(C) whether to conduct further investigations, including conducting investigational hearings or informal conferences;

(D) whether to forward to the board the member's determination that a violation of the Act may have occurred together with a recommendation that proceedings be instituted with the State Office of Administrative Hearings to consider disciplinary action, sanctions, or refusal to issue a license;

(E) whether to forward to the board the member's determination that some person, firm, or corporation may be practicing optometry without a license or otherwise violating the provisions of the Act, along with the member's recommendation that the board notify the attorney general or appropriate district attorney with accompanying request that appropriate action be taken in accordance with law; and

(F) whether to forward to the executive director the member's determination of findings applicable to subparagraphs (D) and (E) of this paragraph for assessment of administrative penalties.

(4) The committee may request that the subject of a complaint respond in writing to the allegations in the complaint. The subject of the complaint shall have 14 days from the receipt of the Board's request to respond. The executive director may extend the time period upon a showing of good cause by the subject of the complaint.

(5) Basic Competence Violations.

(A) If during the investigation of an optometrist's or therapeutic optometrist's compliance with §351.353 of the Act and §279.7 of this title, the optometrist or therapeutic optometrist fails to complete all of the required findings in an initial examination, the completed report of investigation will be classified as an investigative complaint and forwarded by the executive director to the board member in charge.

(B) In determining the action to take under paragraph (3) of this subsection, if any, the board member in charge shall consider the seriousness of the omitted finding, the compliance history of the optometrist or therapeutic optometrist, and prior actions of the board concerning similar complaints. Omission of four or more basic competency findings requires the board member in charge to conduct an informal conference.

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 November 29, 2004.

TRD-200407014

Chris Kloeris

Executive Director

Texas Optometry Board

Effective date: December 19, 2004

Proposal publication date: September 10, 2004

For further information, please call: (512) 305-8502



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4037

The Comptroller of Public Accounts adopts new §9.4037, concerning use of electronic communications for transmittal of property tax information, without changes to the proposed text as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9623).

The new section is adopted to implement Senate Bill 340 and Senate Bill 1833, 78th Legislature, 2003, effective January 1, 2005 for appraisal districts established for a county with a population of more than 500,000, and effective January 1, 2006 for appraisal districts established for a county with a population of 500,000 or less.

A comment from the Chief Appraiser of the Dallas Central Appraisal District (DCAD) was received concerning the effective date of the amendments to Tax Code, §1.085. The comptroller declined to make any changes in the rule since the effective dates are statutorily mandated. Notices of appraised value required by Tax Code, §25.19, that are affected by the rule must be delivered by May 15 or as soon thereafter as practicable, at which time the rule should be implemented by DCAD.

The Chief Appraiser of the Jefferson County Appraisal District submitted a comment concerning adding the provision of Tax Code, §313, on appraised value limitation for school districts. The comptroller declined to change the file layout for this limitation since this provision is not statutorily required by Tax Code, §25.19, and this rule provides the layout for only statutorily required and other necessary administration items.

This new section is adopted under Tax Code, §1.085(e), which requires the comptroller to adopt rules necessary for the use of electronic means for certain interactions between property owners and appraisal districts, taxing units, or other tax officials.

The new section implements Tax Code, §1.085(e).

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 November 29, 2004.

TRD-200407012

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: December 19, 2004

Proposal publication date: October 15, 2004

For further information, please call: (512) 475-0387



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

General Land Office

Title 31, Part 1

The General Land Office (GLO) files this notice of intention to review and proposes the readoption of 31 TAC, Part 1, Chapter 15 relating to Coastal Area Planning. This review of Chapter 15 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9697).

Chapter 15, Subchapter A related to Management of the Beach/Dune System was adopted under authority granted in the Open Beaches Act, Chapter 61, Subchapter B, Texas Natural Resources Code, which authorizes the commissioner of the GLO to adopt rules concerning protection of the public beach easement; and the Dune Protection Act, Chapter 63, Texas Natural Resources Code, which authorizes the commissioner of the GLO to adopt rules for protection of critical dune areas.

Chapter 15, Subchapter B related to Coastal Erosion Planning and Response was adopted under authority granted to the commissioner of the GLO in Subchapter H, Chapter 33, Texas Natural Resources Code, to implement a program of coastal erosion avoidance, remediation, and planning, including coastal erosion studies, demonstration projects, and response projects.

Chapter 15, Subchapter D related to Certification of Coastal Wetlands was adopted under authority granted to the commissioner of the GLO in the Coastal Wetlands Acquisition Act, Article 5415e-3, Texas Civil Statutes (repealed and recodified as §§ 33.231 - 33.238, Texas Natural Resources Code), to set forth the factors which will be considered by the commissioner in selecting and certifying to the Texas Parks and Wildlife Department those coastal wetlands which are most essential to the public interest; in assigning priorities for acquisition of such coastal wetlands; and in revoking certification of such coastal wetlands whenever it is in the public interest.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. Notice of the readopted rules will be provided in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

This notice of proposed readoption of 31 TAC, Part 1, Chapter 15: Coastal Area Planning applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments

should be directed to Walter Talley, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200407008

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: November 24, 2004



The General Land Office (GLO) files this notice and proposes the readoption of 31 TAC, Part 1, Chapter 16 relating to Coastal Protection. This review of Chapter 16 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9697).

Chapter 16 was adopted under authority granted to the commissioner of the GLO in § 31.051, Texas Natural Resources Code, to adopt rules consistent with law. Chapter 16 establish goals and policies for actions of the GLO and the School Land Board that are subject to the Coastal Management Program (CMP), listed in 31 TAC §505.11, relating to the Actions and Rules Subject to the CMP and § 33.2053, Texas Natural Resources Code, relating to Individual Agency or Subdivision Actions.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. Notice of the readopted rules will be provided in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

This notice of proposed readoption of 31 TAC, Part 1, Chapter 16: Coastal Protection applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200407034

Trace Finley
Policy Director
General Land Office
Filed: November 30, 2004



The General Land Office files this notice and proposes the readoption of 31 TAC, Part 1, Chapter 25 relating to Beach Cleaning And Maintenance Assistance Program. This review of Chapter 25 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9697).

Chapter 25 was adopted under authority granted to the commissioner of the GLO in Chapter 61, Subchapter C, Texas Natural Resources Code, which allocates responsibility for cleaning the beaches of this state, provides for reimbursement of local government beach cleaning expenditures, and protects local control over the maintenance and administration of Texas' public beaches. Funds appropriated for the state's share are administered by the Texas General Land Office for the purpose of reimbursing eligible coastal cities and counties for beach cleaning and maintenance expenses, using a formula based on past expenditures for cleaning and maintaining gulf beaches and on the total linear footage of gulf beach cleaned and maintained.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. Notice of the readopted rules will be provided in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment prior to final adoption or repeal.

This notice of proposed readoption of 31 TAC, Part 1, Chapter 25: Beach Cleaning And Maintenance Program applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200407035
Trace Finley
Policy Director
General Land Office
Filed: November 30, 2004



Adopted Rule Review

Texas Education Agency

Title 19, Part 2

(Editor's note: This notice of adopted review, intended for publication in this December 10, 2004, issue of the Texas Register, was published in error on December 3, 2004 (29 TexReg 11394).)

The State Board of Education (SBOE) and the Texas Education Agency (TEA) adopt the review of 19 TAC Chapter 101, Assessment, Subchapters A - E and AA - CC, pursuant to the Texas Government Code, §2001.039. The SBOE and TEA proposed the review of 19 TAC Chapter 101 in the October 1, 2004, issue of the *Texas Register* (29 TexReg 9413).

The SBOE and the TEA find that the reasons for adopting 19 TAC Chapter 101, continue to exist. The SBOE and TEA received no comments related to the rule review requirement.

Changes to rules in 19 TAC Chapter 101, Subchapter A, are necessary to bring the rules into alignment with current statute. The SBOE is proposing revisions in 19 TAC Chapter 101, Subchapter A, which may be found in the Proposed Rules section of this issue. No changes are proposed for rules in Subchapters B - E.

In addition, changes to rules in 19 TAC Chapter 101, Subchapters AA - CC, are necessary. The TEA proposed revisions to rules in 19 TAC Chapter 101, Subchapters AA - CC, in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9786, 29 TexReg 9788, and 29 TexReg 9792, respectively). Subchapter AA revisions are needed to comply with federal legislation regarding limited English proficient students and to provide clarification in the rules. Subchapter BB amendments provide clarifications on grade advancement testing requirements, test administration and schedule, role of grade placement committees, alternate assessment, and accelerated instruction. Subchapter CC revisions clarify transitional issues related to the Texas Assessment of Knowledge and Skills, as specified by the 76th Texas Legislature, 1999, and establish rules for the implementation of the Grade 8 science test required by the 78th Texas Legislature, 2003.

This concludes the review of 19 TAC Chapter 101.

TRD-200407042
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 30, 2004



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.

Office of the Attorney General

Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code section 2254.021 *et seq.*

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2004 ("FY04") (based on actual expenditures) and 2006 ("FY06") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code section 2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY06.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars (\$49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87--one based on FY04 actual expenditures and one based on FY06 budgeted expenditures

*Identify the sources of financial information;

*Inventory all federal and other programs administered by the OAG;

*Classify all OAG divisions;

*Determine administrative divisions;

*Determine allocation bases for allotting services to benefitting divisions;

*Develop allocation data for each allocation base;

*Prepare allocation worksheets based upon actual FY04 expenditures and budgeted FY06 expenditures;

*Summarize costs by benefitting division;

*Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

*Determine indirect cost rates throughout the OAG on an annual basis;

*Prepare and present draft Indirect Cost Plans to the OAG by April 8, 2005;

*Formalize the Actual FY04 and Budgeted FY06 Indirect Cost Plans and present them to HHS by April 29, 2005; and

*Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2005.

2. Develop standardized billing rates for legal services

*Review current criteria used by the OAG for charging various agencies;

*Determine the types of legal services provided to the agencies;

*Compile direct hours for each type of service;

*Determine effort reporting requirements;

*Re-examine billing rate options;

*Determine the actual cost of services;

*Analyze and confirm revenues and cost analyses;

*Prepare and present a draft Legal Services Billing Schedule for FY 2004 actual costs and FY 2006 budgeted costs to the OAG by July 15, 2005;

*Formalize a Legal Services Billing Schedule by August 31, 2005.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;
2. Detailed information on the consultant staff to be assigned to the project; and
3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 20, 2005. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code section 2254.028, the OAG anticipates entering into the resultant contract on or about February 7, 2005.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;
2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;
3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;
4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.
5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.
6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);
2. the date(s) the employment(s) terminated; and
3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exception(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.
2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.
3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.
4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.
5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.
6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.
7. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.
8. consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of

this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.

10. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

13. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. consultant must answer the following questions:

*If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

*If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

*If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

*Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 9, 2005 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request

for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Julie Geeslin

Budget and Purchasing Division

Office of the Attorney General of Texas

300 W. 15th Street, Third Floor

Austin, Texas 78701

(Phone: (512) 475-4495)

TRD-200407043

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: November 30, 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 §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/06/04 - 12/12/04 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/06/04 - 12/12/04 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 12/01/04 - 12/31/04 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 12/01/04 - 12/31/04 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/05 - 03/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/05 - 03/31/05 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 01/01/05 - 03/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code¹ for the period of 01/01/05 - 03/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/05 - 03/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/05 - 03/31/05 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 01/01/05 - 03/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/04 - 12/31/04 is 5% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/04 - 12/31/04 is 5% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

⁴Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200407037

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 30, 2004



Employees Retirement System of Texas

Request for Application

In accordance with Sections 1551.213 and 1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services throughout Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2006, beginning September 1, 2005 and continuing through August 31, 2006. The locations in Texas for which an application may be made are included in the RFA. HMOs must provide the level of benefits required in the RFA and meet other requirements.

An HMO wishing to submit an application and other required documentation in response to this request must: 1) have a current Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the application is made at least since March 1, 2004, and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the application, adequate to provide health care to GBP participants.

The RFA and other required documents will be available in mid-December from the ERS' Web site, and all applications must be received by ERS no later than 12 Noon, C.S.T., on February 3, 2005. To access the RFA from the Web site, an interested HMO must either fax a request on its company letterhead to the attention of Sally Garcia at (512) 867-3380, or send a request via e-mail to agarcia@ers.state.tx.us to receive an access code. Either request must include the name of the HMO, street address, phone number, fax number, and e-mail address.

ERS will base its evaluation and selection of HMOs on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFA, operating requirements, provider network, service area, network quality, administrative quality, premium rates and other relevant criteria. Each application will be evaluated both individually and relative to the applications of other HMOs providing service in the same or a similar area. Complete application instructions will be included with the RFA.

The RFA will be discussed at an HMO Web conference on or after January 5, 2005, beginning at 2:00 p.m., C.S.T. You may access ERS' Web site for details regarding the Web-based conference by selecting the Vendor link following the RFA's publication. This RFA does not commit ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates ERS to award a contract or to pay any costs incurred in the preparation of a response. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract when ERS deems it to be in the best interest of the GBP.

ERS reserves the right to select none, one, or more than one HMO per service area when it is determined that such action would be in the best interest of the GBP. ERS is under no legal requirement to execute a contract on the basis of this advertisement.

TRD-200407045

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: December 1, 2004

Texas Commission on Environmental Quality

Notice of Intent to Perform Removal Action at the Rogers Delinted Cottonseed Company State Superfund Site, Farmersville, Collin County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code (THSC), §361.133, for the Rogers Delinted Cottonseed Company state Superfund site (the site). The site, including all land, structures, appurtenances, and other improvements, is approximately 81 acres located at the intersection of State Highway 380 and Farm-to-Market Road 547 in Farmersville, Collin County, Texas. The site also includes any areas where hazardous substances have come to be located as a result of, either directly or indirectly, releases of hazardous substances from the site. The site is a former cottonseed processing facility. During its operation contamination came to be deposited in the soil and in process wastewater ponds. The contamination consisted of inorganic metals: Aluminum, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cobalt, Copper, Lead, Manganese, Nickel, Selenium, Silver, Thallium, and Zinc. In addition, other organic compounds consisting of pesticides, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs) also were deposited on site.

The site is proposed for listing under THSC, Chapter 361, Subchapter F. Contamination in soil, sediment, and surface water that exceeds commercial/industrial protective concentration levels, as described in the Texas Risk Reduction Program rule (30 TAC Chapter 350), will be removed to prevent any future risk to human health or the environment at the site. A removal action can be completed without extensive investigation and planning and will achieve a significant cost reduction for the site and consists of the removal of contaminated soil, sediment, and surface water. The removal action will help prevent the further spread of contamination.

A portion of the records for this site is available for review during regular business hours at the Charles J. Rike Memorial Library, 203 Orange Street, Farmersville, Texas 75442. Copies of the complete public record file may be viewed during 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. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information, please contact Alvie Nichols, Texas Commission on Environmental Quality, Remediation Division, at (512) 239-2439, or John Flores, TCEQ Community Relations Coordinator, at (512) 239-5674.

TRD-200407036

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 30, 2004

Texas Health and Human Services Commission

Public Notice

The Health and Human Services Commission, State Medicaid Office, received approval from the Centers for Medicare and Medicaid Services (CMS) to amend the Title XIX Medical Assistance Program state plan by Transmittal Number 04-22, Amendment Number 686.

This amendment revises the current state plan as follows:

1. Changes references to the Health Care Financing Administration to CMS;
2. Adds the comparison of the per diem rate to the Support, Maintenance, and Treatment rate in the methodology;
3. Changes the rate period to September 1 through August 31; and
4. Amends the reimbursement methodology to include setting rates biennially.

The state plan amendment is effective as of September 1, 2004.

For additional information, please contact Gilbert Estrada, Policy Development Support with the Medicaid/CHIP Division, at (512) 491-1331 or by e-mail at gilbert.estrada@hhsc.state.tx.us.

TRD-200407016

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: November 29, 2004

Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 04-17, Amendment Number 681.

This amendment allows the state to increase reimbursement to public hospitals participating in the disproportionate share hospital program and to change the population threshold to conform to federal changes in the designation of Metropolitan Statistical Areas. The effective date of the amendment is August 31, 2004.

If additional information is needed, please contact Gilbert Estrada, Policy Development Support with the Medicaid CHIP Division at (512) 491-1331 or by E-mail at gilbert.estrada@hhsc.state.tx.us.

TRD-200407044
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 1, 2004



Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 04-17, Amendment Number 681.

This amendment allows the state to increase reimbursement to public hospitals participating in the disproportionate share hospital program and to change the population threshold to conform to federal changes in the designation of Metropolitan Statistical Areas. The effective date of the amendment is August 31, 2004.

If additional information is needed, please contact Gilbert Estrada, Policy Development Support with the Medicaid CHIP Division at (512) 491-1331 or by E-mail at gilbert.estrada@hhsc.state.tx.us.

TRD-200407051
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 1, 2004



Request for Public Comment--Methodology for Determining Caseload Reduction for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2005

The Texas Health and Human Services Commission (HHSC) is seeking comments from the public on its methodology for determining the TANF caseload reduction from federal fiscal year (FFY) 1995 to FFY 2004. This methodology and its results will be submitted to the federal Administration for Children and Families for use in calculating the caseload reduction credit used in determining compliance with TANF work participation rates for FFY 2005. The methodology will be posted on the HHSC Internet web site at <http://www.hhsc.state.tx.us/research> by December 10, 2004. Written or electronic copies of the methodology can also be obtained by contacting Ross McDonald at (512) 424-6843.

The public comment period begins December 10, 2004 and ends December 23, 2004. Comments must be submitted in writing to Texas Health and Human Services Commission, Center for Strategic Decision Support, Ross McDonald, MC 1950, P.O. Box 13247, Austin,

Texas 78711-3247. Comments may also be submitted electronically to ross.mcdonald@hhsc.state.tx.us.

TRD-200407015
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 29, 2004



Department of State Health Services

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Scott Shepard, D.C., dba Shepard Family Chiropractic

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Scott Shepard, D.C., dba Shepard Family Chiropractic (unregistered) of Georgetown. A total penalty of \$8,000 is proposed to be assessed to the clinic 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 Department of State Health Services, 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-200407049
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: December 1, 2004



Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of ADMINISTRATIVE ENTERPRISES, INC., a foreign third party administrator. The home office is PHOENIX, ARIZONA.

Application for admission to Texas of AMERICAN STERLING INSURANCE SERVICES, INC., a foreign third party administrator. The home office is SANTA ANA, CALIFORNIA.

Any objections must be filed within 20 days after this notice is published in the Texas Register, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200407046
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 1, 2004



Texas Lottery Commission

End of Game Notices December 31, 2004

LEGAL NOTICE:

These Texas Lottery Commission scratch-off games will close on December 31, 2004. You have until June 29, 2005, to redeem any tickets

for these games: #335 LUCKY LOOT (\$5) overall odds are 1 in 3.06, #387 BREAK THE BANK (\$2) overall odds are 1 in 4.94, #389 DOUBLE IT! (\$2) overall odds are 1 in 4.68, #392 TIC TAC TOAD (\$1) overall odds are 1 in 4.86, #424 7-COME-11 (\$1) overall odds are 1 in 4.59, #427 50'S FEVER (\$2) overall odds are 1 in 4.61, #443 DOUBLE BLACKJACK (\$2) overall odds are 1 in 4.68, #451 HIGH ROLLER (\$5) overall odds are 1 in 3.47, #460 LUCKY SLOTS (\$1) overall odds are 1 in 4.87, #463 INSTANT MONOPOLY(tm) (\$2) overall odds are 1 in 4.65, #465 LADY BUCKS (\$1) overall odds are 1 in 4.78, #471 EASY 10 (\$1) overall odds are 1 in 4.65, #485 MONEY TRAIN (\$1) overall odds are 1 in 4.79, #486 PLATINUM PAYOUT (\$5) overall odds are 1 in 4.37, #488 ALL THE MARBLES (\$3) overall odds are 1 in 4.76. The odds listed here are the overall odds of winning any prize in a game, including break-even prizes. Lottery retailers are authorized to redeem prizes of up to and including \$599. Prizes of \$600 or more must be claimed in person at a Lottery Claim Center or by mail with a completed Texas Lottery claim form; however, annuity prizes or prizes over \$999,999 must be claimed in person at the Commission Headquarters in Austin. Call Customer Service at 1-800-37-LOTTO or visit the Lottery Web site at www.txlottery.org for more information and location of nearest Claim Center. The Texas Lottery is not responsible for lost or stolen tickets or for tickets lost in the mail. Tickets, transactions, players and winners are subject to, and players and winners agree to abide by, all applicable laws, Commission rules, regulations, policies, directives, instructions, conditions, procedures and final decisions of the Executive Director. A scratch-off game may continue to be sold even when all the top prizes have been claimed. Must be 18 years of age or older to purchase a Texas Lottery ticket. Play Responsibly. Remember, it's just a game. The Texas Lottery supports Texas education by contributing to the Foundation School Fund.

TRD-200407039
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 30, 2004

◆ ◆ ◆

Instant Game Number 528 "Amazing 8's"

1.0. Name and Style of Game.

A. The name of Instant Game Number 528 is "AMAZING 8'S." The play style is "key number match."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 528 shall be \$1.00 per ticket.

1.2. Definitions in Instant Game Number 528.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$8.00, \$10.00, \$20.00, \$30.00, \$50.00, \$60.00, \$200 and \$800.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 528 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$6.00	SIX\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$60.00	SIXTY
\$200	TWO HUND
\$800	EGT HUND

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 528 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FOR	\$4.00
FIV	\$5.00
EGT	\$8.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will

only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$8.00, \$10.00 or \$20.00.

H. Mid-Tier Prize--A prize of \$30.00, \$60.00, \$100 or \$200.

I. High-Tier Prize--A prize of \$800.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (528), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 528-0000001-001.

L. Pack--A pack of "AMAZING 8'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "AMAZING 8'S" Instant Game Number 528 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "AMAZING 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 12 Play Symbols. If a player reveals an "8" play symbol in the play area, the player wins prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning play symbols will never occur with the same prize symbol (i.e. 5 and \$5).

2.3. Procedure for Claiming Prizes.

A. To claim a "AMAZING 8'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$30.00, \$60.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "AMAZING 8'S" Instant Game prize of \$800, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "AMAZING 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "AMAZING 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "AMAZING 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game Number 528. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 528 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,270,080	11.90
\$2	1,512,000	10.00
\$3	120,960	125.00
\$4	90,720	166.67
\$5	60,480	250.00
\$8	60,480	250.00
\$10	60,480	250.00
\$20	45,360	333.33
\$30	13,860	1,090.91
\$60	10,080	1,500.00
\$100	1,890	8,000.00
\$200	1,701	8,888.89
\$800	252	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 528 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 528, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200407038
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: November 30, 2004

◆ ◆ ◆
Maverick County

Request for Comments and Proposals: Additional Medicaid Beds

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners' Court of a county with no more than two (2) nursing homes to request that the Texas Department of Aging and Disability Services ("TDADS"), formerly known as (f/k/a) Texas Department of Human Services ("TDHS"), contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Maverick County Commissioners' Court is considering requesting that the TDADS, (f/k/a TDHS), contract for more Medicaid nursing facility beds in Maverick County. The Commissioners' Court is soliciting comments on whether the request should be made. Further, the Commissioners' Court seeks proposals from persons interested in providing additional Medicaid beds in Maverick County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals should be submitted to Judge José A. Aranda, Jr. at 500 Quarry Street, Suite 3, Eagle Pass, Texas, before 5:00 PM, CST, on Wednesday, January 5, 2005.

TRD-200407070
 Jose A. Arada, Jr.
 Maverick County Judge
 Maverick County
 Filed: December 1, 2004

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application to Amend Certificated Service Area Boundaries in Concho County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 23, 2004, for an amendment to certificated service area boundaries within Concho County, Texas.

Docket Style and Number: Application of Cap Rock Energy for a Certificate of Convenience and Necessity for Service Area Boundaries within Concho County. Docket Number 30458.

The Application: Cap Rock Energy requested a service area boundary amendment to extend service to a customer located within the certificated electric service area of Coleman County Electric Cooperative, Incorporated (Coleman). The customer requesting service wants to build a new house and water well. Coleman has facilities 10,200 feet from the site and Cap Rock has existing facilities 3,800 feet from the site. Coleman is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately \$10,252.50.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than December 20, 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 30458.

TRD-200407040

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 30, 2004



Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On November 22, 2004, Time Warner Connect filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60075. Applicant intends to relinquish its certification.

The Application: Application of Time Warner Connect to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30455.

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 no later than December 15, 2004. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30455.

TRD-200407032

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 29, 2004



Notice of Training Workshop Relating to Submitting Retail Electric Provider Reports and Confidential Materials

The Public Utility Commission of Texas (PUC or commission) will hold a Training Workshop Relating to the Submission of Retail Electric Provider (REP) Reports and Confidential Materials. This free workshop will be held on January 10, 2005, from 1:00 p.m. until 3:00 p.m.

in the Commissioners' Hearing Room, 7th Floor, at 1701 North Congress Avenue, Austin, Texas.

This workshop is being conducted for the benefit of the REPs who file annual or quarterly reports with the PUC to help them better understand the process of submitting these reports.

Although the workshop is being conducted mainly to assist the REPs, this workshop is open to anyone who wishes a better understanding of the filing procedures of the PUC. While all are encouraged and invited to attend, this workshop will be most beneficial to those persons who actually prepare reports and confidential materials for submission to the commission.

PUC staff will explain how to file the quarterly and annual reports, the commission's procedural rule on confidential materials, how the materials are handled while in the custody of the commission, and how the materials are returned to parties after a case is closed. Staff will also discuss how the PUC processes Open Records requests.

Those attending are asked to bring a copy of PUC Procedural Rule §22.71 with them. A copy of the procedural rule is available at: <http://www.puc.state.tx.us/rules/procrules/pr-e/22.71/22.71.pdf>.

To register for the workshop contact Carol Milner, Confidential Documents Manager, at carol.milner@puc.state.tx.us, no later than January 3, 2005, with the name of your company and the number of persons attending.

TRD-200407031

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 29, 2004



Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Government Code, §825.108 requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15th of each year containing the following information:

- (1) the retirement system's fiscal transactions for the preceding fiscal year;
- (2) the amount of the system's accumulated cash and securities; and
- (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108 of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following reports as required by statute:

Statement of Fiduciary Net Assets

AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)



	FIDUCIARY FUND TYPES		
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Care Trust Fund Retired Plan	Health Care Trust Fund Supplemental Compensation
ASSETS			
Cash:			
Cash in State Treasury	\$ 799,173,077	\$ 323,934,041	\$
Cash in Bank	11,734,631		
Cash on Hand (Note II.B.)	7,103,198		
TOTAL CASH	\$ 818,010,906	\$ 323,934,041	\$
Legislative Appropriations	\$	\$	\$ 7,836,182
Receivables:			
Sale of Investments	\$ 1,121,927,507	\$	\$
Interest and Dividends	267,375,621	425,120	
Member and Retiree	68,366,077	31,154,052	
Reporting Entities	14,441,468	4,264,873	
Other	1,058,589	1,000,000	
Due from State's General Revenue Fund	5,691,155	226,179	
Due from Employees Retirement System of Texas	524,267		
TOTAL RECEIVABLES	\$ 1,479,384,684	\$ 37,070,224	\$ -0-
Investments (Note I.E.):			
Short-Term	\$ 3,027,270,138	\$	\$
Equities	55,835,694,440		
Fixed Income	23,069,878,184		
Alternative Investments	2,478,290,579		
TOTAL INVESTMENTS	\$ 84,411,133,341	\$ -0-	\$ -0-
Invested Securities Lending Collateral	\$ 10,829,078,240	\$	\$
Capital Assets (Note I.E.):			
Land	\$ 1,658,310	\$	\$
Building, Capital Projects and Equipment, at Cost, Net of Accumulated Depreciation	29,721,218		
TOTAL CAPITAL ASSETS	\$ 31,379,528	\$ -0-	\$ -0-
TOTAL ASSETS	\$ 97,568,986,699	\$ 361,004,265	\$ 7,836,182

FIDUCIARY FUND		TOTALS	
TYPES			
Agency Funds	2004	2003	
\$ 775	\$ 1,123,107,893	\$ 1,023,943,196	
	11,734,631	13,975,004	
	7,103,198	6,933,168	
\$ 775	\$ 1,141,945,722	\$ 1,044,851,368	
\$	\$ 7,836,182	\$ 10,000,000	
\$	\$ 1,121,927,507	\$ 1,021,223,979	
	267,800,741	305,842,250	
	99,520,129	64,529,211	
10,420,066	29,126,407	21,709,578	
	2,058,589	1,369,531	
	5,917,334	47,055,175	
	524,267	376,116	
\$ 10,420,066	\$ 1,526,874,974	\$ 1,462,105,840	
\$	\$ 3,027,270,138	\$ 649,652,295	
	55,835,694,440	52,697,198,670	
	23,069,878,184	21,282,297,734	
	2,478,290,579	1,990,765,080	
\$ -0-	\$ 84,411,133,341	\$ 76,619,913,779	
\$	\$ 10,829,078,240	\$ 8,808,329,237	
\$	\$ 1,658,310	\$ 1,658,310	
	29,721,218	30,533,007	
\$ -0-	\$ 31,379,528	\$ 32,191,317	
\$ 10,420,841	\$ 97,948,247,987	\$ 87,977,391,541	

(to next page)

Statement of Fiduciary Net Assets

AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)
(concluded)

EXHIBIT



	FIDUCIARY FUND TYPES		
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Care Trust Fund Retired Plan	Health Care Trust Fund Supplemental Compensation
LIABILITIES (Note I.E.)			
Accounts Payable	\$ 3,845,067	\$ 12,670,779	\$ 7,820,949
Accounts Payable-General Revenue Fund			
Benefits Payable	511,716,180		
Health Care Claims Payable		110,000,000	
Reinstatement Installment Receipts	32,130,935		
Investments Purchased Payable	1,983,555,284		
Securities Lending Collateral	10,829,078,240		
Compensable Absences Payable	2,314,981	48,327	15,233
Funds Held for Others			
Due to Employees Retirement System of Texas	3,364,305		
TOTAL LIABILITIES	\$ 13,366,004,992	\$ 122,719,106	\$ 7,836,182
NET ASSETS HELD IN TRUST FOR PENSION BENEFITS AND OTHER PURPOSES			
	\$ 84,202,981,707	\$ 238,285,159	\$ -0-

(A schedule of funding progress is presented on page 44.)

*The accompanying Notes to the Financial Statements
are an integral part of this financial statement.*

FIDUCIARY FUND		TOTALS	
TYPES			
Agency Funds	2004	2003	
\$	\$ 24,336,795	\$	25,577,207
10,420,066	10,420,066	9,951,828	
	511,716,180	444,586,401	
	110,000,000	97,814,000	
	32,130,935	27,000,240	
	1,983,555,284	1,008,854,827	
	10,829,078,240	8,808,329,237	
	2,378,541	2,361,248	
775	775	3,982	
	3,364,305	2,877,596	
\$ 10,420,841	\$ 13,506,981,121	\$ 10,427,356,566	
\$ -0-	\$ 84,441,266,866	\$ 77,550,034,975	

Teacher Retirement System of Texas

Statement of Changes in Fiduciary Net Assets

YEAR ENDED AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)

EXHIBIT



PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS			
	Pension Trust Fund	Health Care Trust Fund Retired Plan	Health Care Trust Fund Supplemental Compensation
ADDITIONS:			
Contributions:			
Member	\$ 1,530,276,750	\$ 99,297,097	\$
State	1,241,789,167	454,791,657	
Reporting Entities	192,395,672	79,457,387	
Health Care Premiums		248,552,679	
TOTAL CONTRIBUTIONS	\$ 2,964,461,589	\$ 882,098,820	\$
Investment Income:			
From Investing Activities:			
Net Appreciation in Fair Value of Investments	\$ 7,024,439,015	\$	\$
Interest	1,103,782,108	4,803,809	
Dividends	1,005,620,107		
TOTAL INVESTING ACTIVITIES INCOME	\$ 9,133,841,230	\$ 4,803,809	\$
Less Investing Activity Expenses	(16,252,645)		
NET INCOME FROM INVESTING ACTIVITIES	\$ 9,117,588,585	\$ 4,803,809	\$
From Securities Lending Activities:			
Securities Lending Income	\$ 139,932,948	\$	\$
Securities Lending Expenses:			
Borrower Rebates	(106,672,932)		
Management Fees	(4,989,370)		
Net Income from Securities Lending Activities	\$ 28,270,646	\$	\$
TOTAL NET INVESTMENT INCOME	\$ 9,145,859,231	\$ 4,803,809	\$
Other Additions:			
Reinstatement of Contribution Refunds	\$ 124,360,457	\$	\$
Reinstatement Fees	66,867,238		
Transfers from Employees Retirement System of Texas	5,600,176		
Transfer from TRS-ActiveCare Enterprise Fund (Note VII.)		42,000,000	
Legislative Appropriations			281,149,405
Legislative Appropriations for Excess Benefits (Note I.D.)	516,529		
Miscellaneous Revenues	1,909		
On Behalf Fringe Benefits Paid by the State (Note III.)		37,173	8,453
TOTAL OTHER ADDITIONS	\$ 197,346,309	\$ 42,037,173	\$ 281,157,858
TOTAL ADDITIONS	\$ 12,307,667,129	\$ 928,939,802	\$ 281,157,858

TOTALS

2004	2003
\$ 1,629,573,847	\$ 1,565,971,934
1,696,580,824	1,504,072,062
271,853,059	182,536,228
248,552,679	162,917,666
<hr/>	<hr/>
\$ 3,846,560,409	\$ 3,415,497,890
\$ 7,024,439,015	\$ 5,673,389,054
1,108,585,917	1,227,897,485
1,005,620,107	900,563,260
<hr/>	<hr/>
\$ 9,138,645,039	\$ 7,801,849,799
(16,252,645)	(14,604,331)
<hr/>	<hr/>
\$ 9,122,392,394	\$ 7,787,245,468
\$ 139,932,948	\$ 108,579,174
(106,672,932)	(82,193,784)
(4,989,370)	(3,957,811)
<hr/>	<hr/>
\$ 28,270,646	\$ 22,427,579
\$ 9,150,663,040	\$ 7,809,673,047
\$ 124,360,457	\$ 100,499,600
66,867,238	54,911,252
5,600,176	4,037,793
42,000,000	
281,149,405	
516,529	461,925
1,909	1,501
45,626	36,344
<hr/>	<hr/>
\$ 520,541,340	\$ 159,948,415
<hr/>	<hr/>
\$ 13,517,764,789	\$ 11,385,119,352

(to next page)

Teacher Retirement System of Texas

Statement of Changes in Fiduciary Net Assets

YEAR ENDED AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)

(concluded)

EXHIBIT



	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
	Pension Trust Fund	Health Care Trust Fund Retired Plan	Health Care Trust Fund Supplemental Compensation
DEDUCTIONS:			
Benefits	\$ 5,453,864,905	\$	\$
Refunds of Contributions	220,396,709		
Health Care Claims		581,354,957	
Health Care Claims Processing		23,914,851	
Administrative Expenses (Net of Investing Activity Expenses)	24,841,300	2,417,349	457,003
Employees Retirement System Reimbursements	38,068,440		
Transfer to TRS-ActiveCare Enterprise Fund (Note VII.)			
Supplemental Health Care Compensation			280,700,855
Excess Benefits	516,529		
TOTAL DEDUCTIONS	\$ 5,737,687,883	\$ 607,687,157	\$ 281,157,858
Net Increase	\$ 6,569,979,246	\$ 321,252,645	\$ -0-
Net Assets Held in Trust for Pension Benefits and Other Purposes - Beginning of Year	\$ 77,633,002,461	\$ (82,967,486)	\$
Net Assets Held in Trust for Pension Benefits and Other Purposes - End of Year	\$ 84,202,981,707	\$ 238,285,159	\$ -0-

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

TOTALS

<u>2004</u>	<u>2003</u>
\$ 5,453,864,905	\$ 4,728,815,398
220,396,709	186,082,670
581,354,957	571,744,362
23,914,851	19,388,818
27,715,652	25,729,678
38,068,440	28,609,871
	42,000,000
280,700,855	
516,529	461,925
<u>\$ 6,626,532,898</u>	<u>\$ 5,602,832,722</u>
<u>\$ 6,891,231,891</u>	<u>\$ 5,782,286,630</u>
<u>\$ 77,550,034,975</u>	<u>\$ 71,767,748,345</u>
<u>\$ 84,441,266,866</u>	<u>\$ 77,550,034,975</u>

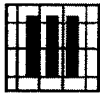
Teacher Retirement System of Texas

Statement of Net Assets

PROPRIETARY FUND

AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)

EXHIBIT



	TRS-Active Care Enterprise Fund	
	2004	2003
ASSETS		
Current Assets:		
Cash:		
Cash in State Treasury	\$ 274,814,166	\$ 207,930,193
Cash on Hand		171,305
Cash in Bank		48,044
TOTAL CASH	\$ 274,814,166	\$ 208,149,542
Accounts Receivable:		
Investment Interest	\$ 345,182	\$
Health Care Premiums	36,760,143	19,853,424
TOTAL ACCOUNTS RECEIVABLE	\$ 37,105,325	\$ 19,853,424
TOTAL ASSETS	\$ 311,919,491	\$ 228,002,966
LIABILITIES		
Current Liabilities:		
Accounts Payable	\$ 309,857	\$ 684,901
Premiums Payable to HMOs	3,247,534	
Health Care Claims Payable	67,948,003	90,848,902
Compensable Absences Payable	42,793	47,384
TOTAL LIABILITIES	\$ 71,548,187	\$ 91,581,187
NET ASSETS		
Restricted for Legislative Appropriations Transfer (Note VII.)	\$	\$ 42,000,000
Unrestricted	240,371,304	94,421,779
TOTAL NET ASSETS	\$ 240,371,304	\$ 136,421,779

*The accompanying Notes to the Financial Statements
are an integral part of this financial statement.*

Statement of Revenues, Expenses and Changes in Net Assets

PROPRIETARY FUND

FOR THE YEAR ENDED AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)

EXHIBIT



	TRS-ActiveCare Enterprise Fund	
	2004	2003
OPERATING REVENUES:		
Health Care Premiums	\$ 758,062,552	\$ 584,572,852
Administrative Fees	192,763	136,288
TOTAL OPERATING REVENUES	\$ 758,255,315	\$ 584,709,140
OPERATING EXPENSES:		
Health Care Claims	\$ 520,998,423	\$ 473,450,544
Health Care Claims Processing	53,564,510	42,411,388
Premium Payments to HMOs	40,210,539	
Administrative Expenses	918,619	1,771,441
TOTAL OPERATING EXPENSES	\$ 615,692,091	\$ 517,633,373
OPERATING INCOME	\$ 142,563,224	\$ 67,075,767
NONOPERATING REVENUES:		
Investment Income	\$ 3,641,100	\$ 2,459,154
On Behalf Fringe Benefits Paid by the State (Note III.)	24,050	31,266
TOTAL NONOPERATING REVENUES	\$ 3,665,150	\$ 2,490,420
Income Before Transfers	\$ 146,228,374	\$ 69,566,187
TRANSFERS:		
Legislative Appropriations Transfer (to)/from Retired Plan (Note VII.)	\$ (42,000,000)	\$ 42,000,000
Change in Net Assets	\$ 104,228,374	\$ 111,566,187
TOTAL NET ASSETS - BEGINNING	\$ 136,421,779	\$ 24,855,592
Restatement (Note I.C.)	(278,849)	
Beginning of Year, as Restated	\$ 136,142,930	\$ 24,855,592
TOTAL NET ASSETS - ENDING	\$ 240,371,304	\$ 136,421,779

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Teacher Retirement System of Texas

Statement of Cash Flows

PROPRIETARY FUND

FOR THE YEAR ENDED AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)

EXHIBIT



	TRS-ActiveCare Enterprise Fund	
	2004	2003
CASH FLOWS FROM OPERATING ACTIVITIES:		
Receipts from Health Care Premiums	\$ 741,359,850	\$ 564,845,229
Receipts from Long-term Care Administrative Fees	192,763	136,288
Payments for Administrative Expenses	(1,293,903)	(1,175,143)
Payments for Health Care Claims	(544,333,788)	(382,601,642)
Payments for Health Care Processing	(53,314,362)	(42,411,388)
Payments for HMO Premiums	(36,963,005)	
NET CASH PROVIDED BY OPERATING ACTIVITIES	\$ 105,647,555	\$ 138,793,344
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:		
Legislative Appropriations Transfer (to)/from Retired Plan (Note VII.)	\$ (42,000,000)	\$ 42,000,000
NET CASH PROVIDED BY NONCAPITAL FINANCING ACTIVITIES	\$ (42,000,000)	\$ 42,000,000
CASH FLOWS FROM INVESTING ACTIVITIES:		
Interest Received	\$ 3,295,897	\$ 2,456,626
NET CASH PROVIDED BY INVESTING ACTIVITIES	\$ 3,295,897	\$ 2,456,626
Net Increase in Cash	\$ 66,943,452	\$ 183,249,970
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	\$ 208,149,542	\$ 24,899,572
Restatement to Beginning Cash and Cash Equivalents (Note I.C.)	\$ (278,828)	\$
Cash and Cash Equivalents - September 1 Restated	\$ 207,870,714	\$ 24,899,572
CASH AND CASH EQUIVALENTS - AUGUST 31	\$ 274,814,166	\$ 208,149,542
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income	\$ 142,563,224	\$ 67,075,767
Adjustments to Reconcile Operating Income to Net Cash Provided (Used) by Operating Activities:		
(Increase) in Health Care Premiums Receivable	\$ (16,906,719)	\$ (19,853,424)
Increase in Premiums Payable to HMOs	3,247,534	
Increase (Decrease) in Health Care Claims Payable	(22,900,898)	90,848,902
Increase (Decrease) in Accounts Payable	(375,045)	684,403
Increase (Decrease) in Compensable Absences Payable	(4,591)	6,430
On Behalf Fringe Benefits Paid by the State (Note III.)	24,050	31,266
Total Adjustments	\$ (36,915,669)	\$ 71,717,577
Net Cash Provided by Operating Activities	\$ 105,647,555	\$ 138,793,344

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Balance Sheet

GOVERNMENTAL FUND
AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)

EXHIBIT



	403(b) Certification Program Special Revenue Fund	
	2004	2003
ASSETS		
Current Assets:		
Cash in State Treasury	\$ 217,967	\$ 223,739
Accounts Receivable	267	
TOTAL ASSETS	\$ 218,234	\$ 223,739
LIABILITIES AND FUND BALANCE:		
Liabilities		
Current Liabilities:		
Accounts Payable	\$ 2,000	\$ 2,000
Fund Balance Reserved for:		
Administrative Expenditures	\$ 216,234	\$ 221,739
TOTAL LIABILITIES AND FUND BALANCE	\$ 218,234	\$ 223,739

Statement of Revenues, Expenditures and Changes in Fund Balance

GOVERNMENTAL FUND
YEAR ENDED AUGUST 31, 2004 (With Comparative Totals for August 31, 2003)

EXHIBIT



	403(b) Certification Program Special Revenue Fund	
	2004	2003
REVENUES:		
Certification Fees	\$ 15,000	\$ 55,000
Investment Income	3,495	4,617
On Behalf Fringe Benefits Paid by the State (Note III.)		1,197
TOTAL REVENUES	\$ 18,495	\$ 60,814
EXPENDITURES:		
Administrative Expenditures	\$ 24,000	\$ 46,674
Compensable Absences	-0-	(1,600)
TOTAL EXPENDITURES	\$ 24,000	\$ 45,074
Excess of Revenues over Expenditures	\$ (5,505)	\$ 15,740
FUND BALANCE - BEGINNING	\$ 221,739	\$ 205,999
FUND BALANCE - ENDING	\$ 216,234	\$ 221,739

*The accompanying Notes to the Financial Statements
are an integral part of these financial statements.*

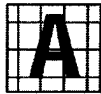
Teacher Retirement System of Texas

Combining Statement of Changes in Assets and Liabilities

AGENCY FUNDS

YEAR ENDED AUGUST 31, 2004

EXHIBIT



	Balances September 1, 2003	Additions	Deductions	Balances August 31, 2004
UNAPPROPRIATED RECEIPTS				
Collections on Behalf of the State's General Revenue Fund				
Assets:				
Cash in State Treasury	\$	\$168,084,003	\$168,084,003	\$
Accounts Receivable - Reporting Entities	9,951,828	10,420,066	9,951,828	10,420,066
TOTAL ASSETS	\$ 9,951,828	\$178,504,069	\$178,035,831	\$10,420,066
Liabilities:				
Accounts Payable - General Revenue Fund	\$ 9,951,828	\$ 10,420,066	\$ 9,951,828	\$10,420,066
OTHER AGENCY FUNDS				
Employees' Savings Bond Account				
Assets:				
Cash in State Treasury	\$ 1,025	\$ 10,875	\$ 11,125	\$ 775
Liabilities:				
Funds Held for Others	\$ 1,025	\$ 10,800	\$ 11,050	\$ 775
Direct Deposit Correction Account Fund				
Assets:				
Cash in State Treasury	\$ 2,957	\$ 1,752,281	\$ 1,755,238	\$
Liabilities:				
Funds Held for Others	\$ 2,957	\$ 1,752,281	\$ 1,755,238	\$
TOTALS - ALL AGENCY FUNDS				
				(Exhibit I)
Assets:				
Cash in State Treasury	\$ 3,982	\$ 169,847,159	\$ 169,850,366	\$ 775
Accounts Receivable - Reporting Entities	9,951,828	10,420,066	9,951,828	10,420,066
TOTAL ASSETS	\$ 9,955,810	\$ 180,267,225	\$ 179,802,194	\$ 10,420,841
Liabilities:				
Accounts Payable - General Revenue Fund	\$ 9,951,828	\$ 10,420,066	\$ 9,951,828	\$ 10,420,066
Funds Held for Others	3,982	1,763,081	1,766,288	775
TOTAL LIABILITIES	\$ 9,955,810	\$ 12,183,147	\$ 11,718,116	\$ 10,420,841

Teacher Retirement System of Texas

Exhibit B**Teacher Retirement System Of Texas
Rate of Return on Assets
Year Ended August 31, 2004**

	<u>Pension Trust Fund</u>	<u>Health Care Plans and 403(b) Program</u>
Cash and Short-Term Investments	1.28%	2.08%
Long-Term Investments: *		
Equities	13.73%	
Fixed Income	7.96%	
Alternative Investments	10.84%	

* Rates for Long-Term Investments include appreciation in market values.



GABRIEL, ROEDER, SMITH & COMPANY

Consultants & Actuaries

5605 N. MacArthur Blvd. • Suite 870 • Irving, Texas 75038-2631 • 469-524-0000 • fax 469-524-0003

November 8, 2004

BOARD OF TRUSTEES

Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2004

We certify that the information included herein and contained in the 2004 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2004.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. Carter and Mr. Newton are members of the American Academy of Actuaries, and are also Enrolled Actuaries. All are experienced in performing valuations for large public retirement systems.

Actuarial Valuations

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Plan

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates have been set by Law and are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

Progress Toward Realization of Financing Objective

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2004, the System's underfunded status has increased because of the continued recognition of the investment results during the poor investment markets of fiscal years 2001 & 2002, and the UAAL is now \$7.953 billion.

This valuation shows a normal cost equal to 11.72% of pay. Since the State contribution rate of 6.00% of pay plus the member contribution rate of 6.40% of pay total 12.40% of pay, there is 0.68% of pay available to amortize the UAAL. However, the contributions provided by this portion of the contribution rate are not sufficient to amortize the unfunded actuarial accrued liabilities of the System. Therefore the funding period corresponding to the 6.00% State contribution rate is "never" or infinite, which is greater than the statutory limit of 31 years.

The actuarial valuation report as of August 31, 2004 reveals that while the System has an unfunded liability, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 91.8%. However, the System is still deferring \$4.6 billion in prior asset losses that will be recognized over the next two valuations. Even though the System earned an 11.9% return on a market value of assets basis for the plan year ending August 31, 2004, the System experienced a \$4.7 billion loss on the actuarial value of assets due to the recognition of prior investment losses.

In the absence of significant actuarial gains over the near term, the contribution rate to the System will need to increase to produce a funding period that does not exceed 31 years. The System would need to earn an average rate of return of 11.5% on a market value basis over the next three years to offset the deferred asset losses that are scheduled to be recognized over the next two valuations. Even if these losses were somehow offset, the current unfunded liability of \$8.0 billion would still require an increase in the contribution rate in order to be amortized. Using GASB Statement No. 25 as a guide, the State

Teacher Retirement System of Texas

contribution rate would need to increase from 6.00% of pay to 7.31% of pay. This rate would fund the normal cost and amortize the UAAL as of August 31, 2004 over the 30-year period called for by GASB Statement No. 25.

It seems unlikely that the System will be able to generate the necessary gains in the short-term (either asset or liability gains) to offset these deferred asset losses and reduce the UAAL to a level that can be amortized by the current contribution rate. In fact, if the System earns 8% on a market value basis for the 2004/05 plan year, the System can expect to recognize a \$4.8 billion loss on the actuarial value of assets at the next valuation. Therefore, we believe the Board should begin laying the groundwork with the Legislature for an increase in the contribution rate.

Any increase in the State contribution rate, however, should be put in historical perspective. Except for non-actuarial issues (related to Texas budget reasons), the TRS State contribution rate has either decreased or not increased since 1979. At 7.31%, the State contribution rate would be the same rate that was contributed by the State prior to the last reduction in the State contribution rate in 1995.

Caution is warranted over the next few years. There should be no benefit increases passed by the Legislature over the next several Legislative Sessions without adequate funding, and the funded status should be carefully monitored. As noted above, in the absence of significant actuarial gains over the near term, an increase in the State contribution rate will be necessary to maintain the actuarial soundness of the System.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Table 20 of the valuation report. This valuation reflects the changes to plan provisions as enacted by the 78th Texas Legislature.

Disclosure of Pension Information

Effective for the fiscal year ending August 31, 1996, the Board of Trustees has adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 21 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2003 and were adopted on May 21, 2004.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations.

Data

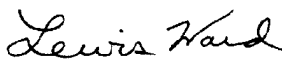
In preparing the August 31, 2004 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,
Gabriel, Roeder, Smith & Company



W. Michael Carter, FSA, EA, MAAA
Senior Consultant



Lewis Ward
Consultant



Joe Newton, ASA
Consultant

GABRIEL, ROEDER, SMITH & COMPANY

Actuarial Present Value of Future Benefits

ACTUARIAL VALUATION - AUGUST 31, 2004

	August 31,	
	2004	2003
Present Value of Benefits Presently Being Paid:		
Service Retirement Benefits	\$ 43,990,300,273	\$ 39,855,845,308
Disability Retirement Benefits	852,998,580	829,882,596
Death Benefits	765,767,599	629,445,482
Present Survivor Benefits	187,208,198	159,810,826
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	\$ 45,796,274,650	\$ 41,474,984,212
Present Value of Benefits Payable in the Future to Present Active Members:		
Service Retirement Benefits	\$ 67,393,286,035	\$ 72,627,163,340
Disability Retirement Benefits	842,184,439	1,334,277,382
Termination Benefits	3,851,143,498	4,703,320,045
Death and Survivor Benefits	1,230,447,990	1,636,283,604
TOTAL ACTIVE MEMBER LIABILITIES	\$ 73,317,061,962	\$ 80,301,044,371
Present Value of Benefits Payable in the Future to Present Inactive Members:		
Inactive Vested Participants		
Retirement Benefits	\$ 1,070,395,666	\$ 979,820,873
Death Benefits	81,136,565	59,399,100
TOTAL INACTIVE VESTED BENEFITS	\$ 1,151,532,231	\$ 1,039,219,973
Refunds of Contributions to Inactive Non-vested Members	\$ 176,633,650	\$ 166,059,923
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 825,824,580	\$ 695,568,135
TOTAL INACTIVE LIABILITIES	\$ 2,153,990,461	\$ 1,900,848,031
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	\$ 121,267,327,073	\$ 123,676,876,614

Summary of Cost Items

	2004	2003
Actuarial Present Value of Future Benefits	\$ 121,267,327,073	\$ 123,676,876,614
Present Value of Future Normal Costs	(24,530,801,603)	(29,413,849,072)
Actuarial Accrued Liability	96,736,525,470	94,263,027,542
Actuarial Value of Assets	(88,783,870,893)	(89,033,023,666)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	\$ 7,952,654,577	\$ 5,230,003,876

Teacher Retirement System of Texas

TRD-200407041
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Filed: November 30, 2004

◆ ◆ ◆

Texas Department of Transportation

Notice of Availability of Final Environmental Impact Statement

Pursuant to 43 TAC §2.43(e)(5)(F), the Texas Department of Transportation (TxDOT) is issuing a notice of availability of a final environmental impact statement to advise the public that the Federal Highway Administration, in cooperation with TxDOT, has approved and made available a final environmental impact statement (FEIS) for a proposed project to construct the "Kelly Parkway" highway project in and near southwest San Antonio, Texas.

The proposed project termini are at US 90, at General Hudnell Drive, and SH 16, south of the San Antonio city limits in Bexar County, Texas. The length of the proposed project is approximately 8.8 miles. The proposed Kelly Parkway would be a four-lane divided highway with 12-foot travel lanes, ten-foot outside shoulders and four-foot inside shoulders. The right of way width varies from 200 feet in the northern portion of the corridor to 250 feet in the southern portion. The median would be 26 feet wide north of Southwest Military Drive and 48 feet wide to the south. The highway facility would be paralleled by a 14-foot wide, shared-use path.

The purpose of and need for the proposed facility is to accommodate access and mobility needs related to traffic growth in the southwest San Antonio area and the redevelopment of Kelly Air Force Base (Kelly USA), as well as nearby areas. The proposed project calls for either reconstructing an existing facility or building a new-location facility, designed to be a direct link from Kelly USA and the Union Pacific South San Antonio Intermodal Rail Terminal to IH 35, IH 410, US 90 and State Highway 16.

A full range of modal alternatives was examined for the proposed Kelly Parkway during the development of Mobility 2025, the San Antonio Metropolitan Transportation Plan. The proposed Kelly Parkway is included in this region's long range metropolitan transportation plan as a highway facility to be developed in combination with transit accommodations to serve Kelly USA. The social, economic, and environmental impacts for eight alternatives and the no build alternative were evaluated in the FEIS. A public hearing regarding the adequacy and completeness of the draft environmental impact statement was held on January 27, 2004. All substantive comments received regarding the draft environmental impact statement are discussed and responded to in the FEIS. The preferred alternative for the proposed facility includes improvements to the US 90 interchange at General Hudnell Drive, widening the existing General Hudnell Drive along the Union Pacific Railroad, a new-location roadway south of Union Pacific Railroad, generally along Quintana Road, and intermodal changes along the railyard to SH 16.

The FEIS is available for public and agency review at the Texas Department of Transportation's San Antonio District Office (4615 NW Loop 410), Kelly Island (2110 Cupples Road), Mendez Café (201 Bartholomew Avenue), South San Recreational Center (2031 Quintana), Brenda's Burgers (3837 Southwest Military Drive), St. Joseph's Catholic Church (535 New Laredo Hwy.), St. John Burchman Catholic Church (1147 Cupples Road), Palo Alto College (1400 W. Villaret), Las Palmas CPS Substation (515 Castroville Road), San Antonio Central Library (600 Soledad), Cortez Branch Library (2803 Hunter), Johnston Branch Library (6307 Sun Valley), Pan American

Branch Library (1122 W. Pyron Avenue), Dwight Middle School (2454 W. Southcross), Carrillo Elementary School (500 Price Avenue), Kelly Elementary School (1026 Thompson Place), and South San High School (2515 Navajo).

To ensure that the full range of issues relating to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. The deadline for the receipt of comments is 5:00 p.m., January 10, 2005.

Agency Contact: Comments or questions concerning this proposed action and the FEIS should be directed to David Casteel, P.E., District Engineer, San Antonio District, Texas Department of Transportation, P.O. Box 29928, San Antonio, Texas 78229, or by telephone at (210) 615-1110.

TRD-200407023
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 29, 2004

◆ ◆ ◆

Request for Proposal for Aviation Engineering Services

The County of Aransas through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: Aransas County, Aransas County Airport, TxDOT CSJ No. 0516ROCKP, Scope: Provide engineering/design services to install erosion/sedimentation controls, improve drainage south of Runway 14-32, replace MIRL on Runway 14-32, rehabilitate and mark Runway 14-32, RSA site prep Runway 14 end.

Future items may include engineering design services to reconstruct and mark Runway 18-36.

The HUB goal is set at 10%. TxDOT Project Manager is John Wepryk, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online by selecting "Aransas" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT web site as

addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Five completed, unfolded copies of Form AVN 550 must be post-marked by U.S. Mail by midnight (CDST) December 29, 2004. Mailing address: TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on December 30, 2004; overnight address: TxDOT, Aviation Division, 200 East Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. December 30, 2004 (CDST); hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members.

The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or John Wepryk, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200407011

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: November 24, 2004



Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Rio Water Supply Corporation, 42 North Suntext Road, Rio Grande City, Texas, received July 20, 2004, application for financial assistance in the amount of \$4,200,000 consisting of a \$500,000 grant from the Small Community Hardship Program and a \$3,700,000 loan from the Rural Water Assistance Fund.

Jarrell-Schwertner Water Supply Corporation, P.O. Box 40, Jarrell, Texas 76537, received November 1, 2004, application for financial assistance in the amount of \$4,000,000 from the Rural Water Assistance Fund.

City of Diboll, P.O. Box 340, Diboll, Texas 75941, received October 25, 2004, application for financial assistance in the amount of \$1,500,000 from the Drinking Water State Revolving Fund.

City of Hico, 120 West First, P.O. Box 533, Hico, Texas 76457, received October 29, 2004, application for financial assistance in the amount of \$3,160,000 from the Texas Water Development Funds.

City of Manvel, P.O. Box 187, 6615 FM 1128, Manvel, Texas 77578, received November 16, 2004, application for financial assistance in the amount of \$845,000 from the Clean Water State Revolving Fund.

City of Montgomery, P.O. Box 708, Montgomery, Texas 77356, received September 30, 2004, application for financial assistance in the amount of \$1,060,000 from the Texas Water Development Funds.

TRD-200407047

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: December 1, 2004



How to Use the Texas Register

Information Available: The 14 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 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.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

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:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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