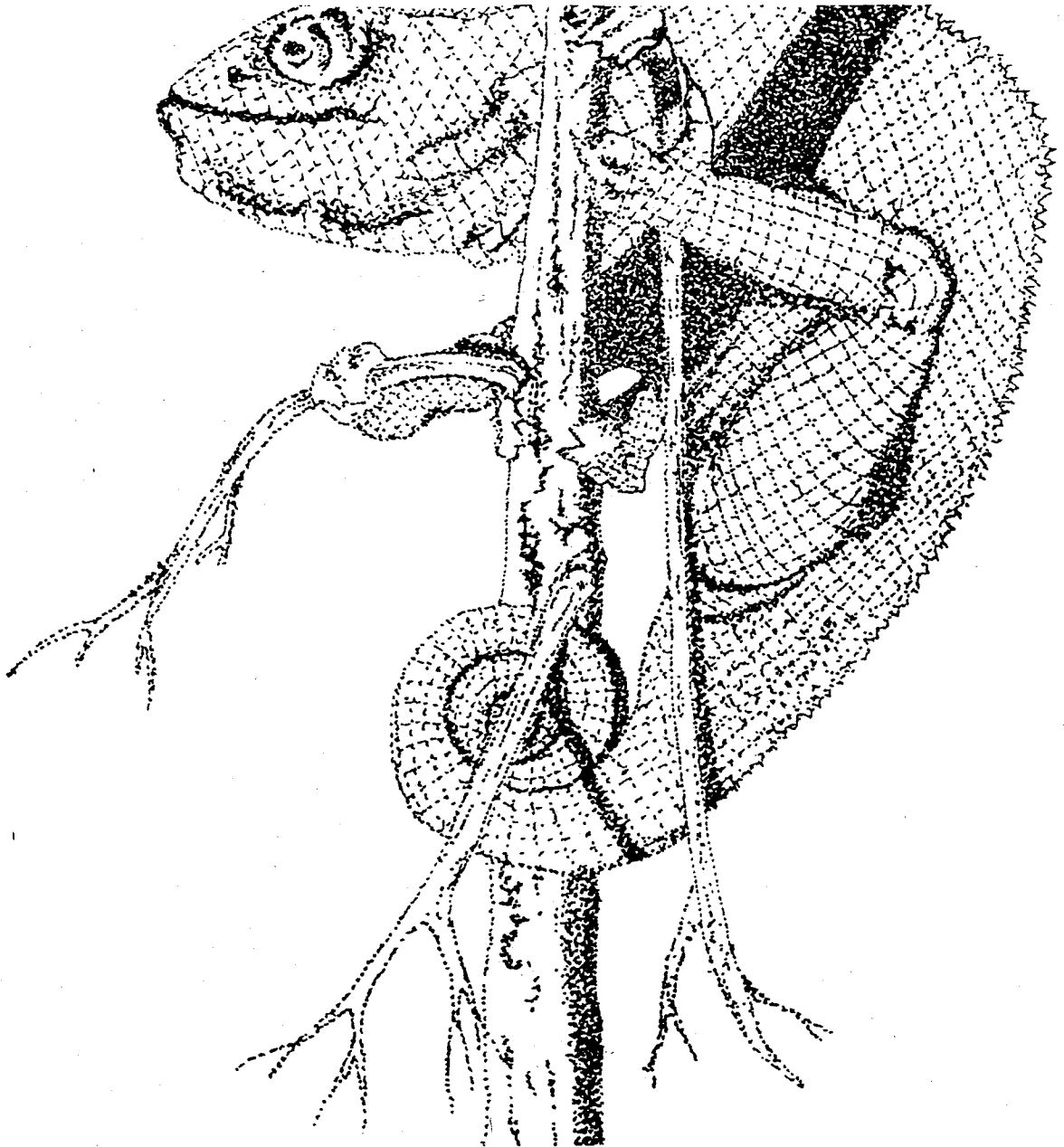

TEXAS REGISTER

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This month's front cover artwork:

Artist: Brian Flanagan

11th Grade

Northbrook Sr. High, SBISD

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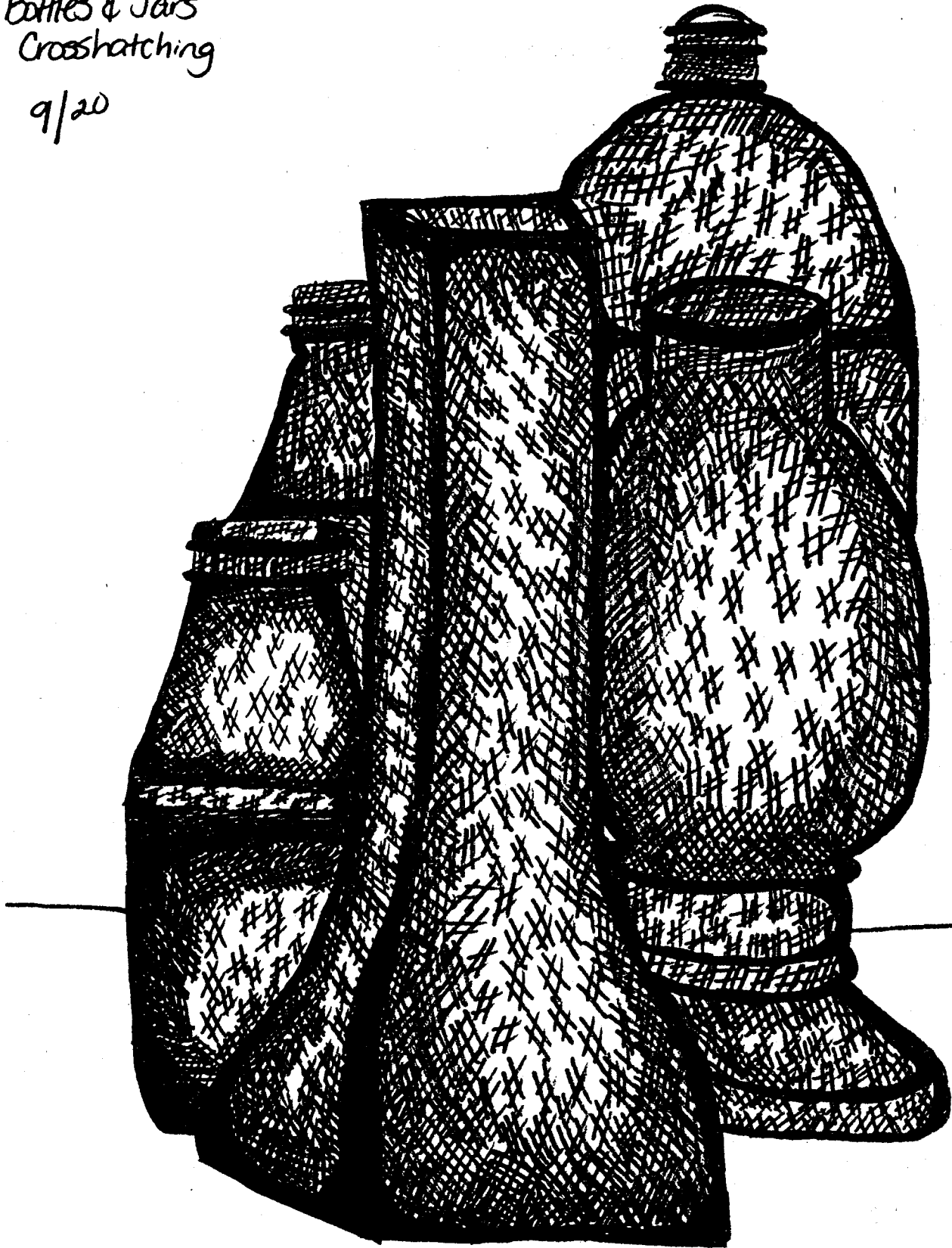
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Name: Britni Gross

Grade: 9

School: Skyline High School, Dallas Independent School District

OFFICE OF 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. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Letter Opinions

LO# 97-002 (ID# 38855). Request from the Honorable Keith Oakley, Chair, Committee on Public Safety, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78711-2548, regarding Municipal zoning regulation of manufactured housing.

Summary. Under the terms of the Manufactured Standards Housing Act, article 5221f, V.T.C.S., an incorporated city may forbid the installation of single-wide or aluminum-roofed dwellings only if such dwellings fail to meet the standards specified by the United States Department of Housing and Urban Development.

LO# 97-003 (ID# 39211). Request from the Honorable Frank Madla, Chair, Committee on Nominations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding when the senate does not act to confirm or reject a person nominated to an office by the governor during a legislative session, is the nominee considered rejected by law, so that he may not be reappointed to same office or board?

Summary. When the senate does not confirm or reject a person nominated to office by the governor during a legislative session, that person is considered to be rejected by the senate for purposes of article IV, §12 of the Texas Constitution. The governor may not appoint that person to fill the vacancy, or, during the term of the vacancy for which the person was rejected, to fill another vacancy in the same office or on the same board, commission, or other body.

LO# 97-004 (RQ-898). Request from the Honorable Bill Ratliff, Chair, Finance Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding Reconsideration of Letter Opinion Number 95-088: Authority of the Lubbock County Hospital District to fund the expenses of the office of county medical examiner.

Summary. Letter Opinion Number 95-088, holding that the Lubbock County Hospital District could not fund the expenses of the medical examiners office, is affirmed. Letter Opinion Number 95-088 (1995). The hospital district was created to provide medical and hospital care to the residents of the district and to assume full responsibility for providing such care to the needy inhabitants of the district. The taxes it levies and collects may only be used for hospital purposes. The purpose of the medical examiner's office is to determine whether the death of a person under certain circumstances was caused by an unlawful act or omission, and since this is not a hospital purpose, the hospital district may not fund that office. The hospital district may contract with the medical examiner in his private capacity to perform medical tests or autopsies on hospital patients for hospital purposes and may pay him for those services, assuming that

this arrangement will not interfere with the medical examiner's duties to the county as medical examiner. The county and the hospital district may enter into a contract under the Interlocal Cooperation Act whereby the hospital district would pay for services performed by the medical examiner in his capacity as a physician performing tests for other physicians. Attorney General Opinion M-379 (1969), holding that a county hospital's statutory authority to provide "care" and "treatment" does not include authority to perform an autopsy on a patient who died of natural causes, is overruled.

LO# 97-005 (ID# 39130). Request from the Honorable Patricia Gray, Chair, Committee on Civil Practices, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768, regarding whether a city may impose a municipal hotel occupancy tax in an area annexed for limited purposes pursuant to a strategic partnership agreement under Local Government Code, §43.0751.

Summary. A city may not collect a municipal hotel occupancy tax in a municipal utility district annexed for limited purposes pursuant to a strategic partnership agreement under Local Government Code, §43.0751. A city with a population of less than 35,000, however, may impose a hotel occupancy tax in the city's extraterritorial jurisdiction pursuant to Tax Code, §351.0025 irrespective of city annexation of the area.

LO# 97-006 (ID# 39233). Request from the Honorable Mark W. Stiles, Chair, Calendars Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768, regarding Constitutionality of Transportation Code requirement that applicant for original, renewal, or duplicate driver's license provide fingerprints, and related questions.

Summary. There is no constitutional impediment to the requirement now contained in §521.142 of the Transportation Code that an applicant for an original, renewal, or duplicate driver's license submit his or her thumb or index fingerprints as a part of such an application.

LO# 97-009 (ID# 39263). Request from the Honorable Ben W. Childers, County Attorney, Fort Bend County, 309 South Fourth Street, Suite 621, Richmond, Texas 77469-3506, regarding whether, in a civil case in which the litigants have agreed to fund an increase, jurors may receive a jury fee different from that the commissioners court has set and related questions.

Summary. Unless a court has found that the county commissioners court has abused its discretion in setting a jury fee, the county treasurer may not pay jurors in a specific case a jury fee different from that the county commissioners court has set in accordance with Government Code, §61.001, even though the litigants have

agreed to fund the increase. No circumstances exist in which a juror may be paid more than the thirty dollar jury fee Government Code, §61.001(a) sets as a maximum. Litigants in a particular case who want to supplement the jury fee are bound by §61.001. Finally, the county treasurer may not agree to deposit the litigants' extra jury fee contribution in a noncounty depository and then disburse the money to the jurors.

LO# 97-010 (ID# 37379). Request from Mr. Steve Robinson, Executive Director, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, regarding whether longevity pay and benefit replacement pay are included within the capped salary rate for Texas Youth Commission teachers.

Summary. Longevity pay and benefit replacement pay are included in the capped rate of salary for teachers employed by the Texas Youth Commission. The minimum salary paid to such teachers, however, may not be reduced by the longevity and benefit replacement payments in order not to exceed the capped salary rate.

TRD-9702960

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LO# 97-007 (ID# 39104). Request from the Honorable John Whitmire, Chair, Senate Committee on Criminal Justice, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether an amusement park may prohibit a peace officer from carrying a concealed handgun on park premises under V.T.C.S. article 4413(29ee), §32 or Penal Code §46.035(b)(5).

Summary. Neither V.T.C.S. article 4413(29ee), §32 nor Penal Code, §46.035(b)(5) authorizes an amusement park to prohibit a peace officer, who is acting in the lawful discharge of an official duty or is a patron of the park, from carrying a concealed handgun on park premises.

LO# 97-008 (ID# 39101). Request from Ms. Kim Kiplin, Acting Executive Director, Texas Lottery Commission, P.O. Box 16630,

Austin, Texas 78761-6630, regarding whether the offer for sale of a sweepstakes ticket combined with a long-distance telephone card constitutes an illegal lottery.

Summary. The Texas Lottery Commission may conclude that a sweepstakes conducted through the sale of a one-minute long-distance telephone card distributed primarily through slot-machine-like vending machines constitutes a prohibited "lottery" under chapter 47 of the Penal Code if it finds, as a matter of fact, that "any character of favoritism" is shown to persons who pay for the card as compared to those who obtain the sweepstakes tickets free of charge; that purchasers of the phone cards do not in fact regard them as having any value as phone cards; that the phone cards do not provide the service advertised; or that the "controlling inducement" to purchasing the phone card-sweepstakes ticket is the lure of operating the dispensing device. If the commission determines that the sweepstakes is a prohibited lottery, the machine that dispenses the tickets is a "gambling device" under chapter 47.

LO# 97-011 (ID# 38679). Request from the Honorable Mark H. Dettman, Midland County Attorney, P.O. Box 2559, Midland, Texas 79702, regarding whether the district or county attorney for Midland County must represent the county in general civil litigation and related questions.

Summary. Neither the Midland County Attorney nor the district attorney of the 142d Judicial District, which district consists of Midland County, is required to represent Midland County in general civil litigation. Nevertheless, the county commissioners court may contract with the county attorney, in his or her private capacity, to represent the county in general civil litigation. The county attorney is entitled to be compensated. On the other hand, the county may not contract with the district attorney to represent the county in general civil litigation in his or her private capacity.

TRD-9702961

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 463. Applications

22 TAC §463.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.5 on an emergency basis. This emergency rule is effective immediately for no more than 120 days after publication in the *Texas Register*.

The amended section is necessary to effectively implement the requirements of Senate Bill 673 of the 74th Legislature of Texas. The emergency amended section establishes standards to define the term "substantial equivalent" for purposes of §15A of the Psychologists' Certification and Licensing Act which permits the Texas State Board of Examiners of Psychologists to issue a one-year temporary license to individuals licensed in another jurisdiction who are seeking permanent licensure from the Board.

The amended section tracks the criteria and/or qualifications for determining if the licensing laws under which the applicant is currently licensed in another jurisdiction has requirements for licensure that are substantially equivalent to the Board's requirement to permit temporary licensure of the applicant by the Board. In addition, it sets forth additional requirements that the applicant must meet to qualify for temporary licensure with the Board while the applicant satisfies the Board's requirements for permanent licensure.

The Texas State Board of Examiners of Psychologists is mandated by the Legislature to regulate the licensure and practice of all individuals who offer psychological services to the public. The fact that the Board has no current rules to permit the Board to adequately assess the qualifications of applicants for temporary licensure based on both the individual merits of the applicant and the law under which the applicant is currently licensed, along with the influx of applicants for temporary licensure under Section 15A of the Psychologists' Certification and Licensing Act, creates an imminent peril to the health, safety and welfare of the public and necessitates the emergency adoption of amended §463.5.

The amendment is adopted on an emergency basis under the Psychologists' Certification and Licensing Act, §8(a) and §15A.

Section 8(a) of the Psychologists' Certification and Licensing Act provides the Board with authority to promulgate rules in accordance with the Constitution and Laws of this State. Section 15A authorizes the Board to grant temporary licenses to individuals who meet certain criteria and/or qualifications.

§463.5. Application File Requirements.

An application file must be complete and contain whatever information or examination results the Board requires. An incomplete application remains in the active file for 90 days, at the end of which time, if still incomplete, it is void. If certification or licensure is sought again, a new application and filing fee must be submitted. No applicant can have more than one application as described in paragraphs (2), (3) and/or (5) of this section pending before the Board at one time. For any applicant against whom a complaint is filed with this Board, any final decision on the application will be held in abeyance until the Board has made a final determination on the complaint filed. If the complaint is not resolved within 180 days after an application has been held in abeyance, the Board shall review the complaint and make a determination as to whether to issue the license notwithstanding the complaint. In making the determination, the Board shall consider any relevant factor, including the potential for harm to the public if the license is granted, and the nature and severity of the allegations. The applicant will be permitted to take all required exams as scheduled but will not be certified or licensed until approved by the Board.

(1)-(7) (No change.)

(8) Temporary License/Certificate.

(A) (No change.)

(B) A completed application for a temporary license or certificate must include, in addition to the requirements stated in paragraph (1) of this section for all applicants:

(i) a statement which has a notary seal or a state seal from the appropriate psychology licensing agency in another jurisdiction confirming that the applicant has an active license, certificate, [license/certificate] or registration and is in good standing with that jurisdiction; and

(ii) proof of any other applicable requirement set forth in Board Rule §463.7 of this title (relating to Temporary Licensure Requirements for Applicants Seeking Permanent Licensure as Psychologists or Psychological Associates) [an official notification] sent directly from the appropriate source to the Board [professional examination service] that the applicant has passed the required appropriate examination with a score that meets or exceeds

the cut-off score in Texas at the time the application is filed with the Board; and]

[(iii) proof that the requirements for licensure/certification in the other jurisdiction are substantially equal to those prescribed by the Psychologists' Certification and Licensing Act for the State of Texas.

[(C) In addition to the requirements listed in subparagraph (B) of this paragraph, all applications must include the following:

[(i) For temporary licensure as a psychological associate, official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed as found in Board Rule §463.8 of this title (relating to Educational Requirements for the Licensed Psychological Associate); or

[(ii) For temporary certification or licensure as a psychologist, an official transcript which indicates that an applicant has received a doctoral degree in psychology and meets the requirements of either §11(b) or (c) of the Psychologists' Certification and Licensing Act, for the State of Texas.]

(C)[(iii)] For temporary licensure as a Licensed Specialist in School Psychology, proof that the individual has been certified as a National Certified School Psychologist, or official transcripts sent directly to the Board from all colleges/universities where applicant completed post-baccalaureate course work verifying the requirements set forth in Board Rule §463.32 of this title (relating to Licensed Specialist in School Psychology); and, if the applicant did not graduate from either a training program accredited by the National Association of School Psychologists or a training program in school psychology accredited by the American Psychological Association, proof of the internship.

(9) (No change.)

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.

Issued in Austin, Texas, on February 26, 1997.

TRD-9702802

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: February 27, 1997

Expiration date: June 28, 1997

For further information, please call: (512) 305-7700

◆ ◆ ◆
22 TAC §463.7

The Texas State Board of Examiners of Psychologists adopts new §463.7 on an emergency basis. This emergency rule is effective immediately for no more than 120 days after publication in the *Texas Register*.

The new section is necessary to effectively implement the requirements of Senate Bill 673 of the 74th Legislature of Texas. The emergency rule establishes standards to define the term "substantially equivalent" for purposes of §15A of the Psychologists' Certification and Licensing Act which permits the

Texas State Board of Examiners of Psychologists to issue a one-year temporary license to individuals licensed in another jurisdiction who are seeking permanent licensure from the Board.

The new section sets forth the criteria and/or qualifications for determining if the licensing laws under which the applicant is currently licensed in another jurisdiction has requirements for licensure that are substantially equivalent to the Board's requirement to permit temporary licensure of the applicant by the Board. In addition, it sets forth additional requirements that the applicant must meet to qualify for temporary licensure with the Board while the applicant satisfies the Board's requirements for permanent licensure.

The Texas State Board of Examiners of Psychologists is mandated by the Legislature to regulate the licensure and practice of all individuals who offer psychological services to the public. The fact that the Board has no current rules to permit the Board to adequately assess the qualifications of applicants for temporary licensure based on both the individual merits of the applicant and the law under which the applicant is currently licensed, along with the influx of applicants for temporary licensure under Section 15A of the Psychologists' Certification and Licensing Act, creates an imminent peril to the health, safety and welfare of the public and necessitates the emergency adoption of new §463.7.

The new section is adopted on an emergency basis under the Psychologists' Certification and Licensing Act, §8(a) and §15A. Section 8(a) of the Psychologists' Certification and Licensing Act provides the Board with authority to promulgate rules in accordance with the Constitution and Laws of this State. Section 15A authorizes the Board to grant temporary licenses to individuals who meet certain criteria and/or qualifications.

§463.7. Temporary Licensure Requirements for Applicants Seeking Permanent Licensure as Psychologists or Psychological Associates.

(a) For purposes of Section 15A, Endorsement, of the Psychologists' Certification & Licensing Act, an applicant for temporary licensure or certification as a psychologist or an applicant for temporary licensure as a psychological associate must establish that the requirements for licensing, certification, or registration in the jurisdiction in which the applicant for temporary license is currently licensed "are substantially equal to those prescribed by this Act" by demonstrating that:

(1) The jurisdiction requires:

(A) A doctoral degree in psychology for licensure, certification or registration as a psychologist, if the applicant seeks temporary licensure or certification as a psychologist; or

(B) A master's degree from a program that is primarily psychological in nature, if the applicant seeks temporary licensure as a psychological associate; and

(2) The jurisdiction requires that the licensee, certificand, or registrant has passed the EPPP; and

(3) For applicants seeking temporary licensure as a psychologist:

(A) That the jurisdiction requires, as a condition for licensure, certification, or registration as a psychologist, that all applicants either:

(i) Successfully pass an oral examination; or
(ii) Complete two years of supervised experience in the field of psychological services, at least one year of which must have been received after the conferring of the doctoral degree; and

(B) That the jurisdiction permits all psychologists so licensed, certified, or registered to engage in the independent practice of psychology.

(b) In addition to establishing that the jurisdiction in which the applicant is currently licensed, certified, or registered meets the criteria set forth in subsection (a) of this section, an applicant for temporary licensure or certification must also show:

(1) If the applicant is applying for a temporary license as a psychological associate:

(A) That the applicant has a master's degree of at least 42 semester hours from a program which is primarily psychological in nature from a regionally accredited university or college; and

(B) That the applicant has passed the EPPP at a 55% level or greater; and

(C) That the applicant completed prior to licensure, certification or registration at least four hundred 50 hours of a practicum, internship or work experience in psychology under the supervision of a qualified psychologist.

(2) If the applicant is applying for temporary certification as a psychologist:

(A) That the applicant has completed a doctoral degree in psychology from a regionally accredited institution; and

(B) That the applicant has passed the EPPP at a 70% level or greater.

(3) If the applicant is applying for temporary licensure as a psychologist, that, in addition to meeting all requirements set forth in this paragraph for temporary certification as a psychologist, the applicant has either:

(A) Completed two years of supervised experience in the field of psychological services, at least one year of which must have been received after the conferring of the doctoral degree; or

(B) Taken and passed an oral examination for the purposes of licensure as a psychologist in a jurisdiction whose requirements are substantially equal to those prescribed under this Act as defined in subsection (a) of this section.

(c) An applicant for temporary licensure is responsible for providing the Board with the most current requirements from the jurisdiction in which the applicant is currently licensed, certified, or registered for purposes of establishing that the jurisdiction's requirements for licensure, certification, or registration are substantially equal to those prescribed by this Act as defined in this rule.

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.

Issued in Austin, Texas, on February 26, 1997.

TRD-9702803
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: February 27, 1997
Expiration date: June 28, 1997
For further information, please call: (512) 305-7700

TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention Services

Chapter 621. Early Childhood Intervention

Early Childhood Intervention Service Delivery

25 TAC §621.23, §621.24

The Interagency Council on Early Childhood Intervention Services is renewing the effectiveness of the emergency adoption of amended §621.23 and §621.24, for a 60-day period. The text of amended §621.23 and §621.24 was originally published in the November 15, 1996, issue of the *Texas Register* (21 TexReg 11149).

Issued in Austin, Texas, on February 28, 1997.

TRD-9702881
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention Services
Effective date: March 6, 1997
Expiration date: May 6, 1997
For further information, please call: (512) 424-6754

Procedural Safeguards and Due Process Procedures

25 TAC §621.46

The Interagency Council on Early Childhood Intervention Services is renewing the effectiveness of the emergency adoption of amended §621.46, for a 60-day period. The text of amended §621.46 was originally published in the November 15, 1996, issue of the *Texas Register* (21 TexReg 11150).

Issued in Austin, Texas, on February 28, 1997.

TRD-9702880
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention Services
Effective date: March 6, 1997
Expiration date: May 6, 1997
For further information, please call: (512) 424-6754



Name: Gustavo Granados

Grade: 10

School: Skyline High School, Dallas Independent School District

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 15. Corporate Activities

Subchapter A. Fees and Other Provisions of General Applicability

7 TAC §15.7

The Finance Commission (the commission) proposes new §15.7, concerning the filing of reproductions of original documents under The Texas Banking Act, Texas Civil Statutes, Article 342-1.001 et seq (the Act).

This proposed new section permits the filing of specified forms of reproductions in lieu of original documents, provides that reproductions filed in accordance with the section will be treated as the originals, and establishes limits regarding reproductions filed by telephonic document transmission, i.e., telecopy or facsimile. The agency declines to authorize filing by electronic mail at this time. With respect to reproductions submitted by telephonic document transmission, the section does not explicitly specify a telecopier number to preserve flexibility. The correct telecopier number may be obtained from the agency upon request.

The proposed section does not affect routine correspondence with the agency, applications submitted to the special audits division of the department of banking, or documents submitted to the agency under Government Code, Chapter 2001, and chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking).

Allen Barr, Assistant Division Director, Corporate Activities Division, Texas Department of Banking, has determined that, for each year of the first five years the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Barr also has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of its adoption will be the convenience to the public of making filing of reproductions with the department. No economic cost will be incurred by a person required to comply with this section, and there will be no effect on small businesses.

Comments on the proposed section may be submitted in writing to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed pursuant to the Texas Banking Act, §1.012(a), which provides that the commission may adopt rules "to accomplish the purposes of this Act," including rules that "implement and clarify" the Act.

As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Texas Banking Act, §§3.002-3.006, 3.101-3.104, 3.201-3.205, 3.301, 3.302, 3.401, 3.402, 3.405, 3.501, 3.502, 4.002(a), 4.005, 4.107, 4.201, 4.205, 4.207, 5.001(b), 5.102, 5.106(b), 5.201(a), 5.103, 7.101(a)(3), 7.102, 7.105, 8.004, 8.206, 8.301, 8.304, 9.004, and 9.006 are affected by the proposed section.

§15.7. Submission of Reproductions.

(a) Scope. This section governs submission of specified forms of copies of original documents to the Texas Department of Banking (the department) for processing by the corporate activities division of the department pursuant to this chapter, and does not permit, prohibit, or affect correspondence with or documents submitted to the department for another purpose, including:

(1) applications submitted to the special audits division of the department; and

(2) documents submitted to the department as required or permitted by Government Code, Chapter 2001, and chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking).

(b) **Reproduction.** For purposes of this section, the term reproduction means a photographic or photostatic copy or similar reproduction of an original document that is submitted to the department by mail, hand delivery, or telephonic document transmission to the telecopier machine specified by the department.

(c) **Filings.** Subject to the length limitations of subsection (d) of this section, a document required or authorized to be filed with the department may be a reproduction, including an application or a supplement to or substitution for a portion of a previously filed and accepted application. Receipt of a reproduction by the department is not equivalent to accepted for filing.

(d) **Page limitations.** A reproduction submitted by telephonic document transmission to the department's telecopier machine may not exceed 25 pages in total length, including the transmittal document required by subsection (e) of this section, or it will be rejected for filing. The transmission of portions of any particular filing at different times is treated as one reproduction for purposes of this subsection.

(e) **Transmittal document.** A cover sheet or transmittal document must accompany every reproduction submitted under this section and must:

(1) clearly identify the sender by name, address, and phone number, the documents being delivered or transmitted, and the number of pages in the submission;

(2) contain clear and concise instructions concerning the sender's request with respect to the submission; and

(3) contain complete and accurate information regarding the payment of required filing fees, if any.

(f) **Time of receipt.** To be considered received by the department, a reproduction must be in clearly legible form. The date the submission is actually received by the department or the date and time imprinted by the department's telecopier on the last page of a reproduction submitted by telephonic document transfer will determine the time of receipt, provided that a reproduction received after 4:30 p.m. is considered received at 8:00 a.m. on the next business day. A reproduction will not be considered received until the department receives the entire document and the required filing fee, if any.

(g) **Equivalent of original.** For all purposes attendant to filing, a reproduction of a document filed with the department under this section, including reproduction of signatures thereon, is considered an original document.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702903

Everette D. Jobe

General Counsel

Texas Department of Banking

Proposed date of adoption: April 25, 1997

For further information, please call: (512) 475-1300

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 1. Architects

Subchapter B. Registration

22 TAC §1.21

The Texas Board of Architectural Examiners proposes an amendment to §1.21, concerning Eligibility. The section is being amended to obtain the social security number of applicants as required by §231.302 of the Texas Family Code. The effects are expected to be the ability to identify and withhold professional licenses from applicants who are not conforming to Texas laws pertaining to child support payments.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be conformance with §231.302 of the Texas Family Code which deals with the collection of child support payments. There will be no effect on small business. There would be no cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§1.21. Eligibility.

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

(e) Pursuant to the provisions of §231.302 of the Texas Family Code, each applicant shall submit his or her social security number on forms prescribed by the board. Such information shall be considered confidential as stated in §231.302(e) of the Texas Family Code.

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

Issued in Austin, Texas, on February 27, 1997.

TRD-9702820

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 305-8535

Chapter 3. Landscape Architects

Subchapter B. Registration

22 TAC §3.21

The Texas Board of Architectural Examiners proposes an amendment to §3.21, concerning Eligibility. The section is being amended to obtain the social security number of applicants as required by §231.302 of the Texas Family Code. The effects are expected to be the ability to identify and withhold professional licenses from applicants who are not conforming to Texas laws pertaining to child support payments.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be conformance with §231.302 of the Texas Family Code which deals with the collection of child support payments. There will be no effect on small business. There would be no cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§3.21. Eligibility.

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

(d) Pursuant to the provisions of §231.302 of the Texas Family Code, each applicant shall submit his or her social security number on forms prescribed by the board. Such information shall be considered confidential as stated in §231.302(e) of the Texas Family Code.

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

Issued in Austin, Texas, on February 27, 1997.

TRD-9702821

Cathy L. Hendricks, ASID/IIDA
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 305-8535

Chapter 5. Interior Designers

Subchapter B. Registration

22 TAC §5.31

The Texas Board of Architectural Examiners proposes an amendment to §5.31, concerning Eligibility. The section is being amended to obtain the social security number of applicants as required by §231.302 of the Texas Family Code. The effects are expected to be the ability to identify and withhold professional licenses from applicants who are not conforming to Texas laws pertaining to child support payments.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be conformance with §231.302 of the Texas Family Code which deals with the collection of child support payments. There will be no effect on small business. There would be no cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§5.31. Eligibility.

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

(d) Pursuant to the provisions of §231.302 of the Texas Family Code, each applicant shall submit his or her social security number on forms prescribed by the board. Such information shall be considered confidential as stated in §231.302(e) of the Texas Family Code.

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

Issued in Austin, Texas, on February 27, 1997

TRD-9702822

Cathy L. Hendricks, ASID/IIDA
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 305-8535

22 TAC §5.38

The Texas Board of Architectural Examiners proposes an amendment to §5.38, concerning Reciprocal Transfer. The section is being amended to clarify the term "substantially equivalent" as used in the rule. The effects are expected to be better understanding and enforcement of the rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks has also determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be clarification of an existing rule. There will be no effect on small business. There would be no cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§5.38. Reciprocal Transfer.

(a) (No change.)

(b) Criteria for reciprocal registration as described in subsection (a) of this section includes:

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

(3) before the board will approve an individual's application for registration by reciprocal transfer, the individual must submit:

(A) an NCIDQ Certification Record showing that he or she has passed all sections of the NCIDQ examination; and

(B) evidence to prove that he or she has a minimum of two years of acceptable practice experience following registration.

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

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

Issued in Austin, Texas, on February 27, 1997.

TRD-9702823

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 305-8535



Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §153.20

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.20, Guidelines for Revocation, Suspension or Denial; Investigation.

The Board proposes amendments to the title of §153.20 to clarify the contents of the section. Amendments to §153.20(a) add provisions to deny issuing a license or certification on the same basis that a license or certification may be revoked or suspended. Amendments to §153.20(g) clarify that the revocation of a license or certification for failure to pay child support is done by the Attorney General or other court of competent jurisdiction, rather than through the board's disciplinary process.

Renil C. Liner, commissioner, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Liner also has determined that each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing and administering this section is to add clarity to the rules to make them more understandable. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, TX 78711-2188, no later than April 11, 1997.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 5, 9, 9A, 11, 12, 12A, 17, and 21 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed amendments.

§153.20. Guidelines for Revocation, Suspension or Denial of License or Certification [;Investigation].

(a) The board may suspend or revoke a license, certification, authorization or registration issued under provisions of the Act or deny issuing a license, certification, authorization or registration to an applicant at any time when it has been determined that the person applying for or holding the license, certification, authorization, or registration:

(1)-(17) (No change.)

(b)-(f) (No change.)

(g) A license, certification, authorization or registration may be revoked or suspended by the Attorney General or other court of competent jurisdiction for failure to pay child support under provisions of Chapter 232 of the Texas Family Code.

(h) (No change.)

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

Issued in Austin, Texas, on March 3, 1997.

TRD-9702857

Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: April 11, 1997
For further information, please call: (512) 465-3950

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.11, concerning Continuing Education. The amendment is being proposed in order to reflect that only 12 hours of continuing education must be completed by any licensee regardless of the number of licenses issued by this Board and held by the licensee, to reflect that continuing education hours obtained in the future can no longer be banked and to reflect that the term "licensee" applies to all individuals licensed by this Board.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure that each individual licensed by the Board is obtaining continuing education hours yearly, thereby allowing the citizens of Texas to obtain the best possible psychological services available by qualified individuals and to make the rules easier for licensees and the general public to understand and follow. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be in direct proportion to the cost of the continuing education obtained by each licensee.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§461.11. Continuing Education.

(a) Requirements. All licensees [certificands/licensees] of the Board must continue their professional education by completing 12 hours of continuing education during each year that they hold a license [certificate and/or license] from the Board regardless of the number of separate licenses held by the licensee. Of these 12 hours, four must be acquired through a formal continuing education program

as defined in paragraph (1) of this subsection. The remaining eight hours may be from either formal program as defined in paragraph (1) of this subsection or from other continuing education experiences as defined in paragraph (2) of this subsection.

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

(b) Banking. Continuing education hours received after December 31, 1997, cannot be banked. Continuing education hours accrued prior to December 31, 1997, received from formal continuing education programs (See subsection (a)(1) of this section) in excess of four hours during any one-year period may be banked for no longer than an additional two years provided that eight hours of additional continuing education hours [Category II] are also completed each year by the licensee [licensee/certificand].

(c) (No change.)

(d) Licensees [Licensees/certificands] will sign and submit a completed Continuing Education Declaration Form with the annual renewal form specifying the continuing education they received for that period. This does not alter the responsibility of licensees [licensees/certificands] to reply truthfully to any question concerning continuing education on the renewal form itself.

(e) Record Maintenance. Licensees [Licensees/certificands] shall maintain continuing education records for five years.

(f) Audit. The Board will audit 10% of licensees [licensees/certificands] each year for compliance with the continuing education requirements. The Board will notify a licensee [or certificand] by mail that they have been selected for an audit. Upon receipt of an audit notification, the licensee [or certificand] must mail the requested proof of his/her compliance with annual continuing education requirements back to the Board along with his/her annual renewal notice and renewal fees in order to renew and avoid non-compliance penalties. All licensees [licensees/certificands] shall comply with any Board requests for documentation and information concerning compliance with continuing education and/or Board audits.

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

Issued in Austin, Texas, on February 26, 1997.

TRD-9702804

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 305-7700

Chapter 463. Applications

22 TAC §463.5

(Editor's Note: The Texas State Board of Examiners of Psychologists proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.5, concerning Application File Requirements. The amendment is being proposed in order to effectively

implement requirements for temporary licensure as mandated by the 74th Legislature of Texas and to establish application requirements for those individuals licensed in another jurisdiction who wish to obtain one-year temporary licenses while seeking permanent licensure from the Board.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure that all licensees and the general public are aware of the Board's requirements for temporary licensure and ensure that the citizens of the State of Texas are receiving the best possible psychological services from qualified individuals. There will be no effect on small businesses. The anticipated economic cost to person who are required to comply with the rule as proposed will be in direct proportion to any cost incurred in obtaining required documentation.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles or codes.

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

Issued in Austin, Texas, on February 26, 1997.

TRD-9702805
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 11, 1997
For further information, please call: (512) 305-7700

◆ ◆ ◆
22 TAC §463.7

(Editor's Note: The Texas State Board of Examiners of Psychologists proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas State Board of Examiners of Psychologists proposes new §463.7, concerning Temporary Licensure Requirements for Applicants Seeking Permanent Licensure as Psychologists or Psychological Associates. The new rule is being proposed in order to effectively implement requirements for temporary licensure as mandated by the 74th Legislature of Texas; to establish standards to define the term "substantial equivalent" for purposes of §15A of the Psychologists' Certification and

Licensing Act permitting the Board to issue one-year temporary licenses to individuals licensed in another jurisdiction who are seeking permanent licensure from the Board; and to set forth additional requirements that the applicant must meet to qualify for temporary licensure with the Board while satisfying the Board's requirements for permanent licensure.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to advise the public of the procedures by which temporary licensure can be obtained by individuals who are seeking permanent licensure with the Board, thereby ensuring that the citizens of Texas are receiving the best possible psychological services from qualified individuals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The new rule is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

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

Issued in Austin, Texas, on February 26, 1997.

TRD-9702806
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 11, 1997
For further information, please call: (512) 305-7700

◆ ◆ ◆
Chapter 465. Rules of Practice

22 TAC §465.22

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.22, concerning Psychological Records. The amendment is being proposed in order to clarify the special requirements for retention of records within the public school districts of the State of Texas.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure that all federal and state laws regarding psychological and educational records in schools are followed by licensees of the Board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§465.22. Psychological Records.

(a) General requirements.

(1)-(6) (No change.)

(7) Licensees of this Board working in public school settings shall comply with all federal and state legislation and regulations relative to the content, maintenance, control, access, retention, and destruction of psychological and educational records.

(b)-(f) (No change.)

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

Issued in Austin, Texas, on February 26, 1997.

TRD-9702807

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 305-7700

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter L. In-Home and Family Support Program

25 TAC §§401.681-401.692

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§401.681-401.692, concerning TDMHMR In-Home and Family Support Program. New §§401.681-401.693, concerning the same, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new sections.

Donald C. Green, chief financial officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Karen Hale, assistant commissioner, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of internal recommendations which are consistent with the recommendations of the Legislative Budget Board as well as the program's enabling statute. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeals are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

Texas Health and Safety Code, Chapter 535 is affected by these proposed repeals.

§401.681. Purpose.

§401.682. Application.

§401.683. Definitions.

§401.684. Support Services.

§401.685. Eligibility Determination.

§401.686. Documentation Requirements.

§401.687. Program Standards and Quality Assurance

§401.688. Payment System.

§401.689. Data Collection.

§401.690. Protection of Client Rights.

§401.691. Distribution.

§401.692. References.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702901

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: April 11, 1997
For further information, please call: (512) 206-4516

Subchapter L. TDMHMR In-Home and Family Support Program

25 TAC §§401.681-401.693

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§401.681-401.693, concerning TDMHMR In-Home and Family Support Program. The repeal of existing §§401.681-401.692, concerning the same, is contemporaneously proposed in this issue of the *Texas Register*.

The proposed new sections would reorganize the text of the subchapter for readability. The term "support" would be referred to as "assistance" and the definition revised. The definition of "developmental delay" would be revised to mean a significant variation in normal development in at least two areas. The definitions of "emergency," "family," and "guardian" would be revised for clarity. The definition of "local authority" would be revised for consistency with state statute. The term "person with a mental disability" would be replaced with definitions of "mental disability" and "person." The definition of "mental disability" would provide additional clarifying language. The revised definition of "person" would mean the person with a mental disability or the person's family, whichever is applicable. The definition of "TDMHMR In-Home and Family Support Program" would be revised to more appropriately reflect its purpose. A list describing the types of unallowable services would be added.

Language would be added to the eligibility criteria clarifying that all four criteria must be redetermined annually. Diagnostic criteria would require the diagnosis to be determined within the previous 12 months. Language would be added clarifying that a mental illness diagnosis means, at the present time, the person's illness substantially impairs the person's thought, perception of reality, emotional process, or judgment, or grossly impairs the person's behavior as manifested by recent disturbed behavior. The residency criteria would clarify that the person must be a resident of the administering agency's specified service area and if a person's family is requesting assistance, then the person and the person's family must live in the specified service area. Income criteria would clarify that the income is based on the adult person's income and the income of the person's spouse, if married, or the income of the minor person's parents. The copayment schedule would be properly referenced and the copayments of persons with income below 105% of the Texas median income level would be \$1. Language would also be added to the needs eligibility criteria requiring the administering agency to take into consideration the extent of the person's need and whether the person was at risk for out-of-home placement.

The list of programs and living arrangements for which participation would render a person ineligible for assistance would be revised for clarification. Language would be added allowing assistance to be provided to an eligible person on the waiting list for the same services from another support program until the service becomes available from the other support program. Language would be added requiring the administering agency

to determine eligibility within 30 calendar days of a person's request for assistance. Language would also be added making persons responsible for providing necessary information to make the eligibility determination in an accurate and timely manner.

Language would be added prohibiting the administering agency from discriminating against any person on the grounds of race, color, national origin, religion, sex, age, disability, or political affiliation. Additional language would clarify that persons' names are placed on record as waiting for assistance if funds are unavailable on the date of their request. Persons on record as waiting for assistance would be contacted annually to determine their continued interest in receiving assistance. The administering agency would be responsible for redetermining a person's eligibility if any of the person's eligibility factors changed while the person was on record as waiting for assistance. Elements would be added to the written plan, including a description of how the services will impact the mental disability; a statement of the desired goals or outcomes and how the services will achieve those goals/outcomes or encourage self-sufficiency; a list of the other support programs contacted in the determination that the person was not eligible for the services elsewhere; the percentage of copayment; a statement by the person that he/she agrees to provide proper receipts for all services purchased with assistance; suggested review criteria for monitoring the written plan; and the date the written plan was signed by the person and administering agency staff. Language would be added clarifying that the written plan is current only for the fiscal year for which it was developed.

Language would be added clarifying that current recipients of assistance may make a new request for another type of service, but that the new request would be processed based upon the new date of request. The one-time grant for architectural modification and/or the purchase or lease of special equipment or supplies would be for costs between \$600 and \$3600; three oral bids would be required for costs between \$250 and \$600; three written bids would be required for costs \$600 and more; and criteria for selecting a vendor would be added. Requirements for programmatic and fiscal records would be added. Language would be added stating that persons who do not comply with their written plan are no longer eligible for assistance and may be liable for restitution. Language would be added to the appeal process allowing the administrative review to be held at a mutually agreed upon location. Data collection requirements would be revised and an exhibit section would be added.

Donald C. Green, chief financial officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Karen Hale, assistant commissioner, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of internal recommendations which are consistent with the recommendations of the Legislative Budget Board as well as the program's enabling statute. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

Texas Health and Safety Code, Chapter 535 are affected by these proposed new sections.

§401.681. Purpose.

The purpose of this subchapter is to provide operational policies to be followed in administering the TDMHMR In-Home and Family Support Program.

§401.682. Application.

This subchapter applies to all local authorities and other administering agencies that receive state funding for the TDMHMR In-Home and Family Support Program.

§401.683. Definitions.

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

Administering agency - An entity that the department designates to administer the TDMHMR In-Home and Family Support Program in a specified service area.

Assistance - A grant awarded within a fiscal year by the TDMHMR In-Home and Family Support Program to a person to purchase allowable services.

CARE - The Client Assignment and Registration System database of TDMHMR.

Date of request - The documented date that the person's eligibility is determined in accordance with §401.685 of this title (relating to Eligibility Determination).

Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).

Developmental delay - A significant variation in normal development, as measured by appropriate diagnostic instruments and procedures, in two or more of the following areas:

- (A) cognitive;
- (B) physical;
- (C) communication;
- (D) social or emotional; or
- (E) adaptive.

Emergency - A documented life-threatening situation or documented risk of imminent out-of-home placement which can be prevented with immediate assistance.

Family - The person, the person's parent(s), guardian(s), spouse, child(ren), sibling(s), and no more than three unrelated individuals who live with the person.

Guardian - An individual who, pursuant to a court order entered in accordance with the Texas Probate Code, is the guardian of the person of another.

Local authority - An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.

Mental disability - A mental illness (as defined in this section), mental retardation, a pervasive developmental disorder, or a developmental delay in a child between the ages of 0 and 4. A mental disability:

(A) is an impairment that is likely to continue indefinitely;

(B) results in substantial functional limitations in one or more of the following major life activities:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency; and

(C) reflects the person's need for services or supports which are of lifelong or extended duration and are individually planned and coordinated.

Mental illness - Consistent with the Texas Mental Health Code, Texas Health and Safety Code, §571.003, an illness, disease, or condition which either:

(A) substantially impairs the person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as manifested by recent disturbed behavior.

Mental retardation - Consistent with the Persons With Mental Retardation Act, Texas Health and Safety Code, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

Natural home - The home in which the person with a mental disability lives that is either the residence of his/her parent(s) or guardian(s), or extended family member(s) or the home where the person has selected to live, with or without roommates, in the community. A natural home utilizes natural support systems such as family, friends, coworkers, and services available to the general population.

Other support programs - All forms of local, state, or federal assistance; contract programs; or support provided by public or private funds to persons with a mental disability or their families.

Parent - A natural, foster, surrogate, or adoptive parent.

Person - A person with a mental disability or the person's family, whichever is applicable.

Pervasive developmental disorder - A pervasive developmental disorder beginning in childhood, including autism, that meets the criteria established in the most recent edition of the *Diagnostic and Statistical Manual (DSM)*.

TDMHMR In-Home and Family Support Program - A program developed pursuant to the Texas Health and Safety Code, Chapter 535, that disburses funds as assistance to persons with a mental disability or their families for the purpose of purchasing services and items that are above and beyond the scope of usual support (i.e., basic clothing, food, shelter, medical care, and education), that are necessitated by the person's mental disability, and that directly support the person to live in his/her natural home. The program accomplishes its purpose by assisting persons in making decisions about their service needs, integrating persons into community living by promoting self-sufficiency, and ensuring flexibility to meet the unique needs identified by persons. It is not the program's purpose to improve the living conditions of persons living at or below the poverty level or to purchase desirable services or items that do not directly relate to the person's mental disability. Program funds are disbursed based upon their availability. Program funds are not an entitlement nor are they an income supplement.

§401.684. Allowable and Unallowable Services.

(a) Allowable services. TDMHMR In-Home and Family Support Program funds may be used to provide services that relate to the person's mental disability. Those services are:

- (1) medical, surgical, therapeutic, diagnostic, and other health services, including medication;
- (2) counseling or training programs that assist the person in an independent living situation or assist the family in providing proper care for the person, and that provide for the special needs of that person or family;
- (3) attendant care, home health aid services, homemaker services, and chore services that provide assistance with training, routine body functions, dressing, preparation and consumption of food, and ambulation;
- (4) transportation for the person;
- (5) transportation and room and board incurred by the person or family during the person's evaluation for services or treatment that has been preapproved by the administering agency;
- (6) respite assistance for the family;
- (7) other services or items consistent with the intent of state statute and this subchapter and as negotiated between the person and the administering agency; and
- (8) architectural modifications to the home and/or purchase or lease of special equipment or supplies that improve or facilitate the care, treatment, therapy, general living conditions as related specifically to the person's mental disability, or access of the person.

(b) Unallowable services. TDMHMR In-Home and Family Support Program funds may not be used to provide services that do not relate to the person's mental disability. These services include, but are not limited to:

- (1) purchase or long-term lease of vehicles, or vehicle maintenance;
- (2) past due expenses;

- (3) income taxes;
- (4) abortion and emergency room services;
- (5) services in segregated settings;
- (6) accident insurance and Medicare premiums;
- (7) death benefits, burial policies, and funeral expenses;
- (8) costs for allowable services incurred before the written plan is approved;
- (9) food, normal shelter, normal utilities, routine home repairs, home appliances, normal furnishings, and yard work;
- (10) items or services paid for or reimbursed by private insurance, Medicaid, Medicare, or other support programs;
- (11) over-the-counter and prescription medications that do not relate to the person's mental disability;
- (12) architectural modifications to a public facility;
- (13) items or services that are primarily for recreational purposes;
- (14) school tuition or fees, or equipment/items/services that should be provided through the public school system;
- (15) restrictive restraint devices;
- (16) child care for children under the age of 14;
- (17) computers, unless it is used as an assistive technology device to increase, maintain, or improve the person's functional capabilities; and
- (18) services provided by an individual under the age of 18 years.

§401.685. Eligibility Determination.

(a) Criteria for eligibility. A request for assistance must be made on an individual basis by the person. If the person lives independently, that person must be 18 years of age or older to request assistance. Eligibility is determined on the basis of the following four factors, which are redetermined annually.

(1) Diagnosis.

(A) The person is eligible if he/she:

(i) has been diagnosed within the previous 12 months, to have:

(I) a mental illness, which at the present time, substantially impairs the person's thought, perception of reality, emotional process, or judgment, or grossly impairs the person's behavior as manifested by recent disturbed behavior;

(II) mental retardation; or

(III) a pervasive developmental disorder; or

(ii) is between the ages of 0 and 4 and has a developmental delay, as determined within the previous 12 months.

(B) Diagnostic eligibility is determined in one of three following ways.

(i) A person meeting the criteria in subparagraph (A) of this paragraph who has previously received services from the Texas Department of Mental Health and Mental Retardation or a

community mental health and mental retardation center is eligible. Additional evaluation or documentation of diagnosis is not required unless deemed necessary by intake staff.

(ii) A person who submits a current diagnosis or assessment from a private licensed or certified service provider which indicates that the person meets the criteria in subparagraph (A) of this paragraph is eligible. Additional evaluation or documentation may be required.

(iii) A person who meets the criteria in subparagraph (A) of this paragraph as determined by the professional staff of the administering agency is eligible. For persons otherwise meeting the residency, income, and need criteria described in paragraphs (2)-(4) of this subsection, emergency eligibility may be granted on a temporary basis for up to 90 days on a one-time basis. Documentation substantiating the diagnostic basis of eligibility is required within 90 days of disbursement of assistance for the emergency.

(2) Residency. A person is eligible if the person is a resident of the administering agency's specified service area. If the person's family is requesting assistance, then the person and his/her family must be residents of the administering agency's specified service area. Proof of residence is required.

(3) Income.

(A) Income eligibility is determined based upon:

(1) the income of the person with a mental disability who is age 18 years or older and the person's spouse, if married; or

(2) the income of the parents of the person with a mental disability who is under the age of 18 years.

(B) The administering agency bases its determination of income on the adjusted gross income from the previous year's federal income tax return (Form 1040EZ, 1040A, or 1040) or other documented indicators.

(C) Persons with income at or above 105% of the Texas median income level are assessed a copayment in accordance with the In-Home and Family Support Program Income Copayment Schedule as found in 40 TAC §48.2703(d), which is a sliding scale, with a base for full compensation using the prevailing Texas median income levels established annually by the Texas Department of Human Services (TDHS) in effect on September 1 of each fiscal year.

(D) Persons with income below 105% the Texas median income level are assessed a copayment of \$1.

(4) Need. Need eligibility is determined jointly by the person and staff of the administering agency. Any service requested must meet an identified need which relates to the person's mental disability. The administering agency shall consider the extent of the person's needs and whether the person is at risk for out-of-home placement.

(A) A person with a diagnosis of mental retardation or pervasive developmental disorder, or who is between the ages of 0 and 4 and has a developmental delay and is being served in a 24-hour residential program or in one of the following programs is not eligible: HCS; HCS-OBRA; CLASS; PPP; and community based alternatives (CBA). Excluding TDMHMR contract or certified homes, recipients of PPP living in a natural home are eligible for a one-time grant of

not more than \$3600 in assistance for the sole purpose of architectural modifications with approval of the administering agency.

(B) A person with a diagnosis of mental illness who does not live in his/her natural home or who is being served in a Medicaid facility or a residential facility of the department or of another state agency is not eligible.

(C) A person with a mental disability is not eligible if he/she lives in an establishment with three or more unrelated individuals of any age, each with a mental disability, in which the establishment furnishes such services as room, board, general supervision, etc.

(D) Assistance may not be used to supplant services available through other local, state, or federal programs, but may be used to supplement services provided and may be granted to persons receiving benefits under any governmental entitlement program.

(E) If a person is on the waiting list of other support programs to receive the same service as requested of the TDMHMR In-Home and Family Support Program, then the person may be eligible to receive assistance until the service becomes available from the other support programs.

(F) The department will coordinate with TDHS to ensure that individuals receiving funds through the TDHS In-Home and Family Support Program are not eligible for assistance from the TDMHMR In-Home and Family Support Program.

(G) Unless required by federal regulations, a local or state agency may not consider assistance received through the TDMHMR In-Home and Family Support Program in determining eligibility for other support programs.

(b) Determination of availability of services or items from other support programs. When a person requests assistance, the administering agency shall determine for each service requested, if the person is eligible to receive the service from other support programs. If the administering agency determines that the person is eligible to receive the service from other support programs and that the service is available, then the administering agency may deny the request.

(1) Denial of a request for a specific service does not constitute denial of a request for other services.

(2) If the administering agency denies the request for the service, it shall provide to the person information for referral to the appropriate other support program and information on how to appeal the denial in accordance with §401.688 of this title (relating to Appeal).

§401.686. Processing and Evaluating Requests and Distributing Assistance.

(a) Processing of requests. When a person contacts the administering agency and requests assistance, the administering agency shall determine if the person is eligible for assistance in accordance with §401.685 of this title (relating to Eligibility Determination) within 30 calendar days. Persons requesting assistance are responsible for providing necessary information to determine eligibility in an accurate and timely manner.

(1) The administering agency shall not discriminate against any person on the grounds of race, color, national origin, religion, sex, age, disability, or political affiliation.

(2) The administering agency shall process requests for assistance in chronological order by the date of request.

(3) If TDMHMR In-Home and Family Supports Program funds are not available on the date of request, then the person's name is placed on record as waiting for assistance.

(4) A record of persons waiting for assistance is maintained across fiscal years by the administering agency.

(5) Persons on record as waiting for assistance will be contacted annually to determine their continued interest in receiving assistance.

(b) **Written plan.** After eligibility has been determined and when assistance becomes available, the administering agency staff and the person develop a written plan. If any of the person's eligibility factors (i.e., diagnosis, residence, income, need, etc.) have changed while the person was on record as waiting for assistance, then the administering agency must redetermine the person's eligibility in accordance with §401.685 of this title (relating to Eligibility Determination). The written plan must be approved by a staff member designated by the administering agency. The amount of assistance is determined in accordance with the written plan.

(1) The written plan must include:

(A) the identification of the direct recipient of the service or item (i.e., the person with a mental disability or the person's family);

(B) the name of the agency staff member responsible for the development of the plan;

(C) a description of need(s) requiring assistance, how the services specifically relate to the person's mental disability, and how the services will impact the mental disability;

(D) a description of the services to be provided, including type and method of delivery;

(E) a statement of the goal(s) or desired outcome(s) and how the services will achieve the goal(s)/outcome(s) or encourage self-sufficiency, if appropriate;

(F) a description of the quantity, frequency, and duration of services to be provided and the rate, amount, and frequency of payment, with designation of payee;

(G) a list of the other support programs contacted in determining that the person was not eligible for the services from other support programs as required in §401.685(b) of this title (relating to Eligibility Determination).

(H) a listing of specific qualifications or requirements for service providers;

(I) a statement by the person and the staff of the administering agency that the vendor selected to render the designated services has been approved as a qualified service provider as agreed upon by the person and staff;

(J) the percentage of copayment;

(K) a statement by the person that he/she agrees to provide receipts for all services purchased with assistance, and that the receipts will:

(i) state the total amount of the cost, including the copayment;

(ii) include the date the services were provided, purchased, or delivered (which must be after the person's written plan was approved);

(iii) include the vendor's name and identifying information;

(iv) be marked paid; and

(v) be an original.

(L) a description of how the written plan will be monitored, designating the staff person responsible, the frequency of review, and review criteria (e.g., home visits or face-to-face visits with the person; accounting for all receipts and necessary bids, ensuring all receipts and bids meet the criteria described in this subchapter, and ensuring completion of provider logs); and

(M) the signatures of the staff persons and the person who developed the written plan and the date it was signed.

(2) A written plan is current only for the fiscal year for which it was developed.

(3) The written plan becomes a part of the person's treatment plan if other nonresidential services are provided to the person by the administering agency.

(c) **Change of a person's eligibility factors.** If any of the eligibility factors (i.e., diagnosis, residence, income, need, etc.) of a person currently receiving assistance change during the fiscal year, the person must immediately notify the administering agency which must conduct a reevaluation of that person's eligibility in accordance with §401.685 of this title (relating to Eligibility Determination).

(d) **Cessation of assistance.** If the annual reevaluation or subsequent reevaluation indicates the person has achieved his/her goal(s) or outcome(s) as stated in the written plan or that the eligibility criteria is no longer met, then assistance will cease.

(e) **Continuation of assistance.** The continuation of assistance for a person from one fiscal year to the next requires:

(1) an annual evaluation of the person's eligibility in accordance with §401.685 of this title (relating to Eligibility Determination) prior to the beginning of each fiscal year; and

(2) the development of a new written plan justifying the continuation of the service(s) identified in the previous written plan.

(f) **New requests from former and current recipients.** Former recipients of assistance may make a new request for assistance and current recipients of assistance may make a new request for another type of service. If the request is appropriate, then a new date of request is documented and the request for assistance is processed in accordance with this section.

(g) **Emergency assistance.** Assistance may be provided in an emergency to eligible persons on record as waiting for assistance to the extent necessary to resolve that emergency. After resolution of the emergency the eligible person remains on record as waiting for assistance. The written plan addresses only those services required to resolve the emergency.

(h) **CARE data entry.** For purposes of entry of data into the CARE system, a family receiving assistance shall be principally

identified by the name of the person on whose behalf assistance has been obtained.

(i) Distribution of assistance. An eligible person may qualify for one or both of the following two categories of assistance.

(1) Assistance of up to \$3600 per fiscal year to purchase allowable services. Disbursement of assistance:

- (A) may be in a lump sum or on a periodic basis;
- (B) may be made to the person or vendor; and
- (C) is reduced by the amount of copayment(s).

(2) Assistance of a one-time grant between \$600 and \$3600 for architectural modification and the purchase or lease of special equipment or supplies that specifically relates to the person's mental disability.

(A) Assistance is reduced by the amount of copayment.

(B) If available, these funds may be encumbered from one fiscal year to the next to pay for approved items that are not completed or received by the end of the fiscal year.

(C) All architectural modifications and special equipment or supplies purchased with TDMHMR In-Home and Family Support Programs funds become the property of the person and are not inventoried by the administering agency or the department.

(D) Architectural modifications to leased or rented property are funded only upon the written approval of the owner or property manager and become the property of the owner.

(j) Additional assistance. On a case-by-case basis, the commissioner of the department or designee may grant assistance to an eligible person in excess of that provided for in subsection (i) of this section.

(k) Competitive bids. Prior to disbursement of assistance, persons shall obtain bids to determine the prevailing costs for architectural modifications and the purchase or lease of special equipment or supplies. The reasons for not obtaining bids must be documented in the written plan.

(1) Three oral bids shall be obtained for costs between \$250 and \$600. Three written bids shall be obtained for costs \$600 and more.

(2) The selection of vendor is negotiated between the person and the administering agency based upon the lowest and best bid. In determining the lowest and best bid, consideration is given to such factors as price, specifications, service delivery date, warranty, etc.

(3) If only one source can provide the service, then documentation must be included in the written plan supporting that no other source was available.

§401.687. Administrative Implementation.

(a) Programmatic and fiscal accountability. The administering agency must maintain programmatic and fiscal records documenting its implementation of the TDMHMR In-Home and Family Support Program in such a manner that the records can be audited by the department and the administering agency. The records must be retained for five years.

(b) Rates. Assistance for services, architectural modifications, and purchase or lease of special equipment or supplies shall not exceed the prevailing rates for the specified service area as determined by the administering agency.

(c) Appropriation of funds for emergencies. Administering agencies may set aside no more than 10% of allocated TDMHMR In-Home and Family Support funds to distribute as assistance in an emergency as defined in §401.683 of this title (relating to Definitions).

(d) Penalties. Persons who do not comply with their written plans are no longer eligible for assistance and may be liable for restitution. Data entry into the CARE system shall reflect such noncompliance and ineligibility.

(e) Felony of the third degree. In accordance with the Texas Health and Safety Code, §535.014, a person commits a felony of the third degree who, in requesting assistance:

(1) makes or causes to be made a statement or representation that the person knows to be false; or

(2) solicits or accepts assistance for which the person knows he/she, or the person for whom the solicitation is made, is not eligible.

(f) Reporting a felony of the third degree. An administering agency that suspects a person of committing a felony of the third degree will report such information to the appropriate law enforcement officials in the county where the person suspected of violating the statute makes an application for assistance.

§401.688. Appeal.

If the administering agency denies a person's request for assistance, it shall provide to the person a copy of the In-Home and Family Support Program Appeal Procedures which is referenced as Exhibit A in §401.691 of this title (relating to Exhibit), concerning the right to appeal the denial of assistance and the procedures for doing so. The administering agency is responsible for communicating to the person, verbally and in writing in the person's primary language, the information contained in Exhibit A. Denial of a request for assistance due to lack of available funding is not grounds for appeal.

(1) The first level of appeal follows the procedures as outlined in §401.464(g) and (h) of this title (relating to Notification and Appeals Process) of Chapter 401, Subchapter G (concerning Community Mental Health and Mental Retardation Centers).

(2) If the decision in the first level of appeal described in paragraph (1) of this section is unsatisfactory to the person, then the person may request an administrative review by the Legal Services Division of the department. The person must request an administrative review within 10 working days of the first appeal decision. The person may choose to have the attorney conducting the review:

(A) conduct the administrative review at the Legal Services office in Austin, Texas, or other mutually agreed upon location, with the person and a representative from the administering agency present;

(B) conduct the administrative review by telephone conference with the person and a representative from the administering agency; or

(C) make a determination based solely upon documents provided by the person and the administering agency without the presence of any of the parties involved.

(3) The administrative review described in paragraph (2) of this section will:

(A) be conducted no sooner than 10 working days and no later than 30 working days of receipt of the request for an administrative review unless an extension is granted by the director of Legal Services;

(B) include a review of the pertinent information concerning the denial of the person's request and may include consultation with department staff who administer the TDMHMR In-Home and Family Support Program;

(C) result in a final decision which will either uphold, reverse, or modify the original decision to deny the person's request; and

(D) be the final step of the appeals process for the TDMHMR In-Home and Family Support Program.

(4) Within five working days of the administrative review, the final decision will be:

(A) communicated to the person, verbally and in writing in the person's primary language; and

(B) provided in writing to the administering agency.

§401.689. Program Standards and Quality Management.

(a) Program standards. The administering agency shall incorporate reasonable standards for services provided through the TDMHMR In-Home and Family Support Program and shall document the specific standards and provider qualifications in the written plan. Specific standards referenced in the community standards of the Texas Department of Mental Health and Mental Retardation may be used when appropriate and/or any other specification mutually agreed upon between the administering agency and the person.

(b) Quality management and other reviews. Quality management activities will be provided consistent with the administering agency's existing internal review mechanism for periodic program evaluation. Consistent with state and federal law, representatives from the department and other agencies may review the program periodically.

§401.690. Data Collection.

On a quarterly basis, each administering agency shall collect data to be submitted to the TDMHMR Central Office In-Home and Family Support Program. The data shall include:

- (1) the number of persons who received assistance from the administering agency during the fiscal year;
- (2) the number of persons who are currently waiting for assistance;
- (3) the type and amount of services provided;
- (4) fiscal information to include income categories of persons receiving assistance and the range of copayments; and
- (5) other data as requested by the department.

§401.691. Exhibit.

Exhibit A, referenced in this subchapter, is the In-Home and Family Support Appeals Procedures. Copies of Exhibit A may be obtained by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668.

§401.692. References.

Reference is made in this subchapter to the following statutes and rules:

- (1) Texas Health and Safety Code, Chapter 535;
- (2) Texas Mental Health Code, Texas Health and Safety Code, §571.003;
- (3) Persons With Mental Retardation Act, Texas Health and Safety Code, §591.003;
- (4) Chapter 401, Subchapter G of this title, relating to Community Mental Health and Mental Retardation Centers; and
- (5) Texas Probate Code; and
- (6) 40 TAC §48.2703(d).

§401.693. Distribution.

This subchapter shall be distributed to:

- (1) members of the Texas Board of Mental Health and Mental Retardation;
- (2) executive, management, and program staff of Central Office;
- (3) executive directors of all community mental health and mental retardation centers;
- (4) executive directors of all state-operated community services; and
- (5) advocacy organizations.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702902

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 206-4516

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing Proclamation

The Texas Parks and Wildlife Department proposes the repeal of §§65.11, 65.13, 65.15, 65.21, 65.42, 65.46, 65.58, and 65.64; amendments to §§65.1, 65.3, 65.5, 65.9, 65.24, 65.26, 65.27, 65.44, 65.48, 65.50, 65.52, 65.56, 65.71, 65.72, and 65.78; and new §§65.11, 65.42, 65.46, and 65.64, concerning the Statewide Hunting and Fishing Proclamation.

The amendment to §65.1, concerning Application, rewords the provisions of subsection (a) to make it clear that the proclamation applies to all wildlife resources in the state except as specifically provided for elsewhere in Chapter 65. The amendment to §65.3, concerning Definitions, contains housekeeping-type revisions intended to clarify existing provisions, and adds definitions of 'artificial lure' and 'permanent residence.' The amendment to §65.5, concerning Importation of a Wildlife Resource, adds new subsection (c) to establish that the possession of wildlife lawfully taken in another state, including species listed as threatened or endangered in Texas, is not a violation, so long as the person in possession of that wildlife can prove that it was lawfully taken. The amendment to §65.9, concerning Open Seasons; General Rules, makes a nonsubstantive grammatical change. New §65.11, concerning Means and Methods, combines the provisions of existing §65.11 with those of §§65.13, concerning Firearms; 65.15, concerning Archery; and 65.21, concerning Falconry, which are being repealed, so as to consolidate regulations concerning means and methods. The amendment to §65.24, concerning Permits, contains nonsubstantive changes that clarify the intent of the regulation and eliminate unnecessary verbiage. The amendment to §65.26, concerning Managed Lands Deer Permits, relocates existing provisions from §65.42, concerning Deer, to consolidate provisions applicable to the harvest of deer under the MLD program. The amendment to §65.27, concerning Antlerless and Spike-buck Control Permits, consists of nonsubstantive grammatical changes and a clarification of the time periods that control permits are valid. New §65.42, concerning Deer, sets out the open seasons, bag limits, and harvest restrictions for the take of white-tailed and mule deer in this state. New §65.46, concerning Squirrel, sets out the open seasons, bag limits, and harvest restrictions for the take of squirrels in this state. New §65.64, concerning Turkey, sets out the open seasons, bag limits, and harvest restrictions for the take of turkey in this state. The amendments to §§65.44, concerning Javelina; 65.48, concerning Desert Bighorn Sheep; 65.50, concerning Elk; and 65.52, concerning aoudad, consist of minor nonsubstantive wording changes to eliminate redundancy. The amendment to §65.56, concerning Prairie Chicken, establishes a free permit that will be required for all persons hunting prairie chicken. The amendment to §65.71, concerning Reservoir Boundaries, eliminates an erroneous reference to Robertson County. The amendment to §65.72, concerning Fish: changes largemouth bass harvest regulations on Lakes Gilmer, Bryan, and Athens; changes harvest regulations for smallmouth bass and spotted bass on Lake Alan Henry; changes harvest regulations for rainbow and brown trout on the Guadalupe River below Canyon dam; modifies harvest regulations for striped bass, blue catfish, and channel catfish in the area immediately downstream from the Lake Livingston dam; standardizes harvest regulations with Oklahoma and Louisiana on Lake Texoma and Toledo Bend Reservoir; prohibits the use of live bait for the harvest of largemouth, smallmouth, and spotted bass from Lakes Fork and Ray Roberts; establishes the

commercial season for king mackerel in Texas waters to run concurrently with the commercial king mackerel season set by the National Marine Fisheries Service under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; decreases the bag limit of greater amberjack from 3 to 1 fish; and removes the regulations concerning shrimp trawls, which will be relocated in another chapter. The amendment to §65.78, concerning Crabs and Ghost Shrimp, establishes that all crab traps fished in Texas waters must be equipped with a degradable panel and adds clarifying language to existing provisions.

The repeals, amendments, and new sections are necessary to implement the statutory duty of the department to regulate the commercial and recreational harvest of the wildlife resources of this state. The repeals, amendments, and new sections will function to eliminate duplication and unnecessary regulations, restructure and reorganize regulatory provisions in the interest of promoting user-friendliness, and implement regulatory changes which advance the Commission policy of increasing recreational opportunity within the tenets of sound biological management practices.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be a reduction in the complexity and volume of regulations, a better organized regulatory scheme, and the enhanced protection of the wildlife resources of the state. There will be no effect on small businesses. There is no anticipated additional economic cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed repeals, amendments, and new sections.

Comments on the proposed rules may be submitted to Robert Macdonald (Wildlife), Ken Kurzawski (Inland Fisheries), Paul Hammerschmidt (Coastal Fisheries), or David Sinclair (Law Enforcement), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

General Provisions

31 TAC §§65.1, 65.3, 65.5, 65.9, 65.11, 65.24, 65.26, 65.27

The amendments and new sections are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), and Chapter 67, which provide the Commission with authority to establish wildlife resource regulations for this state.

The amendments and new section affect Parks and Wildlife Code, Chapter 61 and Chapter 67.

§65.1. Application.

(a) This subchapter applies to all of the wildlife resources [(except migratory game birds)] of Texas, except as otherwise provided for in this chapter.

(b) (No change.)

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

Artificial lure - Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

Baited area - Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that [any] area for the purpose of hunting [where hunters are hunting wildlife resources].

Coastal waters boundary - All public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004 [northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of F.M. Road 2004 in Lake Jackson], thence northward [northeastward] along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur,

thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; [north and west of the junction of the north and south forks of the Guadalupe River in Calhoun and Refugio counties;] the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; the Galveston County Reservoir on State Highway 146 in Galveston County; Lakeview City Park Lake in Corpus Christi; Lake Burke-Crenshaw in Pasadena; Galveston County Reservoir in Galveston County; Galveston State Park ponds #1-7 in Galveston County; Lake Nassau in Harris County; Fort Brown Resaca in Cameron County; Resaca de la Guerra in Cameron County; Resaca de la Palma in Cameron County; Resaca de los Cuates in Cameron County; Resaca de los Fresnos in Cameron County; Resaca Rancho Viejo in Cameron County; and Town Resaca in Cameron County are not considered coastal waters for purposes of this subchapter.

Daily bag limit - The quantity of a species of a wildlife resource that may be lawfully taken in one day.

Final destination for all wildlife resources - The permanent residence of a [the] person possessing or receiving a [the] wildlife resource[,] or [a] part of a [the] wildlife resource; [,] or a commercial processing plant, after the carcass of a [the] wildlife resource has been finally processed.

Fully automatic firearm - Any firearm that is capable of firing more than one cartridge in succession by a single [pull or] function of the trigger.

Gear tag - A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, [and] contain the name and address of the person using the device, and, except for saltwater trotlines, the date the device was set out.

Gig - Any hand-held shaft with single or multiple points[, barbed or barbles].

License year - The period of time for which an annual [a] hunting or fishing license is valid[, whether or not the taking of wildlife is permitted in one or more periods during this time].

Muzzleloader - Any firearm that is loaded only through the muzzle [using black powder or other propellant and separate projectile(s) and is ignited by a flint or percussion mechanism].

Permanent residence - One's principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

Possession limit - The maximum number of a wildlife resource that may be lawfully possessed at one time.

Wildlife resources - All game animals, game birds [(except migratory birds)], marine animals, fish, and other aquatic life.

§65.5. Importation of a Wildlife Resource.

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

(c) Any person may possess an animal or bird taken outside this state that is listed in this state as threatened or

endangered, provided the person possesses proof that the animal or bird was lawfully taken.

§65.9. Open Seasons: General Rules.

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

(c) No antlerless deer permit is [will be] required to possess an antlerless deer taken during the archery-only open season, except on lands for which Managed Lands Deer permits have been issued.

(d)-(e) (No change.)

§65.11. Means and Methods.

It is unlawful to hunt or fish for any of the wildlife resources of this state except by the means and methods authorized by this chapter.

(1) Firearms.

(A) It is lawful to hunt game animals and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this chapter.

(B) Special muzzleloader-only antlerless deer seasons are restricted to muzzleloading firearms only.

(C) It is unlawful to use rimfire ammunition to hunt deer, antelope, desert bighorn sheep, and elk or aoudad sheep (in counties where elk or aoudad sheep are game animals).

(D) It is unlawful to hunt game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(2) Archery.

(A) A person may hunt by means of lawful archery equipment during any open season except a special muzzleloader-only antlerless deer season, except as provided in paragraph (3) of this section.

(B) Arrows that are treated with poisons or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(C) While hunting turkey and all game animals other than squirrels by means of longbow, compound bow, or recurved bow:

(i) the bow must have a minimum peak draw weight of 40 pounds at time of hunting; and

(ii) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. The width must be demonstrable.

(D) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during an archery-only season.

(3) Crossbow. Crossbows are lawful during any general open season except the spring turkey seasons. A person having an upper-limb handicap may use a crossbow to hunt deer and turkey during an archery-only season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability. While hunting by means of crossbow:

(A) the crossbow must have a minimum of 125 pounds of pull;

(B) the crossbow must have a mechanical safety;

(C) the crossbow stock must be not less than 25 inches in length; and

(D) the bolt must conform with paragraphs (2)(B) and (2)(C)(ii) of this section.

(4) Falconry.

(A) It is lawful to hunt any game bird or game animal by means of falconry, but the hunting is limited to persons holding valid permits issued by the department.

(B) It is lawful to hunt game birds other than migratory game birds during the period from September 1 to March 1 of each year. Other wildlife resources may be hunted only during the regular open seasons as provided in this chapter.

(C) The daily bag limit for game birds (except migratory game birds) is one, either sex, per raptor, and the possession limit is two, either sex, per raptor. The daily bag and possession limits for other wildlife resources are as provided under the regular seasons, bag, and possession limits for those resources.

§65.24. Permits.

(a) Permits shall be issued only to the landowner.

(b)[(a)] No person may hunt white-tailed deer, mule deer, antelope, or elk when permits are required unless that person has received from the landowner and has in possession [possesses] a valid permit issued by the department [to the landowner].

(c) [(b)] When permits are required to hunt or possess the wildlife resources listed in subsection (b) [(a)] of this section, it is unlawful to:

(1) use a permit more than once;

(2) use a permit on a tract of land other than the tract for which the permit was issued;

(3) falsify or fail to fully complete any information required by a permit application; or

(4) possess the wildlife resource without attaching a valid, properly executed permit, which shall remain attached until the wildlife resource reaches its final destination.

(d) [(c)] No state-issued permit is required to hunt antlerless white-tailed deer on a [the Aransas] National Wildlife Refuge [in Aransas County, Laguna Atascosa National Wildlife Refuge in Cameron County, or Hagerman National Wildlife Refuge in Grayson County].

[(d) Permits shall be issued only to the landowner.]

§65.26. Managed Lands Deer (MLD) Permits.

(a) MLD permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan) that specifies a harvest quota of buck and/or antlerless white-tailed deer or mule deer.

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

(e) On all tracts of land for which both MLD buck permits and MLD antlerless permits have been issued for the harvest of white-tailed deer, and on properties for which the WMP specifies a harvest quota of zero for either sex:

(1) a hunter may use any appropriate white-tailed deer tag on his or her hunting license, regardless of the bag limit in the

county, provided the hunter also possesses an appropriate MLD permit for each deer taken; and

(2) the landowner may allow the hunting of antlerless white-tailed deer for 14 consecutive days beginning the day immediately following the last day of the general open season.

(f)(e) If a landowner in possession of MLD permits does not wish to abide by the harvest quota specified by the WMP, the landowner must return all MLD permits to the department by opening day of that year's special archery season.

(g)(f) The department reserves the right to deny further issuance of MLD permits to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP.

(h) MLD permits shall not be bartered, purchased, or sold.

§65.27. Antlerless and Spike-Buck Deer Control Permits (control permits).

Control permits [Permits under this section] shall be issued only to control overpopulation of white-tailed deer and may be issued only to a landowner who has a current WMP issued in accordance with §65.25 of this title (relating to Wildlife Management Plan) that specifies a harvest quota of more than 20 antlerless deer. The WMP for permits issued under this section must be signed by a Wildlife Division biologist classified CS VI or higher.

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

(3) No [For the purposes of this section, no] WMP shall authorize the take of more than 300 deer per designated hunter.

(4) Control permits shall be valid only during general open deer seasons, special muzzleloader-only seasons, and when the harvest of deer is authorized under §65.26(e) of this title (relating to Managed Lands Deer Permits).

(5)-(6) (No change.)

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

Issued in Austin, Texas, on February 28, 1997.

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Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 389-4642

31 TAC §§65.11, 65.13, 65.15, 65.21

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

The repeals are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983) and Chapter 67, which provides the Com-

mission with authority to establish wildlife resource regulations for this state.

The repeals, amendments, and new sections affect Parks and Wildlife Code, Chapter 61.

§65.11. Means and Methods.

§65.13. Firearms.

§65.15. Archery.

§65.21. Falconry.

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.

Issued in Austin, Texas, on February 28, 1997.

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Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: (512) 39-4642

Seasons and Bag Limits-Hunting Provisions

31 TAC §§65.42, 65.46, 65.58, 65.64

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

The repeals are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The repeals affect Parks and Wildlife Code, Chapter 61.

§65.42. Deer: White-tailed and Mule Deer.

§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

§65.58. Partridge: Open Seasons and Bag Limits.

§65.64. Turkey.

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.

Issued in Austin, Texas, on February 28, 1997.

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Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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For further information, please call: (512) 39-4642

31 TAC §§65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.56, 65.64

The amendments and new sections are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act

(Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendments and new sections affect Parks and Wildlife Code, Chapter 61.

§65.42. *Deer.*

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits), no person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck).

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis (west of Interstate 35), Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349), Uvalde (north of U.S. Highway 90), and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(2) In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, and Willacy counties, there is a general open season.

(A) Open season: second Saturday in November through the third Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) General Late Antlerless-Only Season. In the counties listed in this paragraph there is a general late antlerless-only season.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: four antlerless deer.

(3) In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (south of U.S. Highway 90), Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a general open season.

(A) Open season: Second Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) General Late Antlerless-Only Season. In the counties listed in this paragraph there is a general late antlerless-only season.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless deer.

(4) No person may take or attempt to take more than one buck deer per license year from the counties, in the aggregate, listed within this paragraph, except as authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits).

(A) In Bell (west of Interstate 35), Bosque, Callahan, Colorado, Comanche, Coryell, Eastland, Erath, Grayson (Hagerman National Wildlife Refuge only), Hamilton, Hood, Jack, Jackson (north of U.S. Highway 59), Lampasas, Lavaca, McLennan, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Williamson (west of Interstate 35), Wharton (north of U.S. Highway 59), and Young counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonefall, Swisher, Wheeler, Wichita, and Wilbarger counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first six days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first six days, antlerless deer may be taken only by MLD antlerless permits.

(D) In Archer, Baylor, Clay, Cooke, Denton, Hill, Johnson, Montague, Tarrant, and Wise counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(E) In Anderson, Bowie, Brazos, Burleson, Camp, Cass, Cherokee, Delta, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hopkins, Houston, Lamar, Leon, Limestone, Madison, Marion, Morris, Navarro, Red River, Robertson, Rusk, San Jacinto, Smith, Titus, Trinity, Upshur, Van Zandt, Walker, and Wood counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits.

(iv) Special Requirement: In that portion of Henderson County bounded on the north by the county line, on the east by U.S. Highway 175 and Tin Can Alley Road, on the south by State Highway 31, and on the west by State Highway 274, hunting of deer is restricted to shotguns with buckshot or lawful archery equipment. Other game animals or game birds may be taken only with shotgun or lawful archery equipment.

(F) In Hartley, Moore, Oldham and Potter counties, there is a general open season.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(G) In Nacogdoches, Panola, Sabine, San Augustine and Shelby counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first two days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first two days, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(H) In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Comal (east of Interstate 35), Crane, De Witt, Ector, Ellis,

Falls, Fannin, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Hunt, Karnes, Kaufman, Lee, Loving, Midland, Milam, Rains, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (north of U.S. Highway 59), Waller, Ward, Washington, Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(5) In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, and Tyler counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than two bucks or more than two antlerless.

(C) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(6) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Grayson (except on the Hagerman National Wildlife Refuge), Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Sherman, Terry, Winkler, and Yoakum counties, there is no general open season.

(7) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, and in Galveston and Grayson counties, there is an archery-only open season during which either sex of white-tailed deer may be taken with lawful archery equipment as provided in §65.11(b) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: Except for Galveston and Grayson counties, the bag limit in any given county is as provided for that county during the general open season. In Grayson and Galveston counties, the bag limit is three deer.

(8) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble,

Kinney (north of U.S. Highway 90), Llano, Mason, Medina (north of U.S. Highway 90), Menard, McCulloch, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis (west of Interstate 35), Upton (that portion located both south of U.S. Highway 67 and east of state highway 349), Uvalde (north of U.S. Highway 90), and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. Highway 90 and west of Spur 239) counties, there is an open season during which only antlerless deer may be taken only with a muzzleloader.

(B) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(C) Bag limit: four antlerless deer.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews, Bailey, Cochran, Gaines, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for five consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only with lawful archery equipment as provided in §65.11(b) of this title (relating to Means and Methods).

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hud-

speth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.44. Javelina: Open seasons and annual bag limits.

(a) In Andrews, Baylor, Blanco, Caldwell, Calhoun, Coke, Comal, Concho, Crane, DeWitt, Ector, Foard, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Howard, Irion, Knox, Llano, Loving, McCulloch, Martin, Mason, Midland, Mitchell, Nolan, Reagan, Refugio, Runnels, San Saba, Sterling, Taylor, Tom Green, Upton, Victoria, Ward, Wichita, Wilbarger, and Winkler counties, there is a general open season [on javelina].

(1) (No change.)

(2) Bag [Annual bag] limit: Two javelina.

(3) (No change.)

(b) In Aransas, Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Menard, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is an open [no closed] season from September 1 through August 31.

(1) Bag [Annual bag] limit: two javelina.

(2) (No change.)

(c) (No change.)

§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

(a) In Brazos, Burleson, Collin, Dallas, Ellis, Falls, Grayson, Grimes, Kaufman, Madison, Milam, and Rockwall counties, there is an open season from September 1 through August 31.

(1) Daily bag limit: 10 squirrels.

(2) Possession limit: 20 squirrels.

(b) In Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Freestone, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Lamar, Leon, Liberty, Limestone, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood counties, there is a general open season for squirrel.

15. (1) Open season: May 1 - May 31 and October 1 - January

(2) Daily bag limit: 10 squirrels.

(3) Possession limit: 20 squirrels.

(c) In Andrews, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Cochran, Crane, Culberson, Dallam, Dawson, Deaf Smith, Ector, El Paso, Floyd, Gaines, Glasscock, Hale, Hansford, Hartley, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Moore, Oldham, Parmer, Potter, Presidio, Reagan, Reeves, Sherman, Swisher, Terry, Upton, Ward, Winkler, and Yoakum counties, there is no open season on squirrel.

(d) In all other counties, there is an open season from September 1 through August 31, during which there is no bag limit.

§65.48. Desert Bighorn Sheep: Open seasons and annual bag limits.

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

(c) Bag [Annual bag] limit: One desert bighorn sheep ram as specified on the permit, by permit only.

(d) (No change.)

§65.50. Elk: Open seasons and annual bag limits.

Elk may be taken in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell counties, by permit only. There is no closed season on elk and the [annual] bag limit is one.

§65.52. Aoudad Sheep: Open seasons and annual bag limits.

In Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties, there is a general open season for aoudad sheep.

(1) (No change.)

(2) Bag [Annual bag] limit: One aoudad sheep.

(3) (No change.)

§65.56. Prairie Chicken: Open Seasons, Bag, and Possession Limits.

(a) In Cochran, Hemphill, Hockley, Lipscomb, Ochiltree, Terry, Wheeler, and Yoakum counties, there is an open season on prairie chicken, during which prairie chicken may be taken only by permit.

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

(b) (No change.)

(c) It is unlawful to hunt prairie chicken by any means [with any weapon] other than [a] shotgun.

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four.

(b) Rio Grande turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Medina (only north of U.S.

Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Aransas, Atascosa, Bee, Calhoun, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Webb, and Zavala counties, there is a fall general open season.

(i) Open season: second Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(C) In Kinney (south of U.S. Highway 90) and Uvalde (south of U.S. Highway 90), and Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239) counties, there is a fall general open season.

(i) Open season: second Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(D) In Brooks, Kenedy and Kleberg counties, there is a fall general open season.

(i) Open season: second Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(E) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wilbarger, and Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(F) In Willacy County, there is a fall general open season for turkeys.

(i) Open season: second Saturday in November through the second Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only with lawful archery equipment as provided in §65.11(b) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits. Crossbows are not a lawful means and method during any spring season.

(A) In Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring season.

(i) Open season: first Saturday in April for 37 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(B) In Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, there is a spring season.

(i) Open season: first Saturday in April for 37 consecutive days.

(ii) Bag limit: one turkey, gobblers only.

(C) In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, there is a spring season.

(i) Open season: last Saturday in March for 37 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Cass, Cherokee, Delta, Gregg, Harrison, Hopkins, Jasper, Lamar, Marion, Nacogdoches, Newton, Red River, Sabine, San Augustine, and Trinity counties there is a spring season.

(1) Open season: the Monday nearest April 14 for 14 consecutive days.

(2) Bag limit: one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsections (b) or (c) of this section, the season is closed for hunting turkey.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702913

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 389-4642

Seasons and Bag Limits-Fishing Provisions

31 TAC §§65.71, 65.72, 65.78

The amendments are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendments affect Parks and Wildlife Code, Chapter 61.

§65.71. Reservoir Boundaries.

Reservoir boundaries for daily bag, possession, and length limits.

(1)-(14) (No change.)

(15) Lake Somerville in Burleson, Lee, Milam, [Robertson,] and Washington counties comprises all impounded waters of Yegua, East Yegua, and Middle Yegua Creeks upstream from the Lake Somerville dam.

(16)-(17) (No change.)

§65.72. Fish.

(a) General rules.

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

(4) Finfish tags: Prohibited Acts.

(A) (No change.)

(B) It is unlawful to:

(i)-(iii) (No change.)

(iv) catch and retain [take] a finfish required to be tagged and fail to immediately attach and secure a [properly executed]

tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder; [or]

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same [Exempt Red Drum Tag holder, or Duplicate Red Drum Tag] holder.

(5) Commercial fishing seasons. [The commercial seasons for red snapper caught in Texas waters shall run concurrently with the commercial season established for red snapper caught in federal waters of the Exclusive Economic Zone (EEZ).]

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B)[(A)] The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for: [under guidelines established by the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico.]

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico; and

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.

(C)[(B)] When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph [red snapper] landed in this state;

(ii) transfer at sea finfish species listed in this paragraph [red snapper] caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph [red snapper] in excess of the current recreational bag or possession limit in or on the waters of this state. The commercial season for red snapper caught in Texas waters shall run concurrently with the commercial season established for red snapper caught in federal waters of the Exclusive Economic Zone (EEZ).

(b) Bag, possession, and length limits.

(1) (No change.)

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) (No change.)

(B) Statewide daily bag and length limits shall be as follows:

Figure 1: 31 TAC §65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:

Figure 2: 31 TAC §65.72(b)(2)(C)(i)

(ii) (No change.)

(c) Devices, means and methods.

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

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

[(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.]

[(i) Only non-game fish may be taken with a cast net.]

[(ii) In salt water, non-game fish may be taken for bait purposes only].

[(B) Dip net.]

[(i) It is unlawful to use a dip net except:]

[(I) to aid in the landing of fish caught on other legal devices; and

[(II) to take non-game fish.]

[(ii) In salt water, non-game fish may be taken for bait purposes only.]

[(C) Gaff.]

[(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.]

[(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.]

[(D) Gig. Only non-game fish may be taken with a gig.]

[(E) Jugline. For use in fresh water only. Non-game fish, channel-catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:]

[(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;]

[(ii) for commercial purposes that is not marked with an orange free-floating device;]

[(iii) for non-commercial purposes that is not marked with a white free-floating device;]

[(iv) in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.]

[(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment.]

[(G) Minnow trap. For use in fresh water only]

[(i) Only non-game fish may be taken with a minnow trap.]

[(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.]

[(H) Perch traps. For use in salt water only.]

[(i) Perch traps may be used only for taking non-game fish.]

[(ii) Perch traps may not exceed 18 cubic feet.]

[(iii) Perch traps must be marked with floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.]

[(I) Pole and line.]

[(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.]

[(ii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.]

[(iii) Game and nongame fish maybe taken by pole and line, except that in Lake Ray Roberts in Cooke, Denton, and Grayson counties and Lake Fork in Hopkins, Rains, and Wood counties, largemouth, smallmouth, and spotted bass may not be retained when taken by any method except artificial lures. Artificial lures cannot have attached living organisms such as fish, crayfish, tiger salamander larvae (waterdogs), insects (grubs, larvae, or adults), or worms. It is an offense to possess a largemouth, smallmouth, or spotted bass while fishing with any other device in Lake Ray Roberts or Lake Fork.]

[(J) Purse seine (net).]

[(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.]

[(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.]

[(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.]

[(K) Sail line. For use in salt water only.]

[(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.]

[(ii) Line length shall not exceed 1,800 feet from the reel to the sail.]

[(iii) The sail and most shoreward float must be a highly visible orange or red color.]

[(iv) No float on the line may be more than 200 feet from the sail.]

[(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.]

[(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.]

[(vii) There is no hook spacing requirement for sail lines.]

[(viii) No more than one sail line may be used per fisherman.]

[(ix) Sail lines may not be used by the holder of a commercial fishing license.]

[(x) Sail lines must be attended at all times the line is fishing.]

[(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.]

[(L) Seine.]

[(i) Only non-game fish may be taken with a seine.]

[(ii) It is unlawful to use a seine:]

[(I) which is not manually operated.]

[(II) with mesh exceeding 1/2-inch square.]

[(III) that exceeds 20 feet in length.]

[(iii) In salt water, non-game fish may taken by seine for bait purposes only.]

[(M) Shad trawl. For use in fresh water only.]

[(i) Only non-game fish may be taken with a shad trawl.]

[(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.]

[(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.]

[(N) Spear. Only non-game fish may be taken with a spear.]

[(O) Spear gun. Only non-game fish may be taken with spear gun.]

[(P) Throwline. For use in fresh water only.]

[(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.]

[(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.]

[(Q) Trotline.]

[(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.]

[(ii) It is unlawful to use a trotline:]

[(I) with a mainline length exceeding 600 feet;]

[(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;]

[(III) with hook interval less than three horizontal feet;]

[(IV) with metallic stakes; or]

[(V) with the main fishing line and attached hooks and stagings above the water's surface.]

[(iii) In fresh water, it is unlawful to use a trotline:]

[(I) with more than 50 hooks;]

[(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Bell Street Lake in Tom Green County, and Boerne City Park Lake in Kendall County.]

[(iv) In salt water:]

[(I) it is unlawful to use a trotline:]

[(a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;]

[(b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;]

[(c-) not marked with yellow flagging attached to stakes or with a yellow floating buoy not less than six inches in height and six inches in width attached to end fixtures. All trotline floats must be yellow.]

[(d-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;]

[(e-) baited with other than natural bait, except sail lines;]

[(f-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or]

[(g-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose

Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.]

[(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy;]

[(R) Umbrella net.]

[(i) Only non-game fish may be taken with an umbrella net.]

[(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.]

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.

(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment.

(G) Minnow trap. For use in fresh water only

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) Perch traps may not exceed 18 cubic feet.

(iii) Perch traps must be marked with floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms,

or any other animal or vegetable material, or synthetic scented materials. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(iii) Game and nongame fish maybe taken by pole and line, except that in Lake Ray Roberts in Cooke, Denton, and Grayson counties and Lake Fork in Hopkins, Rains, and Wood counties, largemouth, smallmouth, and spotted bass may not be retained when taken by any method except artificial lures. Artificial lures cannot have attached living organisms such as fish, crayfish, tiger salamander larvae (waterdogs), insects (grubs, larvae, or adults), or worms. It is an offense to possess a largemouth, smallmouth, or spotted bass while fishing with any other device in Lake Ray Roberts or Lake Fork.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County,

Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Bell Street Lake in Tom Green County, and Boerne City Park Lake in Kendall County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) not marked with yellow flagging attached to stakes or with a yellow floating buoy not less than six inches in height and six inches in width attached to end fixtures. All trotline floats must be yellow.

(-d-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-e-) baited with other than natural bait, except sail lines;

(-f-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-g-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy;

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

§65.78. Crabs and Ghost Shrimp.

(a) Bag, possession and size limits.

(1) It is unlawful while fishing on public waters to have in possession crabs or ghost shrimp in excess of the daily bag limit as established for those waters.

(2) There are no bag, possession, or size limits on crabs or ghost shrimp except as provided in these rules.

(3) It is unlawful to:

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

(C) Remove or possess [on board a vessel on public waters] the left claw from a stone crab (each retained claw must be at least 2-1/2 inches long as measured from the tip of the immovable claw to the first joint behind the claw);

(D)-(F) (No change.)

(b)-(c) (No change.)

(d) Devices, means and methods.

(1) (No change.)

(2) Only the following means and methods may be used for taking crabs:

(A) (No change.)

(B) Crab trap. It is unlawful to:

(i)-(iii) (No change.)

(iv) fish a crab trap that:

(I) exceeds 18 cubic feet in volume; [and]

(II) is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab-retaining chamber, and located on the [lower edge of the] outside trap walls of each chamber; and

(III) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap at one end by a simple loop of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap contains at least one side-wall, not including the bottom panel, with a rectangular opening no smaller in either dimension than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh # 530) or sisal twine (comparable to Lehigh # 390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed.

(v)-(vi) (No change.)

(vii) fish a crab trap in public salt waters without a valid gear tag. Gear tags are valid for 30 days after date set out [that has a date that is more than 30 days old attached to the buoy].

(viii)-(xii) (No change.)

(C)-(D) (No change.)

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

Issued in Austin, Texas, on February 28, 1997.

TRD-9702914

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 389-4642

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 79. Legal Services

The Texas Department of Human Services (DHS) proposes amendments to §§79.1102, 79.1204, 79.1207, 79.1309, and 79.1310, concerning definitions, the appeals process, and hearing procedures, in its Legal Services chapter. The purpose of the amendments is to incorporate procedures into existing rules governing the fair hearing process that would ensure uniformity in the quality of Spanish language interpreters in fair hearings.

Terry Trimble, interim commissioner, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the amendments will be in effect is an estimated additional cost of \$54,214 in fiscal year (FY) 1997 and \$37,361 in each of the FY's 1998 through 2001. There will be no effect on local government or small businesses as a result of enforcing or administering the sections.

Mr. Trimble also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the amendments will be that appellants will have more uniform quality of Spanish/English interpreters available in fair hearings. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 438-4878 in DHS's Administrative Hearings Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Policy Services-132, Texas Department of Human Services W-103, P.O. Box 149030,

Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

Subchapter L. Fair Hearings

40 TAC §79.1102

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22, 31, 32, 33, 34, and 35, which authorizes the department to administer financial assistance programs.

The amendment implements the Human Resources Code, §22.018 and §31.034.

§79.1102. Definitions.

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

Spanish/English interpreter—At the discretion of the hearing officer, the Texas Department of Human Services (DHS) will use a qualified or certified Spanish/English interpreter in fair hearings. A qualified interpreter is one who passed the Texas Oral Proficiency Test (TOPT) at the advanced or higher level and who received appropriate training. The names of qualified interpreters are maintained by DHS on a master list. A certified interpreter is one who is certified by at least one of the following entities:

- (A) the American Translators Association;
- (B) Federally Certified Court Interpreter through the Federal Court Interpreter Certification Examination;
- (C) interpreter certification offered through a four-year college or university;
- (D) state certification programs of California, Washington, New Jersey, Oregon, New Mexico, Minnesota, or Virginia; or
- (E) United States Department of State's Escort seminar or conference.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702897
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: May 1, 1997
For further information, please call: (512) 438-3765

Subchapter 79. Legal Services

40 TAC §79.1204, §79.1207

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22, 31, 32, 33, 34, and 35, which authorizes the department to administer financial assistance programs.

The amendments implement the Human Resources Code, §22.018 and §31.034.

§79.1204. Notice Requirement - Proposed Termination or Reduction of Assistance.

(a) The Texas Department of Human Services (DHS) [DHS] must give clients timely and/or adequate notice if a review of the client's situation shows that the grant is to be lowered or denied or services reduced or terminated; DHS decides to make or continue a protective, vendor, or two-party payment; or DHS decides to continue a protective payment in AFDC mismanagement cases.

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

(3) An adequate notice includes a statement of the proposed action; the reasons for the action; the specific regulations supporting the action; an explanation of the client's right to a hearing, if any; a statement of the right to request an interpreter and a reasonable opportunity to request an interpreter prior to a fair hearing; and the circumstances under which assistance or services are continued if the client requests a hearing.

(4) (No change.)

(b)-(c) (No change.)

§79.1207. Time and Place of Hearing.

(a)-(e) (No change.)

(f) The fair hearing is held at a reasonable place and time. This may be the local office or the appellant's home. The hearing officer considers the physical condition of the appellant and availability of transportation in setting the place of the fair hearing. [A bilingual interpreter is available if the hearing officer determines it is necessary.] A qualified sign language interpreter is available for [deaf] persons who are hearing impaired [requiring one].

(g) The hearing officer determines on a case-by-case basis the necessity for an interpreter. If the hearing officer determines either that all participants in a fair hearing are sufficiently fluent in Spanish or that all are sufficiently fluent in English so that no language barrier is present, no interpreter is required. The Texas Department of Human Services will make every effort to utilize the most qualified available interpreter for a person of limited english proficiency whose native language is not Spanish. A qualified sign language interpreter will be provided for persons who are hearing impaired.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702896
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: May 1, 1997
For further information, please call: (512) 438-3765

Subchapter N. Hearing Procedure

40 TAC §79.1309, §79.1310

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22, 31, 32, 33, 34, and 35, which

authorizes the department to administer financial assistance programs.

The amendments implement the Human Resources Code, §§22.018 and §31.034.

§79.1309. *Action by Hearing Officer.*

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

(d) Recessed Fair Hearings.

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

(4) The Texas Department of Human Services shall allow legal representatives during administrative hearings to make an objection and/or complaint to the hearing officer concerning the interpretation by any interpreter. The legal representative and/or appellant shall have the right to request during the hearing that the appeal be reheard.

§79.1310. *Decisions by Hearing Officer.*

(a) Requirements. The decision by the hearing officer must be in English, in writing, and given to the appellant. The Texas Department of Human Services (DHS) shall provide a translated coversheet in Spanish for hearing decisions where an interpreter was used. The coversheet will include a short translated statement regarding the outcome of the hearing and instruct the appellant to call the hearing officer if he needs assistance to understand the decision. The decision by the hearing officer is made for [the] DHS and is the final administrative action by [the] DHS in an appeal. The decision is documented and given to the appellant. The appellant may examine any documentary material related to the case before, during, or after the hearing.

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

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

Issued in Austin, Texas, on February 28, 1997.

TRD-9702895

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: May 1, 1997

For further information, please call: (512) 438-3765

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 18. Motor Vehicles

Subchapter G. Vehicle Storage Facilities

43 TAC §§18.80-18.82, 18.84, 18.86-18.89, 18.91-18.93

The Texas Department of Transportation proposes amendments to §§18.80-18.82, §18.84, §§18.86-18.89 and §§18.91-18.93, concerning vehicle storage facilities.

Texas Civil Statutes, Article 6687-9a (Vehicle Storage Facility Act), requires the department to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles. These sections are amended to: reorganize for uniformity; provide greater protection to owners of stored vehicles and ensure customer access to information relating to storage facilities; provide greater protection to licensees, simplify licensee requirements, decrease licensee paperwork, and facilitate licensee compliance; expedite the department's auditing and penalty assessment processes; and, provide greater protection for the integrity of department records.

Section 18.80 is amended to confirm the department's commitment to provide vehicle storage facility procedures and policies which protect parties from unfair, unreasonable and deceptive practices.

Section 18.81 is amended to clarify a vehicle storage facility's responsibilities for maintaining a current license issued by the department and for providing proof regarding the consent status of a towed vehicle.

Section 18.82 is amended by adding new definitions for "Affidavit of Right of Possession and Control," "immediate family," and "main entrance," and also amending the definition of "preservation."

Section 18.84 is amended to specify that vehicle storage facilities are non-transferrable and non-assignable between persons or entities, and clarifies when and how license applications, renewals, fees, and name/address changes must be submitted.

Section 18.86 is amended to outline responsibilities for filing proper insurance forms with the department and describe coverage requirements using conventional insurance industry terminology.

Section 18.87 is amended to clarify notification requirements and specify information to be included in customer notifications. In addition, the proposed amendments will simplify notification requirements.

Section 18.88 is amended to clarify licensee record retention requirements, to allow for the consolidation of documents in order to meet these requirements, and to require that a licensee maintain records regarding the type of identification and identification number provided by an individual to whom a vehicle is released.

Section 18.89 is amended to specify that written complaint procedure information provided to the customer must be legible, and further specifies that the required complaint procedure notification sign comply with §18.91(d) of this subchapter.

To protect owners of stored vehicles and expedite the department's audit process, §18.91 is amended to specify that no two vehicle storage facilities may operate within the same fenced area. To ensure that customers have access to vital information and to facilitate the department's audit procedures, proposed amendments specify sign requirements.

To protect customers and licensees and ensure that customers have access to vital information, the proposed amendment to §18.92 specifies identification requirements for persons claim-

ing stored vehicles, specifies that the licensee must provide the owner of a stored vehicle the name, address, and telephone number of the justice of the peace or magistrate from whose jurisdiction the vehicle was removed, requires licensees to provide customers with the facility's insurance information upon request, prohibits the use of stored vehicles without the vehicle owner's written permission, and differentiates "reasonable storage efforts" from "preservation" efforts.

Section 18.93 is amended to specify when a notification fee may not be charged, and requires that the written bill for services explain the exact services performed if the licensee assesses a preservation fee.

Frank Smith, Jr., Director, Budget and Finance Division, has determined that for the first five years the amended sections are in effect, there will be no fiscal implications for state or local government. It is anticipated that there will be minimal economic effects to persons required to comply with the proposed amendments, in the form of ensuring that signs and notifications comply with the requirements of this subsection. However, the department has no method of determining how many licensees will need to modify signs and notifications, or the extent of such modifications.

Lawrence R. Smith, Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments. There will be no effect on small businesses.

Lawrence Smith also has determined that for each year of the first five years the amended sections are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be increased protection for persons whose vehicles are towed without their consent.

Written comments on the proposal may be submitted to Lawrence R. Smith, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on April 11, 1997.

The amended sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6687-9a (Vehicle Storage Facility Act), which authorizes the department to establish requirements for the licensing and operation of vehicle storage facilities.

No statutes, articles, or codes are affected by these proposed amendments.

§18.80. Purpose and Scope.

Texas Civil Statutes, Article 6687-9a (Vehicle Storage Facility Act), provide that a person may not operate a vehicle storage facility unless the person holds a current license to operate a vehicle storage facility issued by the Texas Department of Transportation. In order to protect all parties from unfair, unreasonable and deceptive practices, this subchapter sets forth the department's commitment to provide procedures and policies under which vehicle storage facility operators and their customers may transact business. The sections under this subchapter describe [This subchapter describes] the procedures by which a person may obtain a license to operate a

vehicle storage facility, conditions under which a licensee must operate the facility, and the procedures by which the department will enforce this subchapter.

§18.81. Applicability.

(a) A person may not operate a vehicle storage facility unless that person holds a current vehicle storage facility license issued by the department.

(b) Provisions of the Vehicle Storage Facility Act and this subchapter do not apply to a vehicle parked or stored at a VSF with the consent of the vehicle's owner, or to VSFs operated by persons licensed pursuant to the Texas Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413(36). Vehicle storage facilities shall be responsible for providing proof regarding whether or not a particular vehicle was stored with the vehicle owner's consent.

§18.82. Definitions.

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

Affidavit of Right of Possession and Control-A form prescribed by the department and provided by the licensee, to be utilized by an individual certifying right of possession if the licensee is unable to verify the individual's status as an immediate family member.

Immediate family- An individual's parents, spouse, children, brother, and sister who resides in, or is supported by, the same household.

Main entrance- Initial point where the consumer or service recipient enters the vehicle storage facility.

Preservation-Actions performed on a stored vehicle which consist of the following minimum requirements:

(A) using of materials such as plastic or canvas tarps to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sun roofs, trunks or hoods are broken or inoperative;

(B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;

(C) removing and storing all unsecured personal property contained in a stored vehicle for which safekeeping is necessary; and

(D) obtaining motor vehicle registration information for a specific vehicle from the department's Vehicle Titles and Registration Division, statutory agents or service providers. [An action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to preserve, protect, or service a vehicle stored or parked at the facility.]

§18.84. License Issuance and Renewal [Issuance and Renewal of License; Duplicate Vehicle Storage Facility License].

(a) (No change.)

(b) Transferability/assignability. VSF licenses are non-transferable and non-assignable from a licensee to another person or entity.

(c) Licensee change of name or address. Prior to the effective date of any change in a licensee's name or address from

the name or address appearing on the original vehicle storage facility license application, the licensee shall file a supplemental application with the department.

(d) [(c)] Expiration. VSF licenses are valid for 12 months and expire annually on the issuance anniversary date.

(e) [(d)] Duplicate vehicle storage facility licenses. Application for a duplicate VSF license shall be made with the department. A \$25 fee will be charged for issuing a duplicate license. This fee is non-refundable, and may be paid in accordance with §18.85 of this title (relating to Payment of Fees). The expiration date of a duplicate VSF license shall be the same as the original license.

(f) [(e)] Renewal of vehicle storage facility license. Licensees must apply annually, prior to license expiration, to renew the VSF operators license.

(1) Renewal notices. The department will mail a license renewal notice indicating the month and year the license expires to each licensee approximately 45 days prior to license expiration. Failure to receive the notice does not relieve the licensee of the responsibility to renew the VSF license.

(2) Renewal application and fee. An application for VSF license renewal must be returned by the licensee to the Motor Carrier Division [department, either in person, by mail, or by telefacsimile,] and shall be accompanied by the annual renewal fee of \$75. The renewal fee is non-refundable and is payable as described in §18.85 of this title (relating to Payment of Fees). In order to avoid expiration, a renewal application and fee must be received by the Motor Carrier Division prior to the expiration date.

(3) Expired vehicle storage facility license. [A license will not be renewed if a renewal application is not submitted prior to expiration of the previous year's license.] An individual, partnership, or corporation whose VSF is still in business and whose license is not renewed [prior to expiration] must apply for a new license in accordance with §18.84 of this title (relating to License Issuance and Renewal [Issuance, Renewal and Duplicate Vehicle Storage Facility Licenses]). To avoid the loss of the original license number, an application must be received by the Motor Carrier Division within 90 days after license expiration. The application shall be accompanied by a fee of \$100.

§18.86. Insurance Requirements.

(a) Requirements.

(1) Each license applicant shall ensure that [shall file with the department] a certificate of insurance is on file with the department, evidencing the required garage keeper's legal liability insurance for the VSF. Such evidence shall be submitted on a form prescribed by the department.

(2) No insurance policy or certificate of insurance will be accepted by the department unless issued by an insurance company licensed and authorized to do business in this state in the form prescribed or approved by the Texas Department of Insurance and signed or countersigned by an authorized agent of the insurance company.

(3) If the VSF name or address is changed from that shown on the insurance form filed with the Motor Carrier Division, the licensee shall be responsible for having the insurance company file a corrected insurance form. Such forms shall be

received by the Motor Carrier Division within 10 days of the effective date of the new name or address.

(b) Coverage.

(1) Insurance coverage shall be in an amount of not less than \$9,000 for loss of or damage to [injury to or destruction of] property of others if the VSF has space to store not more than 50 motor vehicles; \$18,000 if the facility has space to store 51 to 99 motor vehicles; and \$25,000 if the facility has space to store 100 or more motor vehicles.

(2) The VSF's insurance policy shall be kept in full force and effect so long as the facility is operating.

(c) Cancellation or expiration. The VSF's insurance policy shall provide that the insurance company will give the department 30 days prior written notice of any policy cancellation or expiration. The department will cancel the license if the insurance has been canceled or it has expired.

§18.87. Notifications Regarding Towed Vehicles.

(a) Applicability. If a vehicle is removed by the owner within 24 hours after the date the operator receives the vehicle, notification as described in subsections (b) through (e) of this section does not apply.

(b) [(a)] Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.

(1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF must notify the vehicle's last registered owner and all recorded lienholders by certified/registered mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) Vehicles registered outside of Texas. After accepting for storage a vehicle registered outside of Texas, or outside of the United States, the VSF must notify the vehicle's last registered owner and all recorded lienholders by certified/ registered mail within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle. It shall be a defense to an action initiated by the department for violation of this section that the facility has attempted, in writing, but been unable to obtain information from the governmental entity where the vehicle is registered.

(3) Vehicle registrant unknown. If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice in one publication in one newspaper of general circulation in the area where the vehicle was towed from is sufficient.

(c) [(b)] Unclaimed or undeliverable notices. Regardless of place of vehicle registration, if the certified/registered letter is returned unclaimed, refused, or moved, left no forwarding address, publication in a newspaper is not required.

(d) [(c)] Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark upon the written notice.

(e) [(d)] Form of notifications. All notifications shall state:

(1) the full registered name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(2) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released."

(3) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred, if the operator will be transferring a vehicle to a second lot due to the vehicle not being claimed [if it is not claimed] within a certain time period [, the date the vehicle will be moved from the VSF and the address to which it will be moved];

(4) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(5) the VSF number preceded by the words "Texas Department of Transportation Vehicle Storage Facility License Number" or "TxDOT VSF Lic. No."; [and]

(6) a notice of the towed vehicle owner's right under Transportation Code, Chapter 685 [685.001], to challenge the legality of the tow involved; and

(7) the name, mailing address, and toll-free telephone number of the Motor Carrier Division for purposes of directing questions or complaints.

(f) [(e)] Non-consent towed vehicle towed from private property. A VSF accepting a non-consent towed vehicle towed from private property must report that tow to the local law enforcement agency from the area where the vehicle was towed. This report must be made within two hours of receiving the vehicle, giving the vehicle's license plate number and issuing notification of state, vehicle identification number, and location from which it was towed. Facility records must indicate specifically to whom the stated information was reported and in what manner, as well as the time and date of the report.

[(f)] Notification fee. The VSF operator may not charge an owner more than \$25 for notifications described by this section. However, if a vehicle is removed by the owner within 24 hours after the date the operator receives the vehicle, then no notification is required under this section, and no notification fee may be charged to the owner by the VSF operator.]

§18.88. Documentation and Records.

(a) Retention of written documentation. Vehicle storage facility licensees must maintain written documentation regarding their operations for a period of two years from the date such operations occurred. Written documentation shall be in the form of:

- (1) motor vehicle registration checks;
- (2) notification letters;
- (3) certified return receipts;
- (4) tow tickets or wrecker slips (if applicable);
- (5) bills for service;
- (6) auction receipts;
- (7) inventory (if applicable);

(8) certificates of authority to demolish; and

(9) any authorized document used to release a vehicle (title, affidavit of right of possession and control, court order, etc.).

(b) Combination documents. Provided that the document contains the minimum information described in subsection (c) of this section, a licensee may consolidate the information required into a single document in order to meet record retention requirements of subsection (a) of this section. Combination documents may consist of:

- (1) bills for service;
- (2) inventory records; (3) tow tickets; or
- (4) wrecker slips (if applicable).

(c) Minimum information. Each licensee shall keep written records on each vehicle kept or stored at the VSF. These records shall contain:

(1) the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;

(2) the date, time and location from which the vehicle was towed, and name of person who authorized the tow;

(3) the name of the tow truck driver, the name of the company that towed the vehicle, and the license plate numbers of plates issued to the tow truck under Transportation Code, Sections 502.180 and 502.281;

(4) the date the vehicle was released, the name of the individual to whom the vehicle was released, and the type of identification (Texas drivers license or other state or federally issued photo identification) and identification number provided by the individual to whom the vehicle was released;

(5) the date of any vehicle transfer, and the address of the location to which it was transferred along with the name of the towing company and tow truck driver who made the transfer;

(6) a copy of any certificate of title issued after the vehicle came into the possession of the VSF, any certificate of authority to demolish, any police auction sales receipt, or any transfer document issued by the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the VSF or if the vehicle has been disposed of or demolished; and

(7) all amounts received at the time the vehicle was released, including the specific nature of each charge.

[(a)] Content of written records. Each licensee shall keep written records on each vehicle kept or stored at the VSF. These records shall contain:]

[(1)] the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;]

[(2)] the date, time and location from which the vehicle was towed, and who authorized the tow;]

[(3)] the name of the tow truck driver, the name of the company that towed the vehicle, and the license plate numbers of

plates issued to the tow truck under Transportation Code, Sections 502.180 and 502.281;]

[(4) the date the vehicle was released and the name of the individual to whom the vehicle was released;]

[(5) the date of any vehicle transfer, and the address of the location to which it was transferred along with the name of the towing company and tow truck driver who made the transfer;]

[(6) a copy of any certificate of title issued after the vehicle came into the possession of the VSF, any certificate of authority to demolish, any police auction sales receipt, or any transfer document issued by the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the VSF or the vehicle has been disposed of or demolished; and]

[(7) all amounts received at the time the vehicle was released, including the specific nature of each charge.]

[(b) Form of documentation. Documentation may be kept in the form of wrecker tickets and wrecker slips if all required information is recorded on those tickets and slips.]

[(d) [(c)] Availability of documentation. All required documentation shall be made available by the licensee, the licensee's agent, or the licensee's employee for inspection and copying upon request by department personnel, or a certified law enforcement officer within the officer's jurisdiction, during the same hours the VSF must ensure that vehicles are available for release to the vehicle owner.

[(e) [(d)] Care and custody of records. Required records shall be kept under the care and custody of the licensee for at least two years from the date the vehicle was received.

§18.89. Notice of Complaint Procedure.

Each VSF shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints regarding vehicle storage to the department. The licensee may use a legible sticker or rubber stamp to convey the required information. The notification shall be included on:

[(1) any written wrecker slip or ticket;]

(1) [(2)] a sign prominently displayed at the place of payment, with specifications in accordance with §18.91(d) of this title (relating to Facility Requirements); and

(2) [(3)] any bill for service.

§18.91. Facility Requirements.

(a) Enclosure and security of stored vehicles.

(1) Fencing. If not enclosed by a five foot high fence on or before September 1, 1985, all vehicle storage facilities shall be completely enclosed by a fence at least six feet high with a gate which is locked at all times when the licensee or an agent or employee is not at the storage lot. No two vehicle storage facilities may operate within the same fenced area.

(2) (No change.)

(b)-(c) (No change.)

(d) Signs.

(1) Facility information. All motor vehicle storage facilities shall have a clearly visible and readable sign at its main entrance.

Such sign shall have letters at least two inches in height, with contrasting background, shall be visible at ten feet, and shall contain the following information:

(A) the registered name of the storage lot, as it appears on the VSF license;

(B)-(E) (No change.)

(2) Per diem charges. All motor vehicle storage facilities shall have a sign setting out the per diem charge for storage and all other fees which may be charged by the storage lot, including administrative and preservation/pound fees. This sign shall be located so it is clearly visible to a vehicle owner prior to paying the fees, shall have letters at least one inch in height, contrasting background, and be visible at ten feet.

(3) Instruments accepted for release of vehicle. All motor vehicle storage facilities shall have a sign describing the instruments which may be presented by the vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described in §18.92(a)(2) of this title (relating to Technical Requirements), and shall also state: "Affidavit of Right of Possession and Control Furnished Upon Request". This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, have letters at least one inch in height with a contrasting background, and be visible at ten feet.

(e) (No change.)

(f) Other laws, statutes, rules and regulations affecting VSF operations. [Other statutes and administrative rules; city ordinances. Each VSF must meet the requirements of all other applicable statutes and administrative rules and all applicable city ordinances in addition to meeting the requirements of these rules.] Some [of the] other laws which may affect the operation of a VSF include:

(1) Transportation Code, Chapter 683 [Chapters 391 and 392];

(2) Texas Civil Statutes, Article 6675c;

(3) Property Code, §70.003, [and] §70.004, and §70.006; and

(4) any political subdivision's ordinances or regulations [any city ordinances relating to zoning].

§18.92. Technical Requirements.

(a) Release of vehicles. The licensee shall comply with the following requirements when releasing vehicles.

(1) The licensee shall comply with all provisions of Texas Transportation Code, Chapter 685, and Texas Civil Statutes, Article 6701 g-3, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of the justice of the peace or magistrate from whose jurisdiction the vehicle was removed.

(2) The licensee shall allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in §18.91(d)(1) of this title (relating to Facility Requirements), upon payment of all fees due, presentation of valid identification (Texas drivers license or

other state or federally issued photo identification), and upon presentation of:

- (A) a notarized power-of-attorney;
- (B) a court order;
- (C) a certificate of title;
- (D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;
- (E) notarized proof of loss claim of theft from an insurance company to show a right to possession;
- (F) positive name and address information corresponding to that contained in the files of the department's Vehicle Titles and Registration Division; or
- (G) a department approved Affidavit of Right of Possession and Control, as defined in §18.82 of this title (relating to Definitions), which is to be furnished by the licensee upon request (an Affidavit of Right of Possession and Control is not to be used as a repossession instrument).

(3) [(1) Facilities which accept vehicles 24 hours per day.] All motor vehicle storage facilities shall have vehicles available for release 24 hours a day within one hour's notice if it accepts vehicles 24 hours a day.

(4) [(2) Facilities which do not accept vehicles 24 hours per day.] If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and [12] midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after [12] midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(b) Notification of insurance information. Upon request by the vehicle owner or the vehicle owner's authorized representative, the licensee shall provide the name, address, and telephone number of the insurance company that is providing required garage keeper's legal liability insurance coverage to the facility, in addition to the facility's insurance policy or certificate number for purposes of filing a claim for loss or damage of property. The insurance information shall be the same as that which is on file with the department.

(c) [(b)] Publicly listed telephone number. All motor vehicle storage facilities shall have a publicly listed and operable telephone where the licensee can be contacted. If the telephone number is changed from the number set out in the vehicle storage license application, the licensee shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number.

(d) [(c)] Inspection of stored vehicles. When the licensee, the licensee's agent, or the licensee's employee accepts a vehicle towed without the vehicle owner's consent, such person shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket any differences from the information previously set out thereon, but shall not write over or deface any prior writing on the slip or ticket. If the license plate number or vehicle identification number on the wrecker ticket or wrecker slip are incorrect, the VSF shall

note on its records the correct number and notify every previously advised person within 48 hours of noting the correct information.

(e) [(d)] Removal of parts; dismantling or demolishing of stored vehicles. Except as stated to the contrary in this section, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within the storage area of a licensed VSF. Vehicles may be dismantled or demolished only if the storage lot has a certificate of title, certificate of authority to demolish, police auction sales receipt, or transfer document issued by the State of Texas for the vehicle being dismantled or demolished.

(f) [(e)] Use of stored vehicles [by facility owner, operator, or employees]. No stored vehicle may be utilized [used by the vehicle storage lot owner, operator, or its employee(s)] for personal or business use without the written consent of the vehicle's owner.

(g) [(f)] Reasonable storage efforts. A VSF operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, sun roofs, trunks, hoods, or convertible tops. Such actions are included in the storage fee as set forth in §18.93 of this title (relating to Storage Fees/Charges).

(h) [(g)] Preservation of stored vehicles. If doors, windows, convertible tops, hatchbacks, sun roofs, trunks, or hoods are broken or inoperative, materials such as plastic or canvas tarpaulins must be used to ensure the preservation of the stored vehicle.

[(1) Minimum requirements.] A VSF operator is [will be] entitled to charge a fee for preservation if, in addition to the requirements set out in this subsection, the VSF operator, at a minimum:

(1) [(A)] conducts a written inventory of any unsecured personal property contained in the vehicle;

(2) [(B)] removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; and

(3) [(C)] obtains motor vehicle registration information for the vehicle from the department.

[(2) Broken or inoperative doors or windows. If doors or windows are broken or inoperative and require the use of materials such as plastic or canvas tarpaulins, such materials must be used to ensure the preservation of the stored vehicle.]

[(3) Preservation fee. If the VSF operator charges a fee for preservation, the written bill for services must specify the exact conduct included in that fee and the date(s) when such conduct occurred.]

(i) [(h)] Repair or alteration of stored vehicles. A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without the vehicle owner's or his authorized representative's consent.

(j) [(i)] Vehicle transfers. When a motor vehicle has been delivered to a VSF, the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of VSF capacity problems, neither the registered vehicle owner nor recorded lienholder(s) may be assessed an additional charge. The VSF must send notice in accordance

with §18.87 of this title (relating to Notifications Regarding Towed Vehicles), except that the notice must be sent no less than 72 hours prior to moving the vehicle. If a vehicle is moved from a VSF, the licensee shall:

(1) charge only those fees otherwise permitted by §18.93 of this title (relating to Storage Fees/Charges) after the vehicle is towed to another location without the vehicle owner's permission;

[(2) comply with all provisions of Texas Civil Statutes, Article 6701g-3, relating to the rights of the owner of a stored vehicle;]

[(3) allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle upon presentation of:]

[(A) a notarized power-of-attorney;]

[(B) a department-approved affidavit of right of possession;]

[(C) a court order;]

[(D) a certificate of title;]

[(E) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;]

[(F) notarized proof of loss claim of theft from an insurance company to show a right to possession, and payment of all fees, at any time between the hours posted on the sign at the location where the vehicle is stored; or]

[(G) positive name and address information corresponding to that contained in the files of the department's Vehicle Title and Registration Division, and payment of all fees, at any time between the hours posted on the sign at the location where the vehicle is stored;]

(2) [(4)] retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the VSF until such time as the vehicle is recovered by the vehicle owner, or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document is issued by the State of Texas; and

(3) [(5)] maintain a record of the ultimate disposition of the vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

§18.93. *Storage Fees/Charges.*

The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.

(1) Notification fee.

(A) A VSF operator may not charge an owner more than \$25 for notification under §18.87 of this title (relating to Notification Regarding Towed Vehicles [Vehicle]).

(B) If a vehicle is removed by the owner within 24 hours after the date the operator receives the vehicle, notification is not required under §18.87 of this title (relating to Notification Regarding Towed Vehicles).

(C) If a vehicle is removed by the owner before notification is sent, or within 24 hours after the date the operator

receives the vehicle, a notification fee may not be charged to the owner by the VSF operator.

(2) (No change.)

(3) Preservation fee. A VSF operator may [is entitled to] charge an owner no more than \$10 for preservation of a stored motor vehicle, if such preservation is performed in accordance with §18.92(g) of this title (relating to Technical Requirements). If the VSF operator charges a fee for preservation, the written bill for services must specify the exact services performed for that fee and the dates such services were performed.

(4) (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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702917

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 463-8630

Chapter 22. Use of State Property

Subchapter B. Use of State Highway Right-Of-Way

43 TAC §22.11, §22.16

The Texas Department of Transportation proposes amendments to §22.11, concerning Definitions, and new §22.16, concerning Memorial Markers.

Transportation Code, §201.103, requires the commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §203.002, empowers the commission to construct, maintain, and operate a modern state highway system. Pursuant to that authority, the commission has adopted rules governing certain private uses of state highway right-of-way which serve a public purpose and are consistent with the safety and convenience of the traveling public. The Department of Public Safety is charged by statute with policing the state highway system and administering state laws relating to traffic and safety on the public roads. Pursuant to that responsibility, a number of Department of Public Safety troopers have lost their lives in the line of duty. The commission determines it to be in the public interest to allow the placement, along state highway right-of-way, of privately funded memorials honoring Department of Public Safety troopers killed in the line of duty.

Section 22.11 is amended to provide definitions relating to Department of Public Safety memorials.

New §22.16 authorizes the placement of memorials along state highway right-of-way honoring Department of Public Safety troopers killed in the line of duty; specifies that only a non-profit

corporation may enter into an agreement with the department to install a memorial on state highway right-of-way and specifies the terms and conditions of an agreement, including the requirement that the corporation furnish, install, and maintain a memorial and furnish and install any initial roadside signage; specifies that prior to entering into an agreement with the department, the corporation must provide the department with a copy of its certificate of incorporation; specifies that a corporation desiring to install a memorial in a specific location on the state highway right-of-way must file a request for department approval to do so with the district engineer of the district in which the right-of-way is located; specifies the contents of any request, including information relating to the memorial's size and materials, the wording on the memorial, the proposed location where the memorial will be installed, written concurrence from the family of the deceased trooper, and whether or not the requestor will provide any roadside signage; provides that the district engineer or his or her designee will approve a request in compliance with this section, subject to any additional terms and conditions deemed necessary to protect the safety of the traveling public; provides an avenue for the requestor to appeal a disapproval to the department's executive director or his or her designee; specifies the contents of any determination, including the approved location on the right-of-way to install the memorial, the specific times of day when the installation may occur and whether a department representative will be present, and the name and telephone number of a department contact; specifies that the location where a memorial may be installed must be approved by the department and may not be placed in a location where it may obstruct the view of motorists, inside the clear zone, or where it will cause substantial negative impact to landscape features or maintenance operations; specifies that all materials used in the construction and installation of the memorial must be approved by the department and specifies the maximum dimensions of a memorial; specifies when a memorial must be installed and authorizes the department to relocate or remove a memorial not installed in compliance with this section or when it poses a potential hazard; and specifies the respective rights of the parties in an agreement.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the new and amended sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the new and amended sections. The estimated additional costs to state government are \$35,500 per year for each of the next five fiscal years. There are no anticipated fiscal implications for local government as a result of enforcing or administering the new and amended sections. There are no anticipated economic costs to persons who are required to comply with the new and amended sections as proposed.

Thomas R. Bohuslav, P.E., Director, Construction and Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new and amended sections.

Mr. Bohuslav also has determined that for each year of the first five years the new and amended sections are in effect the public benefit anticipated as a result of enforcing the sections will be to authorize certain activities on the state highway right-

of-way which serve a public purpose while protecting the safety and convenience of the traveling public and the integrity of the highway facility and adjacent right-of-way. There is an anticipated effect on small businesses. These costs cannot be quantified as the decision to install a memorial is voluntary and would depend on the number of non-profit corporations choosing to install memorials.

Written comments on the proposed new and amended sections may be submitted to Thomas R. Bohuslav, P.E., Director, Construction and Maintenance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on April 11, 1997.

The new and amended sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation; Transportation Code, §201.103, which requires the Texas Transportation Commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads; and Transportation Code, §203.002, which empowers the Texas Transportation Commission to lay out, construct, maintain, and operate a modern state highway system.

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

§22.11. Definitions.

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

DPS- The Texas Department of Public Safety.

Non-profit corporation-A corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 et seq.

Trooper- A commissioned peace officer employed by the Texas Department of Public Safety.

Turnouts- Paved areas adjacent to the roadway shoulder large enough to accommodate at least one passenger vehicle.

§22.16. Memorial Markers.

(a) Purpose. The commission determines it to be in the public interest to allow the placement, along state highway right-of-way, of privately funded memorials honoring Department of Public Safety troopers killed in the line of duty. This section prescribes the process by which the department will allow the placement of memorials along state highway right-of-way.

(b) Agreement. The department may execute an agreement with a non-profit corporation to fund, install, and maintain memorials honoring DPS troopers. A corporation must enter into an agreement with the department in a form prescribed by the department prior to any request for approval to install a memorial. Once a corporation has entered into an agreement, it may request to install a memorial in a specific location on the state highway right-of-way. Corporations desiring to install memorials must submit notice of such interest to the director of the department's Construction and Maintenance Division, along with a copy of the corporation's certificate of incorporation. The agreement will contain terms and conditions the department

deems necessary to protect the privacy of the deceased trooper and to protect the public safety, including, but not limited to:

(1) a statement that only memorials which honor Department of Public Safety troopers who lost their lives in the line of duty will be allowed;

(2) a statement that the corporation must submit a separate request for each memorial it desires to install on state highway right-of-way;

(3) a statement that the memorials will be furnished, installed, and maintained at no cost to the department, and that the corporation will correct any superficial or structural damage done to markers within 30 days of notification for superficial damage, and within 90 days of notification for structural damage;

(4) a statement that the exact location of each memorial must be approved by the department;

(5) a statement that the department may temporarily or permanently relocate the memorials to accommodate highway construction, reconstruction, maintenance or operations;

(6) a statement that the exact wording on the memorials must be approved by the department, and that the name of the company supplying the markers must not appear on the marker;

(7) a statement that the corporation must furnish and install any initial roadside signing of the memorials which meets all department requirements;

(8) a statement that the department will furnish replacement signs if the need arises;

(9) a statement that the department may provide and maintain turnouts, where necessary, so that motorists may view the memorials;

(10) a statement that the corporation will not use the name of the department or refer to the department in any activity which is designed to collect funds or any activity which may lead to the collection of funds; and

(11) a statement that, by approving the placement of a memorial, the department is not obligated to increase maintenance around the site to a level higher than it would be if the memorial were not installed on the right-of-way.

(c) Requests for specific installations.

(1) A non-profit corporation with which the department has entered into an agreement, desiring to install a memorial on state highway right-of-way, must file a request for department approval to do so with the district in which the right-of-way is located.

(2) A request to install a memorial must be submitted in writing to the appropriate district engineer and must, at a minimum, include:

(A) the memorial's size and materials;

(B) the wording on the memorial;

(C) the proposed location where the memorial will be installed, including county, highway, location (distance from a roadway intersection, waterway intersection, county line, etc.), and distance from the right-of-way line;

(D) written concurrence from the family of the deceased trooper;

(E) whether or not the requestor will provide any roadside signage, such as signage indicating the distance remaining until a motorist reaches a memorial marker; and

(F) written certification from the DPS that the Trooper in question was killed in the line of duty.

(d) Department action. The district engineer or his or her designee will review the request and approve the installation of the memorial, and its location, if the request is in compliance with this section, subject to any additional terms and conditions deemed necessary to protect the safety of the traveling public. The district engineer or designee will send written notice of his or her determination. If the district engineer or designee does not approve the request, he or she will send written notice describing the basis for the determination. These notifications will include, as appropriate:

(1) the department's approval or a requirement that a revision be made in the request;

(2) the approved location on the right-of-way to install the memorial;

(3) whether or not the department wishes to have a representative present when the memorial is installed;

(4) specific times of day when the installation may occur;

(5) the name and telephone number of a department contact; and

(6) any other information the department deems appropriate.

(e) Appeal. The requestor may appeal a district engineer's disapproval to the executive director or his or her designee, by submitting to that official by mail or facsimile a notice of appeal, along with the information provided to the district engineer.

(f) Specifications.

(1) All material used in the construction and installation of the memorial must be approved by the department.

(2) The dimensions of a memorial must not exceed four and one-half feet in height, two feet in width, and six inches in depth.

(g) Location. A memorial approved for installation under this section shall be placed as far from the edge of the pavement as possible, and may not be placed:

(1) in a location where it may prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching and merging traffic;

(2) inside the clear zone as defined in the latest edition of the department's Design Division Operations and Procedures Manual; or

(3) where it will cause substantial negative impact to landscape features or maintenance operations.

(h) Installation.

(1) Once the corporation has received the department's approval to install a memorial, the corporation will have 90 days from the date of the approval to install the memorial.

(2) After the memorial has been installed, if the department determines the memorial has not been installed according to this section, an agreement, or the department's approval, the department may require the corporation to relocate or remove the memorial. If so requested, the corporation will relocate or remove the memorial within 30 days. If the memorial has not been relocated or removed after 30 days has passed, the department may remove or relocate the memorial. If the department determines the memorial poses a potential hazard, the department may immediately relocate or remove the memorial without having first notified the corporation.

(i) Termination of agreement. The agreement may be canceled by either party for any reason upon 30 days written notice to the other party. Termination of the agreement will also cancel any department approval to install a memorial not yet installed.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702918

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 11, 1997

For further information, please call: (512) 463-8630

Chapter 23. Travel Information

Subchapter B. Travel Information

43 TAC §23.10

The Texas Department of Transportation proposes amendments to §23.10, concerning travel literature.

Texas Civil Statutes, Article 6144e, authorizes the Department to compile and publish for free distribution, such pamphlets, bulletins, and documents as deemed necessary and expedient for information and publicity purposes concerning the highways of the state for the purpose of dissemination of information relative to highway construction, repair, maintenance and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto.

The amendments provide for notice of a decision to deny requests for multiple copies of travel literature; exclude advertising subjects that are not open to the general public year-round unless they are seasonal; establish publishing guidelines for media information; provide for notice of department acceptance of advertising at various times of the year; establish fair and efficient methods of accepting advertising; and authorize the removal of subject matter or an advertisement from travel publications in response to consumer complaints.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the amendments are in effect there will be fiscal implications for state government as a result of enforcing or administering the amended section. The estimated additional costs for state government are \$220,503 each year in fiscal years 1998-2002. The estimated reductions in costs for state government are

\$11,000 each year in fiscal years 1998-2002. The estimated increase in revenue for state government is \$357,775 in fiscal year 1998, and \$378,700 each year in fiscal years 1999-2002. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the section.

There is an anticipated economic cost to persons who are required to comply with the rules as proposed. However, these costs cannot be quantified as it will depend on the number of persons who purchase advertising space in travel publications and the size and frequency of advertising purchased.

Doris Howdeshell, Director, Travel and Information Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

Ms. Howdeshell also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the section will be to encourage travel to and within the state of Texas, meet the demand of an increasing number of potential travelers requesting travel publications, ensure the accuracy of travel information, and make the notification of advertising more accessible for advertisers. There will be no effect on small businesses.

Written comments on the proposed amendments may be submitted to Doris Howdeshell, Director of Travel and Information Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be at 5:00 p.m. on April 11, 1997.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and Texas Civil Statutes, Article 6144e, which provides the Texas Transportation Commission with the authority to publish pamphlets, bulletins, maps, and documents to serve the motoring public and road users.

No statutes, articles, or codes are affected by the proposed amendments.

§23.10. *Travel Literature.*

(a) Purpose. The Texas Department of Transportation, pursuant to Government Code, §2052.002 and Texas Civil Statutes, Article [Articles 4413(33) and] 6144e, publishes travel literature for free distribution to the traveling public. This section sets forth department policies and procedures relating to the production, development, printing, advertising content, and distribution of that literature.

(b) Subject matter.

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

(3) The director may remove subject matter concerning events and other items or points of interest to the traveling public if the department receives three or more consumer complaints concerning inaccurate information or inadequate services. The department will send a written notice of noncompliance to the person or organization affected. If the director determines the complaints are valid and they remain unresolved after 180

days, the director will remove the subject matter from the travel publication. A person or organization may appeal removal to the department's assistant executive director of motorist services whose decision will be final.

(c) Distribution.

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

(3) Multiple copies or bulk quantities.

(A) (No change.)

(B) The director may deny the distribution of multiple copies or bulk quantities under this paragraph if he or she determines that the copies will not assist the traveling public and stimulate travel to or within the state. When a request is made in writing, the [The] director or the director's designee will provide [to an individual or organization] written notice of [a decision to deny copies. Such notice will contain] the reasons for the director's denial. When a request is made orally, the director or the director's designee, will deliver orally the reasons for denial.

(4) (No change.)

(d) Commercial cooperation. The department may, consistent with Government Code, Chapters 2155-2158 and 2252 [Texas Civil Statutes, Articles 601b and 601g], and Texas Constitution, Article XVI, Section 21, enter into cooperative contracts with commercial entities for production, marketing, and distribution of department travel literature to achieve:

(1)-(5) (No change.)

(e) Advertising.

(1) General policy. Texas Civil Statutes, Article 6144e, empowers the department to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto. In furtherance of that purpose of assisting and encouraging travel in Texas, the department may include certain paid advertising in travel literature, provided that the quality and quantity of the primary information [informational] content is not impaired.

(2) (No change.)

(3) Unacceptable subjects. Advertising subjects not acceptable in department travel literature include:

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

(E) in-state tourism features, locations, destinations, facilities, accommodations, and services not regularly accessible (open) to the general public year-round except for attractions or destinations that open seasonally because of weather conditions; and

(F) [(E)] other subjects not related to travel and tourism.

(4) Advertising sales and solicitations.

(A) (No change.)

(B) Publication of advertiser information [rate cards]. The department will calculate advertising rates and develop a media kit to include [and prepare advertising rate cards for] each travel literature publication deemed by the department as appropriate for advertising. The department will publish the media kit information on a continuous basis [rate cards at least

semiannually] in the Standard Rate and Data [Date] Service [(SRDS) publication], Consumer Magazine and Agri-Media Source [Rates and Data, and other SRDS publications]. The department will also [annually] publish the media kit [rate card] information annually in the Texas Register.

(C) Contents of media kit [Content of rate cards].

The media kit [Rate cards] will include information about:

(i) (No change.)

(ii) advertising rates [costs];

(iii) (No change.)

(iv) circulation data [circulations];

(v) publisher's editorial profile; [and]

(vi) a sample copy of the publication, if applicable; and

(vii) [(vi)] other related information.

(D) Procedure for selling advertising.

(i) The department and/or its designated agent will mail a description [rate card information and a sample or description] of the publication accepting advertising, publication deadlines, rates, and an invitation to receive the media kit to those [every entity or individual] on the mailing list 30 days after publication in the *Texas Register* [on the same date, approximately 12 months prior to the publication closing date]. If the department offers advertising in a travel publication that was not included in the original *Texas Register* notice, then a notice will be placed in the *Texas Register* announcing the acceptance of advertising in the new travel publication. Thirty days after this notice is published, the department or its designated agent will mail a description of the new publication, publication deadlines, rates, and an invitation to receive the media kit to those on the mailing list.

(ii) The department or its designated agent will mail a media kit upon request to an entity or individual not on the mailing list after the publication in the *Texas Register* and prior to the last space-closing date of the publication. [During that 12-month period, the department will also mail the information upon request to any other entity or individual not on the list. After the fifteenth day following the date of the original mailing, the department will mail a reminder to every entity or individual on the mailing list. The reminder will allow recipients to request the rate card and sample or description if they did not receive the first mailing.]

(iii) [(ii)] On and after the 31st day following the initial date of mailing, the department or its designated agent will accept all insertion orders (orders for paid advertising) received prior to the publication deadline on a first-come, first-serve basis or until all advertising space for a particular publication is filled. Insertion orders postmarked or received prior to the end of the 30-day period will not be accepted. All insertion orders will be stamped with the date as they are received. Orders for premium space will be accepted only by mail postmarked on or after the 31st day following the initial date of mailings. Advertisers must indicate ranked preference on all premium positions desired. If more than one insertion order for a premium position is received on the same day [for the same space in a publication], the department will determine selection by a drawing held on 15th day following the

first day insertion orders can be accepted [select an insertion order for acceptance by use of random computer selection]. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

(iv) When advertising space remains available for annual publications 90 days prior to the space-closing deadline, a mailing reminder of deadlines and rates will be sent to those on the mailing list. For quarterly publications, reminders of advertising space deadlines and rates will be included in the quarterly solicitation for listings and mailed quarterly to those on the mailing list.

(iii) On and after the 46th day following the initial date of mailing, if advertising space remains unfilled, the mailing list will be randomly sorted by computer. Each entity or individual will be contacted in that order or sequence to solicit any remaining advertising space].

(5) Restrictions.

(A) The department will not accept advertising it considers to be misleading or a misrepresentation of facts.

(B) The department will not accept advertising from a entity that discriminates against customers on the basis of race, color, creed, religion, sex, or national origin.

(C) The director may remove an advertiser based on the department's receiving three or more consumer complaints concerning service or merchandise. The department will send a written notice of noncompliance to the advertiser. If the director determines the complaints are valid and they remain unresolved after 180 days, the director will remove the advertiser from the travel publication. A business may appeal removal to the department's assistant executive director of motorist services whose decision will be final.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702916
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 11, 1997
For further information, please call: (512) 463-8630



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 22. EXAMINING BOARDS

Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Professional and Technical Standards

22 TAC §663.13

Pursuant to the Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §663.13, submitted by the Texas Board of Professional Land Surveying has been automatically withdrawn, effective March 4, 1997. The amendment to §663.13 as proposed appeared in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8377).

Issued in Austin, Texas, on March 4, 1997.

TRD-9702996

22 TAC §663.21

Pursuant to the Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §663.21, submitted by the Texas Board of Professional Land Surveying has been automatically withdrawn, effective March 4, 1997. The new §663.21 as proposed appeared in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8378).

Issued in Austin, Texas, on March 4, 1997.

TRD-9702997

Name: Megan Maples

Grade: 10

School: Skyline High School, Dallas Independent School District



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 81. Elections

Implementation of the National Voter Registration Act

1 TAC §81.402

The Office of the Secretary of State, Elections Division, adopts new §81.402, concerning the use of file citizenship information by voter registration agency employees, without changes to the proposed text as published in the January 21, 1997, issue of the *Texas Register* (22 TexReg 879).

This new rule is being adopted to address concerns with the ability of voter registration agencies to respond to changes in their clients' citizenship status in terms of offering their clients the opportunity to register to vote.

The new rule limits application of the Texas Election Code (the "Code"), §20.006(b) to those voter registration agencies that require clients to update their citizenship status at the time of their every contact with the agency.

No comments were received regarding adoption of the new rule.

The new section is adopted under the Code, Chapter 31, Subchapter A, §31.003, which provides the secretary of state with authority to promulgate rules to obtain uniformity in the interpretation and application of the Code, and under the Code, Chapter 20, Subchapter A, §20.009, which authorizes the secretary of state to prescribe procedures necessary for the proper administration of voter registration at voter registration agencies.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702959

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: March 24, 1997

Proposal publication date: January 21, 1997

For further information, please call: (512) 463-5650

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plan-Standards

1 TAC §251.1

The Advisory Commission on State Emergency Communications adopts an amendment to §251.1, concerning regional plans for 9-1-1 service without changes to the proposed text as published in the November 29, 1996, issue of the *Texas Register* (22 TexReg 11557). Section 251.1 defines the minimum performance standards for regional plans. The adopted amendment provides that all 9-1-1 calls from wireless telephone systems must be accepted as 9-1-1 calls (e.g., no seven or ten digit screening numbers), and specifically includes Automatic Number Identification (ANI) and Pseudo ANI as a minimum standard for wireless 9-1-1 calls by no later than the 18 month deadline specified by the Federal Communication Commission in 47 Code of Federal Regulation §20.18(d). For purposes of this rule, the terms ANI and Pseudo ANI have the same meaning as in 47 Code of Federal Regulation §20.18. The adopted amendment also deletes a reference to repealed rule §251.2.

Comments were filed by Tarrant County 9-1-1 District (Tarrant County), Denco Area 9-1-1 District (Denco), and XYPOINT Corporation (XYPOINT). Tarrant County opposes adoption of the amendment because the issue of 9-1-1 surcharge revenue from wireless users through wireless providers is before the courts. Tarrant County finds that, if the appeals court rules unfavorably, the best interest of public safety would be served by retaining the option of refusing 9-1-1 service to customers of companies who refuse to collect. Denco suggests abatement of Commission action based on concerns about the funding mechanism, especially in light of problems with the wireless telephone systems' collection and remission of a wireless service fee. XYPOINT is unopposed to the amendment and generally commended the commission's action. XYPOINT did note that it supports a uniform statewide 9-1-1 fee for wireless subscribers.

The commission disagrees with delaying adoption of the rule. The commission must carry out the implementation of statewide 9-1-1 service, including wireless calls, Health and Safety Code,

Chapter 771, §771.001(2)A). The commission's rule §251.1 has required the acceptance of 9-1-1 calls since 1987. Rejection of any 9-1-1 calls is unacceptable. Moreover, the stated purpose of Chapter 772 of the Health and Safety Code includes providing a quick response to any person dialing the telephone number 9-1-1. Health and Safety Code, §772.102, emphasis added. All comments were fully considered by the commission.

The amendments are adopted under the Health and Safety Code, Chapter 771, §§771.051, 771.056, 771.059, which provide the Advisory Commission on State Emergency Communications the authority to administer the implementation of statewide 9-1-1 service, to develop minimum performance standards for 9-1-1 service to be followed in developing regional plans, and to allocate money for the operation of 9-1-1 service.

Health and Safety Code, Chapter 771 is affected by these adopted amendments.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702855

James D. Goerke
Executive Director

Advisory Commission on State Emergency Communications
Effective date: March 21, 1997

Proposal publication date: November 29, 1996

For further information, please call: (512) 305-6911

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter B. General

7 TAC §3.36

The Finance Commission of Texas (the commission) adopts an amendment to §3.36, concerning annual assessments and specialty examination fees for banks and foreign bank agencies under the Texas Banking Act, Texas Civil Statutes, Articles 342-1.001 et seq (the Act, §§1.001 et seq), without changes to the text as proposed in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12351).

The commission amends subsection (b)(4) of §3.36 to modify the cross-reference to a superseded policy memorandum to reflect the revised policy memorandum. The amendment makes no substantive change to the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Act, §§1.012(a)(4), 2.008(b), and 9.002(b), which authorizes the commission to adopt rules providing for the recovery of the cost of maintenance and operation of the agency and the cost of enforcing the Act through the imposition and collection of ratable and equitable

fees against banks and foreign bank agencies for notices, applications, and examinations. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702905

Everette D. Jobe

General Counsel, Texas Department of Banking
State Finance Commission

Effective date: March 21, 1997

Proposal publication date: December 24, 1996

For further information, please call: (512) 475-1300

Part II. Texas Department of Banking

Chapter 15. Corporate Activities

Subchapter A. Fees and Other Provisions of General Applicability

7 TAC §15.5

The Finance Commission (the commission) adopts an amendment to §15.5, concerning public notice under The Texas Banking Act, Texas Civil Statutes, Article 342-1.001 et seq (the Act), without changes to the text as proposed in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12352).

The commission amends subsection (e) of §15.5 to clarify when notice requirements of other regulatory bodies applicable to banks, trust companies or other regulated entities will satisfy notice requirements under the Act. The amendment to subsection (b) inserts a verb inadvertently omitted from the prior text of §15.5.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Texas Banking Act, §1.012(a), which provides that the commission may adopt rules "to accomplish the purposes of this Act," including rules that "implement and clarify" the Act. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702904

Everette D. Jobe

General Counsel

Texas Department of Banking

Effective date: March 21, 1997

Proposal publication date: December 24, 1996

For further information, please call: (512) 475-1300

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 3. State Publications Depository Program

The Texas State Library and Archives Commission adopts an amendment to §3.1, repeals §§3.2-3.10 and simultaneously adopts new §§3.2-3.15, concerning the State Publications Depository Program, with changes to the proposed text as published in the December 20, 1996, issue of the *Texas Register* (21 TexReg 12265). Section 3.16 is adopted without changes and will not be republished.

The new and amended sections will improve the Commission's ability to gather a wider range of state publications in light of recent technological changes in how state publications are disseminated. The repeals enable the addition of the new sections. Many state agencies have been providing publications in various electronic formats for several years and have begun to use the Internet as their medium of choice for many publications.

The new and amended sections expand previous rules governing the identification, collection, and dissemination of state publications to include electronic publications. The adopted actions are interim steps in the Commission's plan to deal with electronic publications and records comprehensively.

All the comments which were received were suggestions for improvements to the proposed rules.

A commenter noted that in §3.1, the definition of "Internet connection" contains a reference to protocols listed in "RFC 1800 or its current successor document." The commenter pointed out that the current version of that document is RFC 1920 and the reference has been corrected.

Another commenter pointed out that the definitions of both "state agency" and "state publication" were inconsistent with the statutory definitions of the same terms found in Subchapter G. The definition of state agency had been changed to agree with language in statutes on the management of state records, to provide consistency across the agency. However, the change is inconsistent with the statute authorizing the publications rules, and the old definition will be retained until the statute can be amended.

A commenter felt that the definition of "state publication" should be amended by incorporating the second sentence of the proposed definition of "publicly distributed," which lists certain types of information that are excluded by statute from the definition of "state publication." This would make "state publication" conform more closely with the statutory definition of "state publication" found in Section 441.101(4) of the Government Code and make it clearer that the excluded information is not subject to the depository and retention requirements of the rules. In the definition of "publicly distributed," the commenter noted that the words "information in any format" should be deleted. The phrase "publicly distributed" is an adjective phrase, but the inclusion of "information in any format" changes it into a noun. In addition, the commenter felt the words "outside the agency" (appearing at the end of the first sentence) should be deleted, reasoning that these words are redundant because the definition of "publicly distributed" includes them. A second commenter felt that the commas in the series of possible means of distribution within the definition of "publicly distributed" should be changed to the word "or" to clarify that these are all separate means of distribution. The rules were amended to reflect the suggested changes.

A commenter noted that the language in §3.3 switches from deposit requirements for state publications in subsection (a) to discussion of "materials" (which are undefined) in subsections (b), (c), and (d). Applicable references to "materials" or "publications" throughout the adopted rules have been changed to "state publications."

Two commenters were concerned over requirements in §3.3 that call for deposit of state publications by Internet connection. One felt that Subsection (d)(2)(C) required clarification. This language requires state agencies to ensure that Internet-accessible publications, with a few exceptions, remain accessible "by Internet connection" for five years from the date of release or last modification. The commenter felt that in some cases this could inadvertently impose an unreasonable burden on state agencies and confuse the public as well, due to multiple versions of publications being available. §3.3(d)(2)(C) requires that only the current version of a publication be available online. Publications that are updated (phone books, pointers to other information, statutes, administrative rules) need only have the current version available. Publications that are issued periodically (annual reports, budgets, strategic plans) should have each iteration available.

A commenter suggested the inclusion of Universal Resource Name (URN) as a possible alternative to Universal Resource Locator (URL) in §3.3(d)(2)(A)(ii). While URNs may prove to be a viable for URLs, the Commission believes the URN system is not yet stable enough to encode as a requirement. The requirement that agencies report URL changes for state publications serves the purpose of perpetually locating them for the time being.

A commenter noted that §3.3(d)(2)(B) seems to imply that individual agencies would be required to index publications according to Z39.50 standards. The subsection requires that agencies provide Z39.50 access for indexed publications, not that they provide an index for everything. Z39.50 has been established as a Department of Information Resources statewide standard for indexing. The Commission intends to

provide meta-indexing, and a Z39.50 web client for searching agency-maintained indexes.

A commenter noted that in §3.7, there are no criteria for determining the availability of a special exemption from the deposit requirements. In their previous form, these rules did not contain criteria for special exemptions for printed publications, and it is intended that the exemptions will continue to be granted based upon the judgment of the Director and Librarian.

A commenter noted concerns with §3.9 (c) (2) (C), which provides that any changes to the "scope and content" of an Internet-accessible publication must be reported within one working day. The commenter felt that because the rules contain no guidance on what is meant by "scope and content," the only way an agency could be certain of compliance with this rule would be to report every single change in a publication's content to the State Library. The commenter suggested that the words "and content" be deleted so that agencies will not be compelled to report every minor change, but will still report changes that affect the scope of a document. The commenter also suggested the word "scope" be defined in these rules to provide greater guidance to state agencies that will be attempting to comply with the rule. The suggestion to remove "and content" was adopted to leave the emphasis on "scope." § 3.5 exempts most of the publications that change frequently or would be of short-term interest. It is the intent of the rule that changes need not be reported if they are not substantive: for instance, changes in layout or decorative graphics, editorial changes, corrections or updates to content. An example might be a phone book published by an agency as a web page. Once it was submitted, changes in the people and numbers listed would not create a requirement for additional reporting; changes in the scope of the listing included (if the listings had included only agency staff, but was expanded to include staff of local constituent organizations) or a change in the URL would. It is the Commission's intention to provide guidelines and training in addition to these rules to assist agencies in determining what needs to be reported. For some agencies, the main web page would be all that needed to be reported, but many agencies are providing many documents on the Internet that will need to be reported individually.

Staff discovered a typographical error in §3.13 incorrectly referring to "print" library status. The error has been corrected to read "electronic" library status.

The commission received comments from: Thomas Thornton, Deputy Land Commissioner, Information Systems, General Land Office; C. J. Brandt, General Counsel, Department of Information Resources; and Clint Sare.

13 TAC §3.1

The amendment is adopted under Government Code, Chapter 441, Subchapter G, §441.102 which provides the Commission the authority to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications, and to establish a system to allow electronic access at the Texas State Library and other depository libraries to state publications in an electronic format that have been made available to the public by or on behalf of a state agency.

The Government Code, Chapter 441, Subchapter A, §§441.103 and 441.104 are affected by the amendment.

§3.1. Definitions.

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

Depository library - Any library that the Director and Librarian or the commission designates as a depository library for state publications.

Depository publication - A state publication in any format distributed from or on behalf of the Texas State Library to a depository library.

Director and Librarian - Chief executive and administrative officer of the Texas State Library and Archives Commission.

Electronic external storage devices - Removable electronic media used to store and transfer electronic information.

Electronic format - A form of recorded information that can be processed by a computer.

Internet connection - A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the standard protocols listed in RFC 1920 or its current successor document.

On-line - Accessible via a computer or terminal, rather than on paper or other medium.

Publicly distributed - Provided to persons outside of the agency, in print or other physical media, or by an Internet connection, or from a limited local area network on agency premises, or at another location on behalf of the agency.

Request for Comments (RFC) - A version of an Internet specification, published as part of the "Request for Comments" (RFC) document series, the official publication channel for Internet standards documents and other publications of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

Serial - Issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The term includes, but is not limited to: periodicals, newspapers, reports, yearbooks, journals, minutes, proceedings, transactions.

State agency - Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by Texas Education Code, §61.003, or a subdivision of one of those entities.

State publication - Information in any format that is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency, and is publicly distributed. The term does not include information the distribution of which is solely limited to contractors with or grantees of the agency, staff persons within the agency or within other government agencies, or members of the public under a request made under the open records law, Government Code, Chapter 552. The term includes but is not limited to: a publication distributed in print, on microform, as audiovisual material, as interactive media or on electronic external storage device; an on-line publication which is an index to other on-line publications, one or more text, graphic, or other digital files, or a user interface to a computer database.

State Publications Depository Program - A program of the Texas State Library designed to collect, preserve, and distribute state publications, and promote their use by the citizens of Texas and the United States.

Texas Records and Information Locator (TRAIL) - A program of the Texas State Library designed to locate, index, and make available state publications in electronic format.

Uniform Resource Locators - The syntax and semantics of formalized information for location and access of resources on the Internet, as specified in RFC 1738 or its current successor document.

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.

Issued in Austin, Texas, on March 2, 1997.

TRD-9702942

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: March 24, 1997

Proposal publication date: December 20, 1996

For further information, please call: (512) 463-5460

◆ ◆ ◆
13 TAC § 3.2-3.10

The repeals are adopted under Government Code, Chapter 441, Subchapter G, §441.102 which provides the Commission the authority to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications, and to establish a system to allow electronic access at the Texas State Library and other depository libraries to state publications in an electronic format that have been made available to the public by or on behalf of a state agency.

The Government Code, Chapter 441, Subchapter A, §§441.103 and 441.104 are affected by the repeals.

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.

Issued in Austin, Texas, on March 2, 1997.

TRD-9702943

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: March 24, 1997

Proposal publication date: December 20, 1996

For further information, please call: (512) 463-5460

◆ ◆ ◆
13 TAC §§3.2-3.16

The new sections are adopted under Government Code, Chapter 441, Subchapter G, §441.102 which provides the Commission the authority to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications, and to establish a system to allow electronic access at the Texas State Library and other depository libraries to state publications in an electronic format that have

been made available to the public by or on behalf of a state agency.

The Government Code, Chapter 441, Subchapter A, §§441.103 and 441.104 are affected by the new sections.

§3.2. State Publications in Multiple Information Formats.

When a publication is available in multiple formats simultaneously, state agencies are required to provide access to or copies of a publication in all applicable formats if all formats are publicly distributed. State agencies are not required to provide copies of a publication on electronic external storage devices if the state publications are made available by an Internet connection.

§3.3. Standard Deposit Requirements for State Publications in All Formats.

(a) State agencies are required to deposit or make accessible copies of all state publications that have not been exempted from the program in §3.5 of this title (relating to Standard Exemptions for State Publications in All Information Formats) and §3.6 of this title (relating to Standard Exemptions for Depositing State Publications in Print Format Only.) The standard number of copies to be deposited is based on the number of copies produced or the medium in which it is made available.

(b) For print state publications only:

(1) If 300 or more copies are produced, 55 copies must be deposited with the State Publications Depository Program.

(2) If fewer than 300 copies are produced, four copies must be deposited with the program.

(c) For state publications available in electronic format only but not by an Internet connection:

(1) State agencies must deposit electronic state publications on electronic external storage devices only when they are not accessible to the public by Internet connection.

(2) State agencies must meet the following requirements when submitting state publications on electronic external storage devices:

(A) Computer Diskette. One copy of all applicable state publications must be submitted on three and one-half inch, 1.44 megabyte high density disks, configured to a MS-DOS platform and formatted in ASCII (American Standard Code for Information Interchange) or other software approved by the Texas State Library.

(B) Compact Disks - Read-Only Memory. One copy of all applicable state publications must be submitted on disks that adhere to standards of ISO (International Organization of Standards) 9660. Files will be formatted in ASCII, or other software that is provided and is in the public domain or has been purchased with a license agreement to distribute it with each copy of the disk. If the file is compressed, software and instructions must be included on the disk to decompress all data directly to a hard drive from commands found in a file on the root directory.

(C) State Publications on Other Electronic External Storage Devices. For new or improved media which may become commonly available, one copy of all applicable state publications may be submitted. All such devices or media for submitting state publications must be approved by the Director and Librarian and must adhere to standards set by the Texas State Library.

(d) For state publications available by an Internet connection:

(1) State agencies are required to provide the Texas State Library with at least one Internet connection, at no charge, to state publications available by an Internet connection that are not exempted from the program.

(2) State agencies must meet the following minimum requirements when providing state publications by Internet connection:

(A) Accessibility. State publications made available by an Internet connection will be accessible:

(i) by anonymous File Transfer Protocol (FTP), Telnet, Gopher, or Hyper Text Transfer Protocol (HTTP) as defined in the current standard as identified in RFC 1920, or its current successor document; and

(ii) by a Uniform Resource Locator (URL) provided by the agency that describes each state publication's specific name and location on the Internet; and

(iii) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(B) Indexing. Indexed state publications will be accessible through indexes which meet current ANSI/NISO (American National Standards Institute/National Information Standards Organization) Z39.50 search and retrieval standards and which adhere to the application profile of the Federal Information Processing Standards Publication 192 or its successor document.

(C) Availability. Except for state publications listed in §3.6 of this title, issues of a serial state publication and current versions only of all other state publications will be accessible on-line by Internet connection for five years from the date of release or last modification with an average availability by the Internet connection of 23 out of 24 hours, seven days a week.

§3.4. *Special Depository Requirements for Print State Publications.*

Except for state publications available only by an Internet connection, publicly distributed state publications must be deposited in the following minimum quantities regardless of the number of copies or different media originally intended to be produced by the agency. For printed state publications, agencies are expected to incorporate these deposit requirements into their printing orders.

(1) Fifty-five copies of the following state publications must be deposited with the State Publications Depository Program:

(A) Annual or biennial report (narrative description and statistics of programs, services, activities),

(B) Statistical compilations (annual or multi-year),

(C) State or strategic plans (for agency services, programs within its jurisdiction),

(D) Codes (published as compendia),

(E) Regulations (published as compendia), and

(F) Directories (of facilities, services, providers).

(2) Three copies of annual financial reports and annual operating budgets must be deposited with the State Publications Depository Program.

(3) Two copies of requests for legislative appropriations and quarterly and annual reports of measures must be deposited with the State Publications Depository Program.

§3.5. *Standard Exemptions for State.*

Publications in All Information Formats. For all formats, the Director and Librarian has exempted certain kinds of state publications from deposit requirements. A state agency is not required to deposit or provide access to state publications or other information in the materials listed as follows:

(1) agendas,

(2) advertisements,

(3) alumni materials,

(4) announcements,

(5) artwork,

(6) contracts,

(7) correspondence,

(8) drafts of plans, reports,

(9) fiction,

(10) fund raising materials,

(11) grant proposals, bids,

(12) literary criticisms,

(13) memorabilia,

(14) memoranda (including e-mail),

(15) notices of sale,

(16) daily or weekly periodicals (which are summarized in monthly or quarterly publications),

(17) photographs,

(18) poetry,

(19) recruitment materials,

(20) reprints (reissued without change),

(21) stationery,

(22) student publications (those produced by students),

and

(23) volunteer newsletters.

§3.6. *Standard Exemptions for Depositing State Publications in Print Format Only.*

The Director and Librarian has exempted certain kinds of state publications distributed in print format. A state agency is not required to deposit these state publications in print format but must make them available in electronic format if they are publicly distributed by an Internet connection or on electronic external storage devices:

(1) calendars,

(2) charts,

(3) course schedules,

(4) certain curriculum catalogs (departmental only),

(5) forms,

- (6) hearings (transcripts of),
- (7) job listings,
- (8) news or press releases,
- (9) newsletters and mailing lists meant only for employee, faculty, or student use,
- (10) personnel manuals,
- (11) policy handbooks (student and faculty),
- (12) programs (announcements of), and
- (13) telephone directories (meant only for employee, faculty, or student use).

§3.7. *Special Exemptions.*

Upon written application, the Director and Librarian may exempt specific kinds of state publications and information formats from deposit requirements.

§3.8. *State Publications Contact Person.*

Each state agency must designate in writing one or more persons to act as liaison with the program. The number of liaisons designated by an agency should reflect the size and complexity of its publishing activities. Each liaison must deposit all state publications within the scope of his or her designated responsibility, provide information and resolve problems about them, maintain records of the agency's state publications, negotiate exemptions from deposit requirements, and submit publication reporting forms.

§3.9. *Publication Reporting Form.*

(a) Each state agency must submit a publication reporting form that describes state publications as they become available.

(b) State publications submitted in formats other than those made available from an Internet connection must be listed on a paper form that is enclosed with each shipment.

(c) Each state publication made available by Internet connection must be reported on an electronic form within one working day:

- (1) of its initial availability by the Internet connection
- (2) and as changes are made which alter its:
 - (A) Uniform Resource Locator;
 - (B) title;
 - (C) scope; or
 - (D) accessibility by new use constraints and technical prerequisites.

(3) Agencies unable to access the electronic reporting form for state publications made available on-line may request special authorization to submit a paper form.

§3.10. *Designation of Depository Library Status for Printed State Publications.*

The director of a library in Texas may apply in writing to the Director and Librarian for print depository library status. After considering the need for additional access to state publications by the public, the number of copies of state publications available for distribution to depository libraries, the geographical distribution of existing repository libraries, whether the applying library will provide access to a unique, unserved or underserved population, whether

it will provide superior access, whether it is a publicly-supported institution and whether it can meet the minimum standards outlined in §3.12 of this title (relating to Minimum Standards for Designated Print Depository Libraries), the Director and Librarian may grant the applying library print depository library status. The Director and Librarian shall execute a contract with the library setting forth the responsibilities of the program and of the depository library. The director of an applying library whose application is denied may appeal the decision to the Texas State Library and Archives Commission.

§3.11. *Termination of Designated Depository Library Status for Printed State Publications.*

Print depository status may be terminated by either party upon six-months' written notice. In the event of termination, title to the collection shall be retained by the Texas State Library, which may remove the collection to the Texas State Library or another print depository library.

§3.12. *Minimum Standards for Designated Print Depository Libraries.*

To meet minimum standards, a designated print depository library must:

- (1) process and shelve physical state publications within 30 days of receipt;
- (2) check all shipping lists to insure that physical state publications are received, and if not, promptly claimed;
- (3) mark and date physical state publications received in shipments to distinguish them from state publications received from other sources;
- (4) provide an orderly, systematic record of depository holdings and subsequent arrangement of state publications;
- (5) furnish a minimum of 400 linear feet of shelving for depository state publications;
- (6) designate a professional librarian to be responsible for state publications and to act as liaison with the Texas State Library;
- (7) provide reference service from state publications to all Texas residents;
- (8) provide access to state publications through reference tools, public catalogs, and national, state, and local computer networks which is comparable with that of similar information available through the library;
- (9) implement a circulation and interlibrary loan policy for state publications which is consistent with the institution's general loan policy;
- (10) retain physical state publications for a minimum of five years unless otherwise instructed, and submit a disposal list in electronic format to the Texas State Library for distribution before such state publications are discarded;
- (11) provide appropriate equipment for the retrieval, use and storage of all state publications;
- (12) publicize state publications through displays and announcements of significant new state publications; and
- (13) display a sign, identifying its depository library status.

§3.13. Designation of Depository Library Status for Electronic State Publications.

The director of a library in Texas may apply in writing to the Director and Librarian for electronic depository library status. After considering the need for additional access to state publications by the public, whether the applying library will provide access to a unique, unserved or underserved population, whether it will provide superior access, whether it is a publicly-supported institution and whether it can meet the minimum standards outlined in §3.15 of this title (relating to Minimum Standards for Designated Electronic Depository Libraries), the Director and Librarian may grant the applying library electronic depository library status. The Director and Librarian shall execute a contract with the library setting forth the responsibilities of the program and of the depository library. The director of an applying library whose application is denied may appeal the decision to the Texas State Library and Archives Commission.

§3.14. Termination of Designated Depository Library Status for Electronic State Publications.

Electronic depository status may be terminated by either party upon six-months' written notice.

§3.15. Minimum Standards for Designated Electronic Depository Libraries.

To meet minimum standards, a designated electronic depository library must:

- (1) maintain an Internet connection available to the public which meets the provisions of §1.100 of this title (relating to Standards for Local Library Internet Access); except that electronic depository libraries need not meet the standards in §1.100 (b)(5)(B)7 and 8 regarding staff access to Internet services and Internet accessibility of the local catalog;
- (2) provide a user interface to the Texas Records and Information Locator (TRAIL), in a format approved by the Director and Librarian, through all public terminals;
- (3) designate a professional librarian to be responsible for state electronic state publications and to act as liaison with the Texas State Library;
- (4) provide reference service from state electronic state publications to all Texas residents;
- (5) provide access to state electronic state publications through reference tools, public catalogs, and national, state, and local computer networks which is comparable with that of similar information available through the library;
- (6) implement a use policy for electronics state publications which is consistent with the institution's general use policy;
- (7) provide appropriate equipment for the retrieval, use and storage of all state publications;
- (8) publicize state publications through displays and announcements of significant new state publications.
- (9) display a sign, identifying its electronic depository library status.

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.

Issued in Austin, Texas, on March 2, 1997.

TRD-9702944

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: March 24, 1997

Proposal publication date: December 20, 1996

For further information, please call: (512) 463-5460

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 1. Architects

Subchapter E. Fees

22 TAC §1.84

The Texas Board of Architectural Examiners adopts an amendment to §1.84, concerning Annual Registration and Renewal Fee, without changes to the text as published in the December 20, 1996 issue of the *Texas Register* (21 TexReg 12271).

This amendment is being adopted to clarify when a notice for annual registration and renewal fee will be mailed to each architect.

The adoption of this amendment will result in fewer late payment penalties being imposed and fewer revocations resulting from registrants failing to pay late renewal penalty fees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

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.

Issued in Austin, Texas, on February 27, 1997.

TRD-9702824

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: March 20, 1997

Proposal publication date: December 20, 1996

For further information, please call: (512) 305-8535

Chapter 3. Landscape Architects

Subchapter E. Fees

22 TAC §3.84

The Texas Board of Architectural Examiners adopts an amendment to §3.84, Annual Registration and Renewal Fee, without

changes to the text as published in the December 20, 1996 issue of the *Texas Register* (21 TexReg 12272).

This amendment is being adopted to clarify when a notice for annual registration and renewal fee will be mailed to each landscape architect.

The adoption of this amendment will result in fewer late payment penalties being imposed and fewer revocations resulting from registrants failing to pay late renewal penalty fees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§3.84. *Annual Registration and Renewal Fee.*

(a) (No change.)

(b) Registrations will expire on staggered dates. Only one notice will be mailed to landscape architects approximately 30 days prior to renewal.

(c) Annual renewal payment is due (postmarked) by the annual expiration date. Failure to renew by the annual expiration date will result in a penalty. If payment is received within 90 days after the expiration date, the penalty is one half of the examination fee. If payment is received from 91 days to one year (91 days to 365 days) after the expiration date, the penalty is the full examination fee. All penalties are in addition to the annual renewal fee.

(d) (No change.)

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.

Issued in Austin, Texas, on February 27, 1997.

TRD-9702825

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: March 20, 1997

Proposal publication date: December 20, 1996

For further information, please call: (512) 305-8535



Chapter 5. Interior Designers

Subchapter E. Fees

22 TAC §5.92

The Texas Board of Architectural Examiners adopts new §5.92, concerning Application Without Examination Fees, with changes to the text as published in the December 20, 1996 issue of the *Texas Register* (21 TexReg 12273). The change is to replace the word pay with the word remit.

This new rule is being adopted to provide for the collection of record maintenance fees from all applicants for interior design registration without examination.

The adoption of this rule will be the recovery of expenses involved in maintaining these applications in the data base, and a reduction in the number of incomplete applications for registration without examination.

No comments were received regarding adoption of the rule.

The new rule is adopted under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This rule does not affect any other statutes.

§5.92. *Application Without Examination Fees.*

All applicants for registration without examination will be required to remit record maintenance fees as prescribed by the board.

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.

Issued in Austin, Texas, on February 27, 1997.

TRD-9702827

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: March 20, 1997

Proposal publication date: December 20, 1996

For further information, please call: (512) 305-8535



22 TAC §5.95

The Texas Board of Architectural Examiners adopts an amendment to §5.95, concerning Annual Registration and Renewal Fee, without changes to the text as published in the December 20, 1996 issue of the *Texas Register* (21 TexReg 12273). The text will not be republished.

This amendment is being adopted to clarify when a notice for annual registration and renewal fee will be mailed to each interior designer.

The adoption of this amendment will result in fewer late payment penalties being imposed and fewer revocations resulting from registrants failing to pay late renewal penalty fees.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

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.

Issued in Austin, Texas, on February 27, 1997.

TRD-9702826

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: March 20, 1997

Proposal publication date: December 20, 1996
For further information, please call: (512) 305-8535

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Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.7, concerning License Statuses, without changes to the proposed text as published in the January 17, 1997, issue of the *Texas Register* (22 TexReg 822).

The rule is being amended to consolidate all rules regarding inactive status for licensees/certificands, as well as to identify all other license statuses.

The amendment will make the rules easier to understand and follow and will better inform the public of the status of a particular licensee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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.

Issued in Austin, Texas, on February 26, 1997.

TRD-9702808

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 20, 1997

Proposal publication date: January 17, 1997

For further information, please call: (512) 305-7700

◆ ◆ ◆
22 TAC §461.28

The Texas State Board of Examiners of Psychologists adopts new §461.28, concerning Suspension of License for Failure to Pay Child Support, without changes to the proposed text as published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 19).

The new rule is necessary to bring the Board into compliance with State child support laws.

The new rule will provide a mechanism by which the Board can enforce license suspension due to failure to comply with State child support laws.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychol-

ogists with the authority to promulgate rules consistent with the Statute.

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.

Issued in Austin, Texas, on February 26, 1997.

TRD-9702809

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 20, 1997

Proposal publication date: January 3, 1997

For further information, please call: (512) 305-7700

◆ ◆ ◆
22 TAC §461.29

The Texas State Board of Examiners of Psychologists adopts new §461.29, concerning Non-compliance with Continuing Education Requirements, without changes to the proposed text as published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 19).

The new rule is necessary to ensure that all individuals practicing psychology pursuant to licensure with the Board are in compliance with the mandatory continuing education required by the Psychologists' Certification and Licensing Act.

The new rule will increase voluntary compliance with the Board's continuing education requirements.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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.

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TRD-9702810

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 20, 1997

Proposal publication date: January 3, 1997

For further information, please call: (512) 305-7700

◆ ◆ ◆
Chapter 465. Rules of Practice

22 TAC §465.1

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.1, concerning Listings, without changes to the proposed text as published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 20).

The rule is being amended to clarify the Board's requirements for listings by individuals being supervised by licensed psychologists, as well as the supervising psychologists.

The amendment will better inform the public and licensees of the requirements of the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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.

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TRD-9702811

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 20, 1997

Proposal publication date: January 3, 1997

For further information, please call: (512) 305-7700



22 TAC §465.10

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.10, concerning Applicability of the Act and Rules of the Board to Licensees, without changes to the proposed text as published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 20).

The rule is being amended to add language that the term "licensee" will refer to all licensees/certificands, applicants and any other individual over whom the Board has authority.

The amendment will clarify and simplify the rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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.

Issued in Austin, Texas, on February 26, 1997.

TRD-9702812

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 20, 1997

Proposal publication date: January 3, 1997

For further information, please call: (512) 305-7700



22 TAC §465.21

The Texas State Board of Examiners of Psychologists adopts the repeal of §465.21, concerning Inactive Status, without changes to the proposed text as published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 21).

The rule is being repealed because the Board is consolidating the rules dealing with inactive status for licensees/certificands.

The repeal will make the rules easier for licensees/certificands and the general public to follow and understand and will better inform the public of the Board's requirements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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.

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TRD-9702813

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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Proposal publication date: January 3, 1997

For further information, please call: (512) 305-7700



Chapter 466. Specialty Certification

22 TAC §466.44

The Texas State Board of Examiners of Psychologists adopts new §466.44, concerning Disciplinary Guidelines, without changes to the proposed text as published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 21).

The new rule is necessary in order to codify existing Board policies and practices.

The new rule will better inform the public about the guidelines used by the Board in imposing disciplinary sanctions.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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.

Issued in Austin, Texas, on February 26, 1997.

TRD-9702814

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 20, 1997
Proposal publication date: January 3, 1997
For further information, please call: (512) 305-7700

◆ ◆ ◆
Chapter 469. Specialty Certification
22 TAC §469.2

The Texas State Board of Examiners of Psychologists adopts an amendment to §469.2, concerning Criteria for Health Service Providers in Psychology, without changes to the proposed text as published in the January 3, 1997, issue of the Texas Register (22 TexReg 23).

The rule is being amended to put limitations on the length of time individuals may apply for status as Health Service Providers through the Board under criteria different from the current national standards.

The amendment will bring the Board's criteria for certifying psychologists as Health Service Providers into line with the Council for the National Register of Health Service Providers in Psychology.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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.

Issued in Austin, Texas, on February 26, 1997.

TRD-9702815
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 20, 1997
Proposal publication date: January 3, 1997
For further information, please call: (512) 305-7700

◆ ◆ ◆
TITLE 25. HEALTH SERVICES
Part VIII. Interagency Council on Early Childhood Intervention Services

Chapter 621. Early Childhood Intervention
Early Childhood Intervention Service Delivery
25 TAC §621.23, §621.24

The Interagency Council on Early Childhood Intervention adopts amendments to §621.23 and §621.24, concerning requirements for physical therapy services, and self-assessment process for new Early Intervention Service Professionals. These sections are being adopted without changes to the proposed text as

published in the December 6, 1996, issue of the *Texas Register* (21 TexReg 11725) and will not be republished.

Sections 621.23 and 621.24 are being adopted to comply with federal regulations and will define terms commonly used in the profession.

No comments were received regarding adoption of the amendments.

The amendments are being adopted under Human Resources Code, Chapter 73 which authorizes the Interagency Council on Early Childhood Intervention Services to establish rules regarding services provided for children with developmental delays.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702884
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention Services
Effective date: March 21, 1997
Proposal publication date: December 6, 1996
For further information, please call: (512) 424-6754

◆ ◆ ◆
Procedural Safeguards and Due Process Procedures
25 TAC §621.45

The Interagency Council on Early Childhood Intervention Services adopts new §621.45 concerning Procedural Safeguards and Due Process Procedures. Section 621.45 is being adopted without changes to the proposed text as published in the December 6, 1996, issue of the *Texas Register* (21 TexReg 11726) and will not be republished.

Section 621.45 will bring the Interagency Council on Early Childhood Intervention Services into compliance with federal regulations which will allow the lead agency to establish and maintain a comprehensive child find system.

No comments were received regarding the adoption of the new rule.

The new rule is being adopted under the Human Resources Code, Chapter 73 which authorizes the Interagency Council on Early Childhood Intervention Services to establish rules regarding services provided for children with developmental delays.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702882
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention Services
Effective date: March 21, 1997

Proposal publication date: December 6, 1996
For further information, please call: (512) 424-6754

25 TAC §621.46

The Interagency Council on Early Childhood Intervention Services adopts amendments to §621.46 concerning Administrative Hearings regarding Child Rights which addresses extensions of time. This amendment is being adopted without changes to the proposed text as published in the December 6, 1996, issue of the *Texas Register* (21 TexReg 11727) and will not be republished.

The amendment is being adopted to comply with federal regulations.

No comments were received regarding adoption of the proposed amendment.

The amendment is being adopted under Human Resources Code, Chapter 73 which authorizes the Interagency Council on Early Childhood Intervention Services to establish rules regarding services provided for children with developmental delays.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702883

Donna Samuelson

Deputy Executive Director

Interagency Council on Early Childhood Intervention Services

Effective date: March 21, 1997

Proposal publication date: December 6, 1996

For further information, please call: (512) 424-6754

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IV. School Land Board

Chapter 155. Land Resources

Coastal Public Lands

31 TAC §155.15

The School Land Board (SLB) adopts an amendment to §155.15, concerning fees and charges which may be collected by the SLB, with minor editorial changes to the proposed text as published in the December 24, 1996, issue of the *Texas Register* (21 TexReg 12392).

The amendment to this section was made to add an annual fee for bulkheads. Further, the adopted amendment defines the terms bulkhead and alignment bulkheads referenced in the rules.

Four editorial changes were made to clarify fees for bulkheads in §155.15(b)(2)(D)(viii)(I), concerning fees for fill activity.

The correct text in §155.15(b)(2)(D)(viii)(I)(-b-) should be annual fee. This change omits the text designating the fee for a bulkhead. The fee of \$.10 per square foot or fill formula, whichever is greater/\$25 minimum, in §155.15(b)(2)(D)(viii)(I)(-b-) is intended to apply to all types of fill activity.

Existing fill (excluding bulkheads) not permitted as of August 15, 1995, has been substituted for the text shown in the proposed text in §155.15(b)(2)(D)(viii)(I)(-b-)(-1-) to clarify that \$.02 per square foot or \$25, whichever is greater, does not apply to bulkheads.

A change to the language in §155.15(b)(2)(D)(viii)(I)(-b-)(-2-) has been made by substituting annual fee for an alignment bulkhead to be constructed or constructed but not permitted as of August 15, 1995, for the proposed text. This is to clarify that the fees in this subsection apply only to alignment bulkheads that fall within the stated requirements.

The correct text in §155.15(b)(2)(D)(viii)(I)(-c-) should be annual fee for other, and the language bulkhead or fill activity should be omitted. The definition of fill area in 155.15(b)(1)(J) includes bulkheads making this language in subsection §155.15(b)(2)(D)(viii)(I)(-c-) unnecessary.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Natural Resource Code, §§33.051, 33.052, 33.063 and 33.064, which authorizes the SLB to adopt procedural and substantive rules necessary to administer, implement, and enforce the Coastal Public Lands Management Act of 1973.

§155.15. Fees.

(a) General.

(1) Form of payment. Fees may be paid by cash, check or other legal means acceptable to the commissioner.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office.

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the General Land Office shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) School Land Board fees and charges. The School Land Board is authorized and required under the Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable.

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

(A) Adjacent littoral property—The property, specified in the easement application as owned by the easement applicant, that is contiguous to and borders the coastal public land upon which the easement is sought.

(B) Alignment Bulkheads—Proposed bulkheads which align with an adjacent, preexisting bulkhead, or bulkheads.

(C) Appraised market value of adjacent littoral property-Fair market value of the unimproved adjacent littoral property as determined by the appropriate tax appraisal district.

(D) Basin-A structure used for commercial or industrial activity that consists of the area of the land encumbered and any fixtures attached thereto. This definition includes the construction and maintenance of marinas, piers, walkways, docks, dolphins, and wharves and any and all dredged area associated therewith.

(E) Basin formula-The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

(F) Bulkhead-A retaining wall or other structure built on or adjacent to littoral property.

(G) Dredged Area-An excavated area, including channels and basins, on coastal public lands. This definition excludes any structure that would be included in the definition of fill area or basin.

(H) Commercial activity-Activity which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes residential uses if there is revenue generating activity conducted on the premises.

(I) Encumbered state land-The amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.

(J) Encumbered open area-That portion of a project in which the design or use of the project impedes public access to coastal public lands and is not otherwise defined as a dredged area or other structure.

(K) Evaluation fee-A one-time fee assessed upon the granting of a commercial instrument. In the case of multiple-purpose easement applications, only one evaluation fee will be assessed.

(L) Fill area-A structure, excluding riprap, concrete stairs, breakwaters, jetties, and groins that permanently and fully encumbers, and entirely displaces the water covering the coastal public land. This activity includes the construction and maintenance of bulkheads.

(M) Fill formula-State land encumbered multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.

(N) Homeowners association-An association whose individual members, by virtue of holding full and exclusive title to the adjacent littoral property area specifically defined in an easement application, are entitled, as a group, to the privileges of an easement that may be granted by the State of Texas for use of adjacent coastal public land.

(O) Industrial activity-A use of coastal public land not associated with private activity that facilitates and is ancillary to a manufacturing, processing, or gathering facility.

(P) Mineral interest holder-Holder of a state mineral lease who plans to dredge on state-owned coastal lands outside the state leasehold tract to obtain access to the state leasehold tract.

(Q) New dredged area-An excavated area which is not under current permit with the General Land Office. The new

dredged area rate is charged for the first year, and the fee for maintaining the dredged area is charged for each subsequent year of the easement term.

(R) Private non-profit use-A private activity which does not contemplate the generation of any revenue.

(S) Public activity-Activity which is performed in the public interest by a public entity or a private non-profit organization, is not designed to enhance or accommodate a profit-making venture, and is not associated with a revenue generating activity.

(T) Public entity-City, county, state agency, board or commission, or any other political subdivision of the state. See §155.21 of this title (relating to Application; Nature of Original Lease; Sublease; Termination).

(U) Residential use, Category I-One single-family residential structure per defined lot or parcel of land; both land and improvements are typically under the same ownership.

(V) Residential use, Category II-Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and qualified homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities.

(W) Resource Impact Fee-A one-time fee assessed for proposed projects that impact seagrass, emergent marsh, or oyster reef, for which there is no separate mitigation requirement.

(X) Return on investment-A number used in the basin, fill, and industrial activity formulas that reflects a financial return expectation. The return on investment rate will be set annually by the School Land Board and will be effective at the beginning of each fiscal year.

(Y) Shoreline stabilization project-Vegetative cover or rip-rap consisting of concrete block, concrete rubble, rock, brick, sack crete or similar material approved by the General Land Office utilized to control shoreline erosion.

(Z) Structure-As defined in the Natural Resources Code, §33.004.

(AA) Submerged land discount-60% discount used in formulas when the easement is commercial, 70% discount used in formulas when the easement is industrial.

(2) Coastal fees and charges. The School Land Board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The School Land Board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in subparagraphs (C) and (D) of this paragraph. The greater of the fixed fee or formula rate will be charged.

(A) Coastal lease charges. The School Land Board may only grant coastal leases to certain entities, as prescribed by the Natural Resources Code, §33.105 and §33.109.

(i) Private activity, Non-profit, scientific, or educational activity authorized by §155.2(a)3 and (4) of this title (relating to Leases):

- (I) filing fee: \$25;
- (II) annual fee: negotiable/\$5.00 minimum.
- (iii) Public activity authorized by §155.2(a)(1) and (2) of this title (relating to Leases):
 - (I) filing fee: \$25;
 - (II) annual fee: no charge.
- (iii) Public activity authorized by §155.2(a)(1) and (b)(4) of this title (relating to Leases):
 - (I) sub-lease processing fee: \$50;
 - (II) annual fee: negotiated percentage of the activity's gross annual revenues.

(B) Structure registration fee. Structure registration fee is required for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Natural Resources Code, §33.115. Though School Land Board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure:

- (i) filing fee: \$25;
- (ii) annual fee: no charge;
- (iii) assignment fee: \$25;
- (iv) amendment fee: \$25.

(C) Miscellaneous coastal easement fees:

- (i) assignment fee: \$50;
- (ii) amendment fee: \$50;
- (iii) late payment fee: 10% of past due amount/\$25

minimum.

(D) Coastal easement fees:

- (i) piers and docks:
 - (I) residential use: Category I:
 - (-a-) filing fee: \$25;
 - (-b-) annual fee: \$.03 per square foot/\$25

minimum;

- (II) residential use: Category II:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;

same use as a commercial activity/\$100 minimum;

- (III) commercial:
 - (-a-) filing fee: \$50;
 - (-b-) evaluation fee: \$50;
 - (-c-) annual fee: \$.20 per square foot/\$100

minimum;

- (IV) Other, private non-profit use:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: negotiable/\$100 minimum.

(ii) marinas:

- (I) Clear Lake:
 - (-a-) filing fee: \$50;
 - (-b-) evaluation fee: \$50;

(-c-) annual fee: \$4.00 per boat slip linear foot;

(II) residential use: Category II:

- (-a-) filing fee: \$50;
- (-b-) annual fee: 75% of fee calculated for same use as a commercial activity;

(III) other:

- (-a-) filing fee: \$50;
- (-b-) evaluation fee: \$50;
- (-c-) annual fee: \$3.00 per boat slip linear

foot;

(iii) wharf:

- (I) filing fee: \$50;
- (II) evaluation fee: \$50;
- (III) annual fee: \$.30 per square foot/\$100

minimum;

(iv) breakwaters, jetties, and groins:

- (I) residential—Category I:
 - (-a-) filing fee: \$25;
 - (-b-) annual fee: \$.20 per square foot/\$25

minimum;

(II) residential—Category II:

- (-a-) filing fee: \$50;
- (-b-) annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;

same use as a commercial activity/\$100 minimum;

(III) commercial activity:

- (-a-) filing fee: \$50;
- (-b-) evaluation fee: \$50;
- (-c-) annual fee: \$.20 per square foot/\$100

minimum;

(v) dredged area:

- (I) mineral interest holder:
 - (-a-) filing fee: \$50;
 - (-b-) evaluation fee: \$50;
 - (-c-) annual fee:

(-1-) first year fee for a new dredged area: \$.02 per square foot/\$100 minimum;

(-2-) fee for maintaining a dredged area after first year of easement: \$.005 per square foot/\$100 minimum;

(II) residential—Category I:

- (-a-) filing fee: \$50;
- (-b-) annual fee:

(-1-) first year fee for a new dredged area: \$.03 per square foot/\$25 minimum;

(-2-) fee for maintaining a dredged area after first year of easement: \$.005 per square foot/\$25 minimum;

(III) residential—Category II:

- (-a-) filing fee: \$50;
- (-b-) annual fee: 75% of fee calculated for same use as commercial activity/\$100 minimum;

- (IV) commercial activity:
 - (-a-) filing fee: \$50;
 - (-b-) evaluation fee: \$50;
 - (-c-) annual fee:
 - (-1-) first year fee for a new dredged area: \$.05 per square foot/\$100 minimum;
 - (-2-) fee for maintaining a dredged area after first year of easement: \$.01 per square foot/\$100 minimum;
- (vi) Open encumbered area:
 - (I) residential—Category I:
 - (-a-) filing fee: none;
 - (-b-) annual fee: none;
 - (II) residential—Category II:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: 75% of fee calculated for same use as commercial activity/\$100 minimum;
 - (III) commercial activity:
 - (-a-) filing fee: \$50;
 - (-b-) evaluation fee: \$50;
 - (-c-) annual fee: \$.03 per square foot/\$100 minimum;
 - (IV) Other, private non-profit use:
 - (-a-) filing fee: \$50;
 - (-b-) evaluation fee: \$50;
 - (-c-) annual fee: negotiable/\$100 minimum;
- (vii) basin: commercial and industrial activity:
 - (I) industrial activity:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: basin formula, industrial activity;
 - (-c-) evaluation fee: \$50;
 - (II) commercial activity:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: basin formula, commercial activity;
 - (-c-) evaluation fee: \$50;
- (viii) fill area: all activity:
 - (I) commercial/industrial:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: \$.20 per square foot, \$100 minimum, or fill formula;
 - (-c-) evaluation fee: \$50;
 - (II) private activity/public activity:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee:
 - (-1-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$.02 per square foot or \$25, whichever is greater;
 - (-2-) annual fee for an alignment bulkhead to be constructed or constructed, but not permitted, as of August 15, 1995: \$.02 per square foot or \$25, whichever is greater;
 - (-c-) annual fee for other: \$.10 per square foot or fill formula, whichever is greater/\$25 minimum;

- (ix) Shoreline stabilization project:
 - (I) All activities authorized by §155.1(b)(2)(A)-(C) of this title (relating to General Provisions):
 - (-a-) filing fee: \$15;
 - (-b-) annual fee: none.
 - (II) Others:
 - (-a-) filing fee: \$25;
 - (-b-) annual fee: negotiable/\$.03 per square foot/\$25 minimum;
 - (x) Boat ramps, concrete stairs, concrete slabs:
 - (I) residential—Category I:
 - (-a-) filing fee: \$25
 - (-b-) annual fee: \$.03 per square foot/\$25 minimum;
 - (II) residential—Category II:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;
 - (III) commercial activity:
 - (-a-) filing fee: \$50;
 - (-b-) evaluation fee: \$50;
 - (-c-) annual fee: \$.20 per square foot/\$100 minimum;
 - (IV) Other, private non-profit use:
 - (-a-) filing fee: \$50;
 - (-b-) annual fee: \$100.
 - (E) Structure (cabin) permits:
 - (i) fees:
 - (I) refundable deposit: \$200;
 - (II) annual fee for all structures excluding piers, docks, and walkways will be calculated at \$.60 per square foot per year;
 - (III) contract renewal: \$175;
 - (IV) new contract issuance: \$325;
 - (V) late payment fee: 25% of past due amount;
 - (VI) minimum annual payment: \$175;
 - (ii) permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.
 - (F) Resource Impact Fee:
 - (i) Public use piers and residential piers constructed within guidelines: exempt;
 - (ii) All others: \$100 plus \$1.00 per square foot of impacted area.
 - (G) Term. The term for all coastal leases and coastal easements is negotiable. School Land Board approval is required prior to construction.
 - (H) Rental adjustments—all commercial and industrial easements. At every five-year interval in the term of commercial and

industrial easements, the rental fee for the easement will be subject to adjustment. The adjustment, if any, will be in accordance with the then current Fee Schedule as adopted by the School Land Board.

(I) Discretionary authority. The School Land Board may reduce or waive any fee set forth herein if such action would be in the public's best interest as determined by the School Land Board.

(J) Implementation.

(i) New residential developments. Upon the application for an easement associated with the development of a multi-unit or single-family residential project, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to individual use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the General Land Office, may pay a \$50 conversion fee. The easement fee may then be reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provisions herein, the unit will then be considered to be subject to the residential activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a residential activity rate will be granted without the payment of the conversion fee.

(ii) Additional terms. The commissioner of the General Land Office may require, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.

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.

Issued in Austin, Texas, on February 27, 1997.

TRD-9702785

Garry Mauro

Chairman

School Land Board

Effective date: March 20, 1997

Proposal publication date: December 24, 1996

For further information, please call: (512) 305-9120

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) adopts amendments to §3.501, §3.902, and §3.1601, concerning household determination, income and relationship/domicile in its Income Assistance Services rule chapter.

The purpose of the amendments is to implement federally mandated policy that revises the temporary absence from 12

months to six months and penalizes a parent who fails to report the temporary absence.

The amendments will function by ensuring that DHS will be in compliance with federal law.

Subchapter E. Household Determination

40 TAC §3.501

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment is adopted in compliance with federal requirements effective April 1, 1997.

The amendment implements the Human Resources Code §§22.001-22.030.

§3.501. Household Determination.

(a) (No change.)

(b) Aid to Families with Dependent Children. The following persons are not included in an AFDC certified group:

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

(3) Disqualified persons.

(A) Persons are disqualified because they:

(i)-(iii) (No change.)

(iv) fail to comply with employment services, social security number, or third-party resources (TPR) requirements;

(v) are caretakers and second parents (except for those who are members of the state welfare reform waiver control group as described in §3.6002 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code, §31.0065, Relating to Time-Limits) who have exhausted their time limits of 12, 24, or 36 months, assigned according to the guidelines in Human Resources Code, §31.0065 for receiving AFDC cash benefits; or

(vi) fail to timely report a certified child's temporary absence.

(B)-(C) (No change.)

(4)-(7) (No change.)

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

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702898

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: April 1, 1997

Proposal publication date: N/A

For further information, please call: (512) 438-3765.

40 TAC §3.902

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment is adopted in compliance with federal requirements effective April 1, 1997.

The amendment implements the Human Resources Code §§22.001-22.030.

§3.902. *Types of Income.*

(a) Aid to Families with Dependent Children. The Texas Department of Human Services (DHS) counts the following as income:

(1)-(16) (No change.)

(17) disqualified legal parent. DHS counts the income of a legal parent disqualified for noncompliance with social security number requirements, third party resource requirements, intentional program violations, child support requirements, employment services requirements or failure to report temporary absence of a child using regular budgeting policy and allowing an exclusion for diverted income only as specified in subsection (b)(1) of this section. DHS counts the income of a parent(s) disqualified because of alien status as specified in 45 Code of Federal Regulation (CFR) §233.50(c), citizenship requirements as specified in §3.603(a) of this title (relating to Disqualification because Verification of Citizenship Is Pending), or exhaustion of time limits as specified in §3.501(b)(3) of this title (relating to Aid to Families with Dependent Children (AFDC) and Food Stamp Household Determination). The income of such a parent is counted as specified in 45 CFR 233.20(a)(3)(B)(vi).

(18)-(29) (No change.)

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

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.

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TRD-9702899

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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Proposal publication date: N/A

For further information, please call: (512) 438-3765

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40 TAC §3.1601

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment is adopted in compliance with federal requirements effective April 1, 1997.

The amendment implements the Human Resources Code §§22.001-22.030.

§3.1601. Aid to Families with Dependent Children Relationship/Domicile Requirements.

Aid to Families with Dependent Children clients must meet relationship/domicile requirements stipulated in 45 Code of Federal Regulations §233.90(c)(1)(v) or, the Social Security Act as amended by

Title IV, Section 408 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or must live with a first cousin once removed or a great-great-great grandfather or grandmother.

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.

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TRD-9702900

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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Proposal publication date: N/A

For further information, please call: (512) 438-3765

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Chapter 79. Legal Services

Subchapter T. Administrative Fraud Disqualification Hearings

40 TAC §79.1917

The Texas Department of Human Services (DHS) adopts the amendment to §79.1917, administrative fraud disqualification hearings, in its Legal Services chapter.

The purpose of the amendment is to include disqualification periods specific for the Aid to Family with Dependent Children (AFDC) and Food Stamp programs.

The amendment will function by ensuring that the disqualification periods specific for the AFDC and Food Stamp programs are clarified.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22, 31, and 33, which authorizes the department to administer financial and nutritional assistance programs. The amendment is adopted in compliance with federal requirements effective September 22, 1996.

The amendment implements the Human Resources Code, §§22.018, §31.034, and §§33.001-33.025.

§79.1917. Effect of an Administrative Determination of Intentional Program Violation.

(a) If a hearing officer finds that a household member committed an intentional program violation, the household member is disqualified from the Food Stamp and/or Aid to Families with Dependent Children (AFDC) programs for the following periods.

(1) AFDC. The person is disqualified

(A) six months for the first intentional program violation determination,

(B) one year for the second intentional program violation determination, and (C) permanently for the third intentional program violation determination.

(2) Food Stamps. The person is disqualified

(A) for a period of one year upon the first occasion of any such determination;

(B) for a period of two years upon

(i) the second occasion of any such determination;

(ii) the first occasion of a finding by a federal, state, or local court of the trading of a controlled substance (as defined in Title 21, United States Code (USC), §802) for coupons; and

(C) permanently upon

(i) the third occasion of any such determination; or

(ii) the second occasion of a finding by a Federal, state, or local court of the trading of a controlled substance (as defined in Title 21, USC, §802) for coupons; or

(iii) the first occasion of a finding by a federal, state, or local court of the trading of firearms, ammunition, or explosives for coupons; or

(iv) conviction of the offense of knowingly receiving, transferring, acquiring, altering, or possessing coupons, authorization cards, or access devices in any manner contrary to the Food Stamp Act of 1977 involving an item of \$500 or more.

(D) for a period of ten years if a person is convicted in a state or federal court or is found by a state administrative hearing to have made a fraudulent statement or representation with respect to the identification or place of residence of the individual, in order to receive multiple benefits simultaneously under the Food Stamp Program.

(b)-(c) (No change.)

(d) If the hearing officer imposes a one year disqualification for an initial violation, no further disqualifications may be imposed for violations occurring before the hearing decision that are later discovered. These violations may be brought to the hearing officer and, if appropriate, an intentional program violation may be found.

(e) Although the hearing officer's decision regarding the intentional program violation is final, the appellant may appeal the investigator's computation of the amount of overpayment.

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.

Issued in Austin, Texas, on February 28, 1997.

TRD-9702894

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: September 22, 1996

Proposal publication date: N/A

For further information, please call: (512) 438-3765

Part II. Texas Rehabilitation Commission

Chapter 104. Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official

40 TAC §§104.1, 104.2, 104.5, 104.6, 104.8

The Texas Rehabilitation Commission (TRC) adopts amendments to §§104.1, 104.2, 104.5, 104.6, and 104.8, concerning Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official, without changes to the proposed text as published in the January 21, 1997, issue of the *Texas Register* (22 TexReg 895).

These adopted amendments are to more fully inform appellants of their rights to a fair hearing.

No comments were received regarding adoption of these amendments.

The amendments are adopted under Texas Human Resources Code Annotated, Title 7, §111.018, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code Annotated.

The Texas Human Resources Code, Chapter 111, Title 7, §111.018 is affected by these adopted amendments.

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.

Issued in Austin, Texas, on February 19, 1997.

TRD-9702889

Charles W. Schiesser

Associate Commissioner for the Legal Services Division

Texas Rehabilitation Commission

Effective date: March 21, 1997

Proposal publication date: January 21, 1997

For further information, please call: (512) 424-4051

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Subchapter G. Donations

43 TAC §§1.500-1.505

The Texas Department of Transportation adopts new §§1.500-1.505, concerning donations. Sections 1.500-1.505 are adopted without changes to the proposed text as published in the January 3, 1997, issue of the *Texas Register* (22 TexReg 40) and will not be republished.

Government Code, Chapter 2255, requires a state agency which is authorized by statute to accept money from a private donor to adopt rules governing the relationship between the donor, the agency, and the agency's employees.

Section 1.500 establishes procedures concerning the acceptance of gifts and donations made to the department.

Section 1.501 defines words and terms used in the new subchapter.

Section 1.502 identifies the types of gifts and donations the department may accept and specifies that the gifts and donations must be accepted for the purpose of performing the department's functions under the identified statutes.

Section 1.503 describes the conditions under which the department will approve the acceptance of an authorized gift or donation, including the requirements that the gift or donation further the department's responsibilities under the identified statutes and that the donor must not be regulated by the department or have any interest or the likelihood of an interest in any contract, purchase, payment, or claim with or against the department. The section also allows the acceptance of a gift or donation, notwithstanding department regulation or donor interest, if the acceptance will provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

Section 1.504 prescribes a donation agreement which must be executed by the donor and the department to effect a donation valued at more than \$250 and sets out the terms which must be included in all such agreements.

Section 1.505 prescribes the disposition of an accepted gift or donation, including the requirement that the department deposit monetary donations in the state treasury, in an approved account, to the credit of the department, to be used to carry out the purposes of the department as specified by the donor.

No comments were received on the proposed new sections.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Government Code, Chapter 2255, which requires a state agency which is authorized by statute to accept money from a private donor to adopt rules governing the relationship between the donor, the agency, and the agency's employees.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702919

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: April 1, 1997

Proposal publication date: January 3, 1997

For further information, please call: (512) 463-8630

Chapter 2. Environmental Policy

Subchapter C. Environmental Review and Public Involvement for Transportation Projects

43 TAC §2.42

The Texas Department of Transportation adopts an amendment to §2.42, concerning public involvement in highway improvement projects which utilize federal aid highway funds. Section 2.42 is adopted without changes to the proposed text as published in the December 6, 1996, issue of the *Texas Register* (21 TexReg 11761) and will not be republished.

Section 2.42, presently requires public involvement for highway improvement projects which utilize federal aid highway funds to be consistent with applicable state and federal law and §2.43(a) of this title (relating to Highway Construction Projects-State Funds). Subsection 2.43(a) concerns environmental studies. The correct subsection which should be cross-referenced is §2.43(b), concerning early coordination and public involvement. The amendment will make the cross-reference consistent with the subject matter of the primary rule.

No written comments were received on the proposed amendment.

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation; Transportation Code, §201.103 and §203.002, which require the commission to formulate plans and policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads, and to lay out, construct, maintain, and operate a modern state highway system; Transportation Code §203.021, concerning public involvement under certain circumstances; Transportation Code, §221.003 and §222.031, which provide for the utilization of federal funds in carrying out such operations; and, Transportation Code, §222.001, which provides for the utilization of money in the state highway fund, including federal aid money, for improvement of the state highway system or to mitigate adverse environmental effects that result directly from the construction or maintenance of a state highway by the department.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702920

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: March 24, 1997

Proposal publication date: December 6, 1996

For further information, please call: (512) 463-8630

Subchapter D. Public Participation Programs

43 TAC §§2.61-2.70

The Texas Department of Transportation adopts new §§2.61-2.70, concerning public participation programs. Sections 2.62-2.67 are adopted with changes to the proposed text as published in the December 6, 1996, issue of the *Texas Register*

(21 TexReg 11762). Section 2.61, and §§2.68-2.70 are adopted without changes and will not be republished.

Adoption of the new sections is necessary to replace, in an amended form, the provisions of §§25.301-25.309, concerning the Landscape Cost Sharing Program; §§25.601-25.610, concerning the Adopt-a-Freeway Program; §§25.701-25.709, concerning the Adopt-a-Highway for Landscaping Program; and §§25.801-25.809, concerning the Adopt-a-Highway Program. These sections are being contemporaneously repealed because the subject matter more appropriately falls within Chapter 2, Environmental Policy. The new sections also add new §2.67, concerning the Adopt-an-Area Program.

Human Resources Code, Chapter 122, requires that state agencies procure certain services from a community rehabilitation program which provides for the employment of disabled persons. The adoption of new §2.67 is necessary to allow private businesses and civic organizations the opportunity to fund the department's antilitter and maintenance efforts by adopting a state highway rest area, and to further the policy of the previously cited legislation by funding the department's contracts with nonprofit organizations for the employment of disabled individuals.

These new sections reflect minor wording changes and rephrase wording for proper clarity and style; limit eligibility for participation in these programs to those groups with responsibility for promoting the beautification of the locality in which the adopted state highway section or area is located; limit the size and type of identifying sign that may be erected for safety and fiscal considerations; provide for the safety of individuals and groups participating in the programs; and provide for deferral of approval of applications for participation and for appeal of a denial of an application.

Section 2.61 establishes the purpose of the department's rules concerning public participation programs.

Section 2.62 defines words and terms used in the new subchapter.

Section 2.63, concerning the Adopt-a-Highway Program, specifies who is eligible to participate in the program; specifies the size and type of signs the department will erect to identify the adopting entity; and identifies sections of highway not eligible for adoption.

Section 2.64, concerning the Adopt-a-Highway for Landscaping Program, specifies who is eligible to participate in the program and specifies the size and type of signs the department will erect to identify the adopting entity.

Section 2.65, concerning the Landscape Cost Sharing Program, places responsibility for maintaining the adopted section of the state highway system on the local government, and specifies that the local government acts as a pass through for private entities that wish to donate a portion of the project costs; specifies who is eligible to participate in the program; and specifies the size and type of signs the department will erect to identify the adopting entity.

Section 2.66, concerning the Adopt-a-Freeway Program, places responsibility for maintaining the adopted section of the state highway system on the local government, and specifies that the

local government acts as a pass through for private entities that wish to donate a portion of the project costs; specifies who is eligible to participate in the program; and specifies the size and type of signs the department will erect to identify the adopting entity.

Section 2.67, concerning the Adopt-an-Area Program, allows private businesses or civic organizations to donate 25% or more of the costs of maintaining a state highway safety rest area, with such funds to be used for the department's antilitter and maintenance efforts and to fund the department's contracts with nonprofit organizations for the employment of disabled individuals to maintain these safety rest areas. This section also specifies who is eligible to participate in the program and specifies the size and type of signs the department will erect to identify the adopting entity.

Section 2.68 specifies that any sign damaged because of vandalism will not be replaced within the term of any agreement unless a replacement sign is paid for by the adopting entity.

Section 2.69 provides for centralized approval of applications for adoption, when appropriate, and an avenue to appeal any denial of an application submitted under this subchapter.

Section 2.70 specifies when a program established under this subchapter may be revised or terminated.

No comments were received on the proposed new sections. However, the department has determined that certain revisions should be made which are described as follows.

Regarding §2.62, the definition of "family member" has been revised to more adequately describe and specify who is a member of a family and to allow more members of a family to participate in a program. The revised definition includes spouses, aunts, uncles, and cousins.

Regarding §2.63, subsection (d)(1) of that section has been revised to delete any requirement for an adopt-a-highway chairperson to execute a written agreement with the department providing for a group's participation. As this section requires that a group have an authorized representative submit an application for participation, this paragraph has been revised to be consistent with that requirement. Subsection (e)(1)(A) of this section has also been revised to substitute "authorized representative" for "a chairperson" as the spokesperson for a group, to be consistent with the rest of this section. In order to provide for the safety of group members during a cleanup, subsection (e)(2)(C) of this section has been revised to specify that the department will provide fold-down traffic signs during a cleanup, as well as safety vests.

Regarding §2.64, the department has added the term "establishment" in all places where the term "project maintenance" has been used. Section 2.62 defines project establishment as the landscape maintenance activities required to ensure the viability, upkeep, and continued effectiveness of the project. That section also defines project maintenance as the activities performed as determined by the program agreement to ensure the establishment, upkeep, and continued effectiveness of a project. As maintenance of a project is, generally, ensuring that project establishment is carried out, the two terms are part and parcel of each other.

Regarding §2.65, the department has added the term "establishment" to the term "maintenance" for the reasons described in the preceding paragraph. The department has also deleted paragraph (3)(B)(ii) of subsection (d), relating to project design elements, as this subchapter allows for signage identifying an adopting entity.

Regarding §2.66, the department has added the terms "establishment" or "maintenance", as required, for the reasons stated in the preceding paragraphs. The department has also revised subsection (c)(2)(D) of this section to substitute the term "highway" for "proposed adopted", when referring to the highway section the local government is interested in adopting, and to require that the local government specifically describe the highway section it is interested in adopting. The department requires specificity in any application to adopt a section of a highway in order to ensure it keeps adequate track of sections that have been adopted.

Regarding §2.67, the department has added the words "but not limited to" to subsection (b)(1) of this section to clarify that the maintenance tasks listed are not exclusive. The department has also revised subsection (c)(5), changing the person required to sign an application to adopt an area from a "contact person" to the donor's "authorized representative," to be consistent with the rest of this subchapter. In order to be consistent with the eligibility requirements of the other programs and to remove potential ambiguity to such requirements, the requirements that an eligible donor have a documented policy of non-discrimination for the disabled in §2.67(b)(2)(B) and (c)(6) has been deleted.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, §203.002, which authorizes and empowers the commission to lay out, construct, maintain, and operate a modern state highway system.

§2.62. Definitions.

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

Adopted area-A safety rest area approved for adoption by a donor.

Adopted section-A section of state highway right-of-way approved for adoption by a group.

Authorized representative-An individual with the authority to sign agreements for the group or donor.

Commission-The Texas Transportation Commission.

Department-The Texas Department of Transportation.

Design fee-Those engineering or project administration costs or expenses identified prior to the construction of a project.

District-One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

District engineer-The chief executive officer in charge of a district, or his or her designee.

Donor-The private business or civic organization which adopts a safety rest area under the Adopt-an-Area Program or donates funds or services to a local government for the purpose of participating in the Landscape Cost Sharing or Adopt-a-Freeway Programs.

Family member-Any spouse, sibling, parent, stepparent, grandparent, child, stepchild, aunt, uncle or cousin.

Group-An entity which adopts a section of state highway right-of-way.

Highway landscaping-A project design intent which attempts to provide primarily for the installation of native, naturalized, or adapted plant material within the project limits.

Local government-A city or county.

Non-cash contributions-The agreed value of labor, equipment, material, or design services furnished by a local government, and the agreed value of material and design services furnished by the donor in support of the project.

Pedestrian landscaping-A project design intent which requires the installation of elements oriented primarily to pedestrian usage, including, but not limited to, parking, curbs, sidewalks, pavers, ramps for the disabled, cycling or jogging trails, benches, trash receptacles, or illumination.

Project concept plan-The preliminary sketches, drawings, details, estimates, and specifications required by the department to illustrate the type of project development and establishment proposed by the local government, and as required for the department to determine if the proposed project is a highway landscaping project or a pedestrian landscaping project.

Project design plan-The final drawings, details, specifications, and estimates, whether furnished by or through the local government or the department as may be required by the department to fully control the work to be performed on the project.

Project development-The initial construction and installation of the landscape items in accordance with the project design plan.

Project establishment-The landscape maintenance activities required to ensure the viability, upkeep, and continued effectiveness of the project.

Project maintenance-The activities performed as determined by the program agreement to ensure the establishment, upkeep, and continued effectiveness of the project.

Safety rest area-A roadside park, equipped with restroom facilities, intended to improve highway safety by providing a location for motorists to rest and recover from highway travel, such term to include a safety rest area adjacent to travel information centers.

§2.63. Adopt-a-Highway Program.

(a) **Purpose.** The Adopt-a-Highway Program (Program) allows private citizens an opportunity to support the department's antilitter programs by adopting a section of highway for the purpose of controlling and reducing litter on an adopted section. This section sets forth policies and procedures to be used in administering the Program.

(b) Participation.

(1) **Adoption.** An eligible group may, upon approval by the department, adopt a section of a highway on the state highway

system for purposes of picking up and removing litter from the rights-of-way of that section under such terms and conditions as may be prescribed by the department and the commission.

(2) Eligibility.

(A) The following groups are eligible to participate in the Program:

- (i) members or employees of civic and nonprofit organizations;
- (ii) employees of private businesses and governmental entities; and
- (iii) families.

(B) To be eligible a group must be located or reside in the county or a county adjacent to the county in which the adopted section is located.

(c) Application.

(1) The authorized representative of a group who desires to participate, or to continue to participate, in the Program shall submit an application to the district engineer of the district in which the section of highway to be adopted is located.

(2) The application shall be in the form prescribed by the department and shall at a minimum include:

- (A) the date of application;
- (B) the name and complete mailing address, including street address, of the group;
- (C) the name, telephone number, and complete mailing address of the group's authorized representative; and
- (D) the highway section the group is interested in adopting.

(d) Agreement.

(1) If the application submitted by the group under subsection (c) of this section is approved by the district engineer, the authorized representative of that group shall execute a written agreement with the department providing for the group's participation in the Program.

(2) The agreement shall be in the form prescribed by the department and shall include:

- (A) an acknowledgment by the group of the hazardous nature of the work involved in participating in the Program;
- (B) an acknowledgment that the members of the group agree jointly and severally to be bound by and comply with the terms of the agreement; and
- (C) the respective responsibilities of the group and the department as contained in subsection (e) of this section.

(e) Responsibilities of group and department.

(1) Groups must:

- (A) appoint or select an authorized representative to serve as spokesperson for the group;
- (B) obey and abide by all laws and regulations relating to safety and such other terms and conditions as may be required by

the district engineer for special conditions on a particular adopted section;

(C) furnish adequate supervision by one or more adults for participants of a group who are 15 years of age or younger;

(D) conduct at least two safety meetings per year and ensure participants of the group attend a safety meeting before participating in the cleanup of the adopted section;

(E) adopt a section that is a minimum of two miles in length unless the district engineer determines a shorter length is in the best interests of the department, and in the case of a construction project, the entire length of the project;

(F) adopt a section for a minimum period of two years, and in the case of a construction project, to adopt for the entire duration of the project;

(G) pick up litter a minimum of four times a year and at such additional times as required by the district engineer, unless the district engineer determines that two times a year is adequate to maintain an acceptable right-of-way (it is desired that one of these pickups occur during the department's annual trash-off events);

(H) obtain required supplies and materials from the department during regular business hours;

(I) assure that fold-down traffic control signs are folded open during a cleanup and returned to the closed position after the cleanup;

(J) wear department furnished safety vests during the pickup;

(K) place litter in trash bags furnished by the department and place filled trash bags at locations as determined by the district engineer;

(L) return all unused materials and supplies to the department within one week following cleanup;

(M) neither possess nor consume alcoholic beverages while on the adopted section; and

(N) maintain a first-aid kit and adequate drinking water while on the adopted section.

(2) The department will:

(A) work with the group to determine the specific section of state highway right-of-way to be adopted;

(B) erect a sign at each end of the adopted section with the group's name or acronym displayed;

(C) provide fold-down traffic control signs, safety vests, trashbags, and safety literature;

(D) remove the filled trashbags the first workday after the pickup; and

(E) remove litter from the adopted section only under unusual circumstances, i.e., to remove large, heavy, or hazardous items or if the group has not fulfilled its responsibilities.

(f) General limiting conditions. The Program is subject to the following conditions.

(1) The department may consider such factors as width of right-of-way, geometrics, congestion, and sight distance of roadways

in determining what sections of highways shall be eligible for adoption. In no circumstance shall a section of an interstate highway be eligible for adoption.

(2) If any actions are determined to be contrary to any legislative restrictions or any restrictions on the use of appropriated funds for political activities, the department, at its sole discretion will take any and all necessary remedial actions, including, but not limited to, the removal of signs displaying the group's name or acronym.

(3) Adopt-a-Highway signs shall be four feet by four feet and shall be the least expensive and most effective for each situation. A sign that recognizes a family will not state the full name or official title of an elected official.

(4) A group may not subcontract or assign its responsibilities to any other group, organization, or enterprise without the express written authorization of the department.

(5) The department, in no event, shall have the right to control the group in performing the details of picking up litter from the section of highway adopted by the group, and, in picking up litter, the group shall act as an independent contractor.

(g) Modification/renewal/termination of the agreement. The agreement may be modified in any manner at the sole discretion of the department. The group will have the option of renewing the agreement subject to the approval of the district engineer and the continuation of the Program. The department may terminate the agreement and remove the signs upon 30-day notice, if in its sole judgment it finds and determines that the group is not meeting the terms and conditions of the agreement.

§2.64. Adopt-a-Highway for Landscaping Program.

(a) Purpose. The Adopt-a-Highway for Landscaping Program (Program) augments the Adopt-a-Highway Program, established in §2.63 of this title (relating to Adopt-a-Highway Program) by allowing groups to adopt a section of rural state highway right-of-way for landscape development and maintenance to enhance the beauty of rural Texas highways while preserving the integrity of native Texas flora and providing litter pickup. This section sets forth policies and procedures to be used in administering the Program.

(b) Participation.

(1) Adoption. An eligible group may, upon approval by the department, adopt a rural section of the state highway system for landscape development and maintenance and litter pickup.

(2) Eligibility.

(A) The following groups are eligible to participate in the Program:

(i) members or employees of civic and nonprofit organizations;

(ii) employees of private businesses and governmental entities; and

(iii) families.

(B) To be eligible a group must be located or reside in the county or a county adjacent to the county in which the adopted section is located.

(3) Current participating groups. Groups currently participating in the Program for litter control will be given the opportunity

to expand their scope of support by adopting their respective sections of highway right-of-way as a landscape project if their section satisfies requirements relating to right-of-way width, highway geometrics, sight distance, and safety considerations.

(c) Application.

(1) The authorized representative of a group who desires to participate, or continue to participate, in the Program shall submit an application to the district engineer of the district in which the proposed adopted section is located.

(2) The application shall be in the form prescribed by the department and shall at a minimum include:

(A) the date of application;

(B) the name and complete mailing address, including the street address, of the group;

(C) the name, telephone number, and complete mailing address, including street address, of the authorized representative of the group;

(D) the highway section the group is interested in adopting;

(E) whether the group proposes to adopt the section for project development, establishment, and maintenance only, or also for litter control in accordance with §2.63 of this title (relating to Adopt-a-Highway Program); and

(F) the project design plan, including sketches, drawings, and specifications as may be required by the department to illustrate the level of landscape development.

(3) Groups currently participating in the Adopt-a-Highway Program will be required to indicate on the application their current participation in such Program.

(d) Agreement.

(1) If the application submitted by the group under subsection (c) of this section is approved by the district engineer, the authorized representative of that group shall enter into a written agreement with the department providing for the group's participation in the Program.

(2) The agreement shall be in the form prescribed by the department and shall at a minimum include the following terms.

(A) The project design plan furnished by the group shall consist of plans, sketches, drawings, notes, and specifications required to fully illustrate the level of project development proposed.

(B) The group shall acknowledge the hazardous nature of the work involved in participating in the Program.

(C) The group shall agree that its members are jointly and severally to be bound by and comply with the terms of the agreement.

(D) The project design plan shall be subject to the approval of the department.

(E) All costs, materials, labor, and equipment necessary for project development shall be furnished by the group.

(F) All costs, materials, labor, and equipment necessary to provide for project establishment and maintenance for a period

specified by the department, such period being not less than two consecutive years following the completion of project development, shall be furnished by the group.

(G) The respective responsibilities of the group and the department as cited in subsection (e) of this section.

(H) Conditions by which the agreement may be terminated.

(I) A provision to satisfy legal relations and responsibilities to the public, including insurance and traffic control.

(3) The department's decision will be final with respect to any disputes that may arise concerning the group's responsibilities under the agreement.

(e) Responsibilities of group and department.

(1) Groups must:

(A) appoint an authorized representative who shall have the authority to execute the agreement as defined in subsection (d) of this section;

(B) obey and abide by all laws and regulations relating to safety, and legal relations to the public, and such other terms and conditions as may be required by the district engineer for special conditions on a particular adopted section;

(C) comply with §2.63 of this title (relating to Adopt-a-Highway Program) if participation includes that Program;

(D) furnish adequate supervision by one or more adults for participants who are 15 years of age or younger;

(E) conduct at least two safety meetings per year and ensure participants of the group attend at least one safety meeting before participating in the cleanup of the adopted section;

(F) adopt the section of highway for a minimum period of two years;

(G) adopt only those sections of highway determined by the department to be appropriate for project development and maintenance;

(H) provide for the establishment of plant material;

(I) water all plant material except seeding at least twice per month during the months of April through September, and at least once per month during the months of October through March, unless in the opinion of the department, sufficient natural rainfall has occurred;

(J) remove weeds and vegetative matter from within the watering basins of all installed plant material at least once per month during the months of April through September, and at least once every other month during the months of October through March;

(K) assure that the fold-down traffic control signs are folded open during project participation and returned to the closed position after project completion each day;

(L) assure each individual participant of the group wears department-furnished safety vests while on the adopted section;

(M) neither possess nor consume alcoholic beverages while on the adopted section;

(N) maintain a first-aid kit and adequate drinking water while on the adopted section; and

(O) act as an independent contractor during project participation.

(2) A group may not subcontract or assign its project responsibilities to any other group, organization, or enterprise, unless expressly authorized by the department.

(3) The department will:

(A) work with the group to determine the specific section of the state highway right-of-way to be adopted.

(B) comply with §2.63 of this title (relating to Adopt-a-Highway Program) if litter control is included as a portion of the application;

(C) review the group's design plan for project development and reserves the right to require modifications to the design prior to approval; and

(D) provide for the installation of suitable Adopt-a-Highway for Landscaping signs in accordance with existing regulations relating to the Adopt-a-Highway Program, including §2.63(f)(3) of this title (relating to Adopt-a-Highway Program).

(f) General limiting conditions and eligibility. The Program is subject to the following conditions.

(1) Only highway right-of-way eligible for the Program for litter control and only those sections which are deemed appropriate for landscape development, as determined by the department, may be adopted. Unless otherwise approved by the department, controlled access highways or routes within urban or metropolitan areas are not eligible for adoption.

(2) The department may consider such factors as width of right-of-way, geometrics, congestion, and sight distance of roadways in determining what highway shall be eligible for adoption.

(3) Limits for adopted sections for landscape development will be subject to the approval of the department.

(4) Plant material will be limited to native and adapted trees, shrubs and wildflower and grass seeding activities.

(5) Groups currently participating in the Adopt-a-Highway Program which submit an application under subsection (c) of this section to participate in the Program may only adopt within the limits of the original adopted section. Project maintenance shall be performed for a period as specified by the department, such period being not less than two consecutive years following the completion of the project development.

(6) Sections currently adopted under the Adopt-a-Highway Program shall not be eligible for adoption under the Adopt-a-Highway for Landscaping Program by any other group until the original adoption under the Adopt-a-Highway Program has expired.

(7) Signs shall be four feet by four feet and shall be the least expensive and most effective for each situation.

(8) With the exception of the Adopt-a-Highway Program, work under the Adopt-a-Highway for Landscaping Program will not be combined with any other landscape-related program sponsored by the department.

(9) If any actions are determined to be contrary to any legislative restrictions or any restrictions on the use of appropriated funds for political activities, the department, at its sole discretion, will take all necessary remedial actions, including, but not limited to, the removal of signs displaying the group's name or acronym.

(g) Modification/renewal/termination of the agreement. The agreement may be modified in any manner at the sole discretion of the department. The group will have the option of renewing the agreement subject to the approval of the district engineer and the continuation of the Program. The department may terminate the agreement and remove the signs upon 30-day notice, if in its sole judgment it finds and determines that the group is not meeting the terms and conditions of the agreement.

§2.65. *Landscape Cost Sharing Program.*

(a) Purpose. The Landscape Cost Sharing Program (Program) allows private businesses, civic organizations, and local governments an opportunity to support the aesthetic improvement of the state highway system by sharing the project development, establishment, and maintenance cost of landscaping the state highway system. This section sets forth policies and procedures governing the Program.

(b) Participation.

(1) Local government. A local government, upon approval of the district engineer, may share in the cost of the development, establishment, and maintenance of the landscaping of a segment of the state highway system.

(2) Donor.

(A) An eligible private business or civic organization may participate in the Program as a donor by providing to the local government cash or non-cash donations in an amount equal to not less than 25% of the local government's share of the project cost. The donor will receive recognition of the donation by the erection, at the project site, of a sign announcing participation by the donor in the Program.

(B) A private business or civic organization is eligible to participate in the Program as a donor if the business or civic organization is located in the county or a county adjacent to the county in which the project site is located.

(c) Application.

(1) A local government entity which desires to participate or to continue to participate in the Program shall submit an application to the district engineer of the district in which the adopted section is located.

(2) The application shall be in the form prescribed by the department and shall at a minimum include:

(A) the date of application;

(B) the name, telephone number, and complete mailing address of the local government;

(C) the highway section the local government is interested in developing;

(D) the project concept plan, containing sketches, drawings, estimates, specifications, and descriptive text as may be required by the department to evaluate the project under required general, site, and design considerations, to determine the proposed

design intent, and to estimate the amount of department participation; and

(E) a statement, chart, or spreadsheet based on the project concept plan, which illustrates the recommended responsibilities of the department and the local government and, if applicable, the donor (this statement, chart, or spreadsheet shall contain fully itemized cost figures for each portion of the project as may be required for the department to evaluate the recommended fair-market values for acceptable material and services proposed by the local government).

(d) Conditions. In order to participate in the Program, each project must meet the department's approval under general, site, and design considerations.

(1) General considerations. Normally, work on state highway right-of-way will be performed by state forces or by contractors selected and administered by the department. An exception will be granted to allow local governments to perform work on state highway right-of-way when approved by the district engineer.

(A) A local government may participate in the joint beautification of the existing state highway system subject to the following restrictions.

(i) If the project is determined by the department to be a highway-landscaping project, the department will evaluate accepting labor, equipment, materials, design services, and cash as the local government's contribution toward the proposed project.

(ii) If the project is determined by the department to be a pedestrian landscaping project, the department's participation will be limited to furnishing materials only for the local government's installation.

(iii) It shall be the local government's responsibility to secure and coordinate labor, equipment, materials, design services, and cash if the project is initiated by a donor.

(B) Unless waived by the department projects shall exceed \$25,000 if constructed by the department.

(C) The cost of any previous work by the local government shall not be included as a portion of the contribution toward the project.

(D) For a project to be evaluated by the department for work under the Program, the minimum value of acceptable non-cash contributions plus cash contributions by the local government must equal or exceed \$2,500.

(E) If the department is to provide material to the local government for the project, applicable statutes, rules, and procedures relating to the purchase of materials using state funds will apply.

(F) If the department is to provide for the construction of any portion of the project, applicable statutes, rules, and procedures relating to scheduling, processing, and administering a highway improvement project through the department's highway letting process will apply.

(G) Projects must be coordinated by the local government, although numerous entities may be supporting the local government's efforts.

(2) Site considerations. For sites proposed by the local government to be approved by the department, the following site conditions must be met. The site must:

(A) not be scheduled for future construction as defined within the department's current unified transportation plan which would conflict with the activities proposed on the project;

(B) contain sufficient right-of-way to reasonably permit planting and landscaping operations without conflicting with safety, geometric, and maintenance considerations;

(C) not contain overhead or underground utilities, driveways, pavement, sidewalks, or highway system fixtures including traffic signage or signalization which will conflict with the planting or landscaping operations proposed under the project; and

(D) not obstruct or interfere with existing drainage conditions along the site.

(3) Design considerations. For sites as proposed by the local government to be approved by the department, the following design considerations must be met.

(A) The project design, as shown on the project concept plan, must be acceptable to the department.

(B) Unless otherwise approved by the department, the project design may not include the following design elements:

(i) plant material or fixtures which, in the opinion of the department, require an intensive level of continued establishment and maintenance in order to assure the effectiveness and function within the design;

(ii) flagpoles or pennant poles;

(iii) fountains or water features; and

(iv) statuary, sculpture, or other art objects.

(C) The following items, if considered by the department as an acceptable element of the project design plan, may not be included as a contribution cost, and will not be furnished or installed by the department:

(i) benches and pedestrian seating;

(ii) pedestrian or historic lighting or illumination systems; and

(iii) trash or refuse receptacles.

(D) The local government must fully illustrate the recommended division of responsibilities as necessary for the department to evaluate the proposed manner of project implementation, establishment, and maintenance if applicable. The illustration of recommended project responsibilities shall at a minimum include:

(i) preparing the project design plan, provided that the cost of providing the project design plan for a pedestrian landscaping project shall be the sole responsibility of the local government, and shall not be included as a portion of the local government's contribution toward the project;

(ii) furnishing and installing required material; and

(iii) performing project establishment and maintenance, if required, provided that the cost of performing project establishment and maintenance on a pedestrian landscaping project shall

be the sole responsibility of the local government and shall not be included as a portion of the local government's contribution toward the project.

(E) The local government must fully itemize and document the proposed cash and non-cash contribution available to support the project. This itemization and documentation shall include at a minimum the following items:

(i) amount of cash to be provided to the department;

(ii) non-cash value of each individual item of material to be furnished by the local government;

(iii) cost of each individual item or material to be furnished by the department;

(iv) non-cash value of labor and equipment necessary to install each individual item of material if performed by the local government;

(v) cost of installing each individual item of material if performed by the department; and

(vi) non-cash value of the project design plan if furnished by the local government, provided the maximum acceptable non-cash value of furnishing the project design plan, based upon the selected project cost, including project establishment and maintenance for highway landscaping projects and excluding project establishment and maintenance for pedestrian landscaping projects, shall not exceed 8.5% for projects up to and including \$200,000, and 7.5% for projects greater than \$200,000.

(e) Amount of departmental participation.

(1) Highway landscaping projects within the existing city limits of a city. The department, after approving the project under general, site, and design considerations, will participate in up to 50% of the total cost of the project including project establishment and maintenance, and preparation of the project design plan.

(2) Pedestrian landscaping within the existing city limits of a city. The department, after approving the project under general, site, and design considerations, will participate by furnishing material only up to but not exceeding 50% of the total cost of project development, excluding project establishment and maintenance and the preparation of the project design plan.

(3) Highway landscaping projects outside the existing city limits of a city. The department, after approving the project under general, site, and design considerations, will participate in up to 50% of the total project development, establishment, maintenance and design cost.

(4) Pedestrian landscaping projects outside existing city limits. Unless otherwise approved, the department will not participate in the cost of these projects under the Program.

(f) Agreement.

(1) If the proposed project as submitted under subsection (d) of this section is approved by the department, the local government shall enter into a written agreement with the department providing participation in the Program. The agreement becomes effective when finally executed by the department and shall terminate upon satisfactory completion of the work as stipulated within the agreement. Work on any phase of the project may not begin until the agreement is fully executed by both parties.

(2) The agreement shall be in the form prescribed by the department and shall at a minimum include the following terms.

(A) The project design plan, when furnished by the local government, shall consist of plans, sketches, drawings, notes, estimates, and specifications as required by the department.

(B) Any changes to the agreement shall be enacted by written amendment.

(C) The department and the local government shall not assign or otherwise transfer its obligations under this agreement except with prior written consent of the other party.

(D) If prepared by the local government, the project design plan shall be subject to the review and satisfactory approval by the department prior to a departmental bid opening.

(E) Violation or breach of contract terms by the local government shall be grounds for termination of the agreement by the department. In the event of disputes as to the party's obligations under the agreement, the department's decision shall otherwise be final and binding.

(F) The local government and its contractors, if any, shall to the extent provided by law, furnish certificates of insurance, guarantees of self insurance if appropriate, and indemnification as may be prescribed by the department.

(G) The local government shall provide, erect, and maintain to the satisfaction of the department any barricades, signs, and traffic handling devices necessary to protect the safety of the travelling public while performing any work on the project.

(H) The department's employees shall not accept any benefits, gifts, or other favors from the local government or donor under the agreement.

(3) The agreement shall include the funding arrangement and payment schedule as agreed upon by the department and the local government.

(g) General limiting conditions and eligibility. Because of administrative, legislative, and financial constraints, the Program shall be subject to the following terms.

(1) The department will consider such factors as width of right-of-way, geometrics, congestion, sight-distance, and maintenance requirements in determining the acceptability and/or amount of departmental participation in any proposed project.

(2) Signage for the Program shall be four feet by four feet and shall be the least expensive and most effective for each situation.

(3) Work under the Program shall not be combined with any other landscape-related programs sponsored by the department.

(4) If any actions are determined to be contrary to any legislative restrictions or any restrictions on the use of appropriated funds for political activities, the department shall have the right to take any and all necessary remedial actions, including, but not limited to, the removal of the signs displaying the local governmental entity's or donor's name.

(h) Modification/termination of agreement. The agreement as cited in subsection (f) of this section may be modified in any manner at the sole discretion of the department.

§2.66. *Adopt-a-Freeway Program.*

(a) Purpose. The Adopt-a-Freeway Program (Program) allows private businesses, civic organizations, and local governments an opportunity to support the department's landscape programs by adopting a section of urban freeway for the purpose of project development and project establishment and maintenance on that section. This section sets forth policies and procedures governing the Program.

(b) Participation in program.

(1) Local government. A local government, upon approval by the district engineer, may adopt a section of urban state highway right-of-way for the purpose of project design, project development, and project establishment and maintenance by assuming the responsibility for all design, construction, establishment, and maintenance costs involved in the project.

(2) Donor.

(A) An eligible private business or civic organization may participate in the Program by providing to the local government cash or non-cash donations in an amount equal to not less than 25% of the project cost. The donor will receive recognition of the donation by the erection at the project site of a sign announcing participation by the donor in the Program.

(B) A private business or civic organization is eligible to participate in the Program as a donor if the business or civic organization is located in the county or a county adjacent to the county in which the adopted section is located.

(c) Application.

(1) A local governmental entity which desires to participate or to continue to participate in the Program shall submit an application to the district engineer of the district in which the adopted section is located.

(2) The application shall be in the form prescribed by the department and shall at a minimum include:

(A) date of application;

(B) the name and complete mailing address of the local government;

(C) the name, telephone number, and complete mailing address of a contact person for the local government;

(D) the highway section the local government is interested in adopting;

(E) if provided by the local government, the project design plan, specifications, and estimates for the work the local government is interested in performing; and

(F) if provided by the department, the estimates, specifications, full descriptive text, sketches, or samples of work proposed by the local government as may be required by the department to produce the project design plan; and

(G) a resolution by the local government that includes:

(i) a statement that it approves participation in the Program;

(ii) a statement that it agrees to accept the responsibility of the project; and

(iii) a statement that the local government agrees and is authorized to enter into the agreement as defined in subsection (d) of this section.

(d) Agreement.

(1) If the application submitted under subsection (c) of this section is approved by the department, the local government shall enter into a written agreement with the department providing for participation in the Program.

(2) The agreement shall be in the form prescribed by the department and shall contain at a minimum the following terms.

(A) The local government shall comply with the terms and conditions set forth in the agreement.

(B) All costs of project design, development, establishment, and maintenance shall be the sole responsibility of the local government. Prior to the date scheduled for contract award the local government shall remit to the department an amount equal to the remainder of the local government's funding share for the project.

(C) If prepared by the local government, the project design plan shall be subject to the review and satisfactory approval by the department prior to a departmental bid opening.

(D) The local government shall agree to provide funding for project establishment, and maintenance contracts let for construction by the department for a period as specified by the department, such period being not less than five consecutive years following the completion of the project development contract.

(E) A list of the respective responsibilities of the local government and the department as cited in subsection (f) of this section.

(F) The local government shall agree to provide necessary indemnification as may be required by the department.

(e) Responsibilities of local government and department.

(1) A local government who desires to participate in the Program shall be subject to the following requirements and responsibilities relating to project development.

(A) If the project design plan is furnished by the local government, the local government must provide:

(i) for the department's review, the project design plan;

(ii) for the department's review, specifications, general notes, and estimates based upon the project design plan as may be necessary to fully document the project development;

(iii) after the department's review, all required revisions to the project design plan, specifications, general notes, and estimates as may be required; and

(iv) after revisions to the project design plan, specifications, general notes, and estimates have been made to the department's satisfaction, one set of reproducible mylars to the format and time schedule as may be required by the department, and three sets of 8 1/2 inches by 11 inches contract documents including specifications, general notes, and estimates.

(B) If the project design plan is to be furnished by the department, the local government must provide:

(i) information which establishes the proposed design concept as may be required by the department (this information may be in the form of descriptive text, sketches, or copies of developments similar to the type of project development proposed by the local government); and

(ii) a check, payable to the Texas Department of Transportation, in the full amount of the design fee.

(C) The local government must provide a check, payable to the Texas Department of Transportation, in the full amount of the final departmental estimate for project development, no later than 60 days prior to the date of the project's scheduled bid opening.

(D) The local government must provide a check, payable to the Texas Department of Transportation, in the full amount of the final departmental estimate for project establishment and maintenance. Prior to the department's scheduled date for contract award, the local government shall remit to the department an amount equal to the remainder of the local government's funding share for the project.

(2) The department, conditioned on approving the project as submitted by the local government, will be responsible for providing the following services.

(A) Project design plan:

(i) if submitted by the local government the project design plan will be reviewed; and

(ii) if requested by the local government the project design plan will be prepared.

(B) Project development:

(i) scheduling the project for the first available departmental bid opening;

(ii) awarding the construction contract; and

(iii) administering the project during construction.

(C) Project establishment and maintenance:

(i) providing plans, specifications, and estimates as may be required for the establishment and maintenance project;

(ii) scheduling the establishment and maintenance project for the first available departmental bid opening;

(iii) awarding the establishment and maintenance contract; and

(iv) administering the project.

(f) General limiting conditions and eligibility. The Program shall be subject to each of the following conditions.

(1) No section will be approved for adoption if any portion of the section is scheduled for future construction within the department's current unified transportation plan.

(2) Designs which reflect the character of adjacent developments will be accepted by the department provided such designs do not include logos of private entities, civic organizations, or local governments and provided that the local government will provide funding for adequate project development, establishment and maintenance as required by the department.

(3) All major routes including controlled access routes on the highway system within the urban and metropolitan areas will be eligible for adoption.

(4) Signage announcing participation in the Program shall be four feet by four feet and shall be the least expensive and most effective for each situation.

(5) Special landscape features such as fountains, retaining walls, paving or walkway treatment, architectural lighting or landscape treatments which require, in the opinion of the department, high-level maintenance may be submitted and proposed for approval by the department.

(6) Work under the Program will not be combined with any other landscape-related programs sponsored by the department.

(7) The project design plan, if provided by the department, will be scheduled for preparation within the constraints of the department's existing resource capability.

(g) Modification/termination of agreement. The agreement as cited in subsection (d) of this section may be modified at the sole discretion of the department or commission. The agreement may also be terminated as provided in the agreement by mutual agreement and consent of the local government and the department, or by the department, after a 30-day notice, for failure by the local government to fulfill its responsibilities.

§2.67. *Adopt-an-Area Program.*

(a) Purpose. The Human Resources Code, Chapter 122 provides for the employment of disabled persons by state agencies. Under this program, the department contracts with nonprofit organizations for the employment of such individuals in the maintenance of department facilities. The Adopt-an-Area Program (Program) allows private entities to provide funding to the department for the employment of Texans with Disabilities for litter pickup and maintenance of state highway safety rest areas. This section sets forth the policies and procedures governing the Program.

(b) Participation.

(1) Adoption. An eligible donor may, upon approval by the department, adopt a safety rest area for the purpose of funding litter pickup and removal, and/or additional maintenance tasks including, but not limited to, mowing, landscaping, tree trimming, landscape and grounds maintenance, safety rest area maintenance, cleaning fixtures, painting, janitorial services, and graffiti removal and control from safety rest areas, and the rights-of-way of the adopted safety rest area.

(2) Eligibility. A donor is eligible to participate in the Program if it is a private business or civic organization that is located or has a place of business in the county or a county adjacent to the county in which the safety rest area is located.

(c) Application. The authorized representative of a donor who desires to participate in the Program must submit an application to the district engineer of the district in which the safety rest area is located. The application shall be in the form prescribed by the department and shall at a minimum include:

- (1) the date of application;
- (2) the name and complete mailing address, including the street address, of the donor;

(3) the name, telephone number, and complete mailing address of the donor's authorized representative;

(4) a description of the safety rest area that the donor is interested in adopting; and

(5) the signature of the donor's authorized representative.

(d) Agreement.

(1) If the application submitted under subsection (c) of this section is approved by the district engineer, the donor shall enter into a written agreement with the department providing for participation in the Program.

(2) The agreement shall be in the form prescribed by the department and shall contain at a minimum the following terms.

(A) The donor shall comply with the terms and conditions set forth in the agreement.

(B) The funding arrangement as agreed upon by the department and the donor.

(i) Payment shall be made in the form of a certified or cashier's check.

(ii) Payment must be in an amount equal to but not less than 25% of the amount the department has determined will be the annual cost of funding the tasks described in subsection (b)(1) of this section.

(e) Program requirements.

(1) Each area must be adopted for a minimum period of one year. The donor adopting the area will retain first option on renewing the contract the following year.

(2) The department may decline adoption for reasons of safety.

(3) The department will erect a sign at the safety rest area, with the donor's name or acronym displayed. Signs shall be four feet by four feet and shall be the least expensive and most effective for each situation. Organizational or corporate logos are permitted, but must be provided by the donor and must meet the department's size and material specifications. No product name is allowed on the sign, except when it is an established and integral part of the group's name. No directions, slogans, or instructions are permitted on the signs.

(4) The department will be responsible for hiring contractors to perform all work and duties related to the litter pickup and removal or maintenance of the adopted area.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702921

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630

Chapter 4. Employment Practices

Subchapter E. Sick Leave Pool Program

43 TAC §§4.51, 4.55, 4.56

The Texas Department of Transportation adopts amendments to §4.51, §4.55, and §4.56, concerning the department's sick leave pool program. Sections 4.51 and 4.56 are adopted with changes to the proposed text as published in the November 12, 1996, issue of the *Texas Register* (21 TexReg 11093). Section 4.55 is adopted without changes and will not be republished.

Government Code, Chapter 661, authorizes the department to establish a sick leave pool program and to adopt rules and prescribe procedures to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state.

The amendments identify the specific criteria used to determine if an illness or injury is a severe condition, place stricter requirements on psychological conditions as a qualifying reason for using pool hours, and establish greater control over the use of hours granted from the pool.

Section 4.51 is amended to add new definitions of licensed psychiatrist and sick leave. The definition of severe condition is amended to add separate psychological and physical conditions and establish separate criterion for each and also eliminates the reference to permanent disability as used in the term. The amendments also remove the definition of permanent disability.

The amendments to §4.55 clarify which form the pool administrator will review for contribution returns.

The amendments to §4.56 require that a licensed psychiatrist certify a psychological medical condition; the employee's job description be attached to the medical certification form the health care provider completes; and the employee exhaust accrued leave before using hours granted from the pool. The amendments also remove the paragraph that defines the appropriate use of hours granted for a permanent disability, allow time granted from the pool to begin after the time covered by the last worker's compensation check distributed for on the job injuries, consolidate the maximum hours per request and maximum hours per condition, and change 90 calendar days to 90 work days regarding the maximum number of hours that can be granted per condition.

No comments were received on the proposed amendments. Changes were made to §4.51 to divide the definition for severe condition into two definitions, severe psychological and severe physical conditions, and §4.56 to clarify that only a severe psychological condition must be certified by a licensed psychiatrist.

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Government Code, Chapter 661, which requires the department to adopt rules administering a sick leave pool program.

§4.51. Definitions.

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

Licensed psychiatrist-A psychiatrist licensed by a state medical licensing board.

Severe psychological condition-A psychological illness that results in the patient being suicidal or capable of harming themselves or others and requires one week or more inpatient hospitalization.

Severe physical condition-A physical illness or injury that poses an imminent threat to the life of the patient or causes the employee to be off work for three continuous months or more for the current episode.

Sick leave-Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his immediate family who is actually ill.

§4.56. Withdrawals.

(a) Restrictions.

(1) An employee or an employee's immediate family must have a catastrophic illness or injury to be eligible to withdraw from the pool. The patient's health care provider must certify in writing that the illness or injury of the employee or member of the employee's immediate family is catastrophic.

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. Requests related to severe psychological conditions must be certified by a licensed psychiatrist. The certification should include the diagnosis and prognosis of the condition or combination of conditions and the date the employee or employee's immediate family member will be able to return to normal activities. If the certification is for the employee's immediate family member, it should also include the amount of time the employee will be needed to provide primary care. The health care provider certification shall be in a form prescribed by the pool administrator. This information is confidential, unless otherwise required by law, and may only be released to the human resources officer if he or she can demonstrate a legitimate business necessity for this information.

(3) The employee must submit an updated health care provider's certification that certifies that the catastrophic illness or injury still exists or that it is necessary for the employee to be off work to recover or assist in the recovery from the treatment of the catastrophic illness or injury before an extension may be approved.

(4) An employee's use of a transfer from the sick leave pool for family members not residing in that employee's household is strictly limited to the time necessary to provide assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

(5) The maximum number of hours that may be granted per catastrophic condition is 720 hours (90 work days) or one third of the pool balance, whichever is less at the time a request is received.

(6) When the pool balance is below 7200 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340

hours. Additionally, the pool administrator will approve or deny all requests in the order in which they are received.

(7) The time transferred will begin on the date and time the employee exhausted all accrued leave or, in cases which are eligible for workers' compensation payments, after the period covered by the last workers' compensation check distributed.

(8) An employee who uses pool sick leave in accordance with this subchapter is not required to pay back that leave.

(9) An employee must exhaust all accrued leave time before using hours approved from the sick leave pool.

(10) All withdrawals from the pool must be used solely for the catastrophic illness or injury for which they were granted.

(11) An employee who is in need of additional sick leave after exhausting all accrued leave time shall exhaust all available extended sick leave before using time granted from the sick leave pool.

(12) An employee who is injured on the job, who is entitled to receive worker compensation payments, and who chooses to integrate his or her sick leave, and vacation leave, or compensatory time is also eligible to receive a withdrawal in accordance with this subchapter.

(13) Hours from the sick leave pool may be granted in a block of time and used on an as needed basis. The pool administrator may require the unused hours to be returned to the pool after such time has expired unless an immediate need for such leave still exists.

(14) The pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis when the necessary information to make a definite determination of the employee's need for pool hours is changed, uncertain, or not available. If the employee is determined to be able to return to work sooner than a previous certification, the pool administrator may require the unused portion of a withdrawal to be returned to the pool. If the employee fails to cooperate with recertification requirements and reevaluation procedures, the pool administrator may deny the request or require the unused portion of a withdrawal be returned to the sick leave pool.

(15) Unused sick leave from the pool shall be returned to the pool when the need for such leave ceases to exist or the pool administrator requires it in accordance with this subchapter.

(16) The estate of a deceased employee is not entitled to payment for unused sick leave from the pool.

(b) Procedures.

(1) The employee shall complete the application for withdrawal. The human resources officer shall assist the employee by verifying leave balances and the date and time all accrued leave time was or will be exhausted.

(2) The employee shall submit the application and the health care provider's certification form and a copy of the employee's functional job description to his or her health care provider no earlier than 15 workdays before the need for the withdrawal. The health care provider will complete the certification and mail it, with the completed application, directly to the pool administrator.

(3) The pool administrator will consider applications for withdrawal in the order in which they are received. The pool

administrator shall stamp the date and time of receipt on each application, and shall approve or deny the request within five working days of that date.

(4) If the pool administrator questions the validity of the certification completed by the employee's health care provider, based on the average expected duration or severity of the condition, the administrator may request a health care provider, contracted by the department, to review the patient's medical records. The contracted health care provider may consult with the patient's health care provider if more information is needed. If the determination of the contracted health care provider differs from the patient's health care provider, the pool administrator may request that the patient's medical records be reviewed by a third health care provider who is not under contract with the department. The pool administrator and the employee must agree on the third health care provider. The determination of the third health care provider is binding. The department will pay for both reviews. If the employee fails to cooperate with the medical records review, the pool administrator may deny the request or require that the unused portion of the withdrawal to be returned to the sick leave pool.

(5) The pool administrator will determine the amount of sick leave transferred for each request based on:

(A) the number of hours requested by the employee;

(B) the health care provider's certification which indicates the approximate date the patient will be able to return to light and normal duties or the amount of time that the employee is needed to provide primary care for the immediate family member;

(C) the date and time all accrued leave time was or will be exhausted; and

(D) the balance of the pool.

(6) The pool administrator shall approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

(7) The human resources officer shall inform the pool administrator of the amount of leave the employee used for the illness or injury at the end of each month, and, if he or she has returned to work, the total number of hours used and how many hours are being returned.

(8) The pool administrator shall return all unused hours to the pool.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702922

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: March 24, 1997

Proposal publication date: November 12, 1996

For further information, please call: (512) 463-8630

Chapter 18. Motor Carriers

Subchapter A. General Provisions

43 TAC §18.2

The Texas Department of Transportation adopts an amendment to §18.2, concerning definitions. Section 18.2 is adopted without changes to the proposed text as published in the November 12, 1996, issue of the *Texas Register* (21 TexReg 11095) and will not be republished.

The amended section is necessary to ensure the department's proper administration of the laws concerning the registration of commercial motor carriers.

Texas Civil Statutes, Article 6675c, states that motor carrier registration provisions do not apply to "... a motor vehicle the department by rule exempts because the vehicle is subject to comparable registration and a comparable safety program administered by another agency." The Texas Alcoholic Beverage Commission adopted 16 TAC §35.5, which became effective August 26, 1996. With the adoption of §35.5, vehicles transporting liquor under a private carrier permit issued in accordance with the Texas Alcoholic Beverage Code, Chapter 42, are subject to registration and safety programs comparable to those required by the department. In addition to a comparable registration program, the Texas Alcoholic Beverage Commission's safety program includes comparable liability insurance levels, proof of insurance, insurance filing, safety affidavit, and suspension/cancellation requirements. As such, the department has determined that such carriers should be exempt from motor carrier registration under this department's rules.

The amendment to §18.2 revises the definition of "commercial motor carrier" to exclude vehicles transporting liquor under a private carrier permit issued in accordance with the Texas Alcoholic Beverage Code, Chapter 42. The amendment will release affected permittees from the obligation of complying with overlapping regulations by the Texas Alcoholic Beverage Commission and the Texas Department of Transportation. Such dual regulation unnecessarily raises the costs of governmental agencies and regulated businesses.

No comments were received.

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Texas Civil Statutes, Article 6675c, which authorizes the department to carry out the provisions of those laws governing motor carrier registration.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702923

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: March 24, 1997

Proposal publication date: November 12, 1996

For further information, please call: (512) 463-8630

Chapter 25. Traffic Operations

The Texas Department of Transportation adopts the repeal of §§25.301-25.309, concerning the Landscape Cost Sharing Program; §§25.601-25.610, concerning the Adopt-a-Freeway Program; §§25.701-25.709, concerning the Adopt-a-Highway Program for Landscaping Program; and §§25.801-25.809, concerning the Adopt-a-Highway Program. The repeals are adopted without changes to the proposed text as published in the December 6, 1996, *Texas Register* (21 TexReg 11772) and will not be republished.

These sections are being adopted for repeal because the subject matter more appropriately falls within Chapter 2, Environmental Policy, and due to the simultaneous adoption of new §§2.61-2.70, concerning public participation programs, which adopts in an amended form provisions of the repealed sections.

No comments were received on the proposed repeals.

Subchapter F. Landscape Cost Sharing Program

43 TAC §§25.301-25.309

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, §203.002, which authorizes and empowers the commission to lay out, construct, maintain, and operate a modern state highway system.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702924

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Effective date: March 24, 1997

Proposal publication date: December 6, 1996

For further information, please call: (512) 463-8630

Subchapter J. Adopt-A-Freeway Program

43 TAC §§25.601-25.610

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, §203.002, which authorizes and empowers the commission to lay out, construct, maintain, and operate a modern state highway system.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702925
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: March 24, 1997
Proposal publication date: December 6, 1996
For further information, please call: (512) 463-8630

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Subchapter K. Adopt-A-Highway for Landscap-
ing Program

43 TAC §§25.701-25.709

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, §203.002, which authorizes and empowers the commission to lay out, construct, maintain, and operate a modern state highway system.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702926
Bob Jackson
Deputy General Counsel
Texas Department of Transportation

Effective date: March 24, 1997
Proposal publication date: December 6, 1996
For further information, please call: (512) 463-8630

◆ ◆ ◆
Subchapter L. Adopt-A-Highway

43 TAC §§25.801-25.809

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, §203.002, which authorizes and empowers the commission to lay out, construct, maintain, and operate a modern state highway system.

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.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702927
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: March 24, 1997
Proposal publication date: December 6, 1996
For further information, please call: (512) 463-8630

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1. 31 TAC §65.72(b)(2)(B)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1[3]	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Spotted and Guadalupe bass.		12	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30
Drum, red.	3*	20	28*
<p>*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.</p>			

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder, except on board a licensed commercial shrimp boat.			
Jewfish.	0		
Mackerel, king.	2	23	No limit
Mackerel, Spanish.	7	14	No limit
Marlin, blue.	No limit	114	No limit
Marlin, white.	No limit	81	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish.	No limit	76	No limit
Saugeye	3	18	No limit
Seatrou, spotted.	10	15	No limit
Shark: all species, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Sheepshead.	5	12	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	5	15	No limit
Snapper, vermilion.	No limit	8	No limit
Snook.	1	24	28
Tarpon.	0		Catch and release only*
*Special Regulation: One tarpon 80 inches in length or larger may be retained during a license year when affixed with a properly executed Tarpon Tag.			

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Walleye.	5	16	No limit

Figure 2: 31 TAC §65.72(b)(2)(C)(i)
(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson)	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
[Lake Toledo Bend (Newton, Sabine and Shelby).]	[8 (in any combination)]	[14]	[Possession Limit is 10.]
<u>Bass: largemouth and smallmouth</u>			
<u>Lake Toledo Bend (Newton, Sabine and Shelby).</u>	<u>8</u> (in any combination)	<u>14</u>	<u>Possession Limit is 10.</u>
Bass: largemouth.			
Lakes Brownwood (Brown), Coleman (Coleman), Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Lost Creek (Jack), Champion Creek (Mitchell), and Ratcliff (Houston).	5	16	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lakes Fairfield (Freestone), San Augustine City (San Augustine), Ray Roberts (Denton, Cooke, and Grayson), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), Madisonville (Madison), Bright (Williamson), Cooper (Delta and Hopkins), Alan Henry (Garza), Aquilla (Hill), [Athens (Henderson),] Bellwood (Smith), Casa Blanca (Webb), Old Mount Pleasant City (Titus), Rusk State Park (Cherokee), Welsh (Titus), [and] Braunig (Bexar), <u>Bryan (Brazos), and Gilmer (Upshur).</u>	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release and only.
Purtis Creek State Park Lake (Henderson and Van Zandt), Gibbons Creek Reservoir (Grimes), and Raven Walker.	0	No Limit	Catch and release only except that any bass 22 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lakes Pinkston (Shelby), Waxahachie (Ellis), Bridgeport (Jack and Wise), Weatherford (Parker), Georgetown (Williamson), Tyler State Park (Smith), Striker (Rusk), Caddo (Marion and Harrison), Burke-Crenshaw (Harris), Grapevine (Denton and Tarrant), and Davy Crockett (Fannin).	5	14-18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Bastrop (Bastrop), Houston County (Houston), Nacogdoches (Nacogdoches), Fork (Wood, Rains and Hopkins), Monticello (Titus), Mill Creek (Van Zandt), Joe Pool (Dallas, Ellis, and Tarrant), Walter E. Long (Travis), [and] Timpson (Shelby), and Athens (Henderson).	5	14-21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Fayette County (Fayette)	5	14-24 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Belton (Bell and Coryell), Cisco (Eastland), Greenbelt (Donley), Oak Creek (Coke), Stillhouse Hollow (Bell), White River (Crosby), Whitney (Bosque, Hill and Johnson), <u>Alan Henry (Garza)</u> , and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12-15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
<u>Bass: spotted</u>			
<u>Lake Alan Henry (Garza)</u>	<u>3</u>	<u>18</u>	
<u>Lake Toledo Bend (Newton, Sabine and Shelby).</u>	<u>8</u>	<u>12</u>	<u>Possession Limit is 10.</u>
Bass: striped, its hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No Limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No Limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 10.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No Limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
<u>Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3128 bridge.</u>	<u>2</u> (in any combination)	<u>18</u>	
Lakes Conroe, Livingston, Limestone, Palestine, Somerville, Buchanan, Canyon, Georgetown, Inks, Lyndon B. Johnson, Marble Falls, and Travis.	25	12	
<u>Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).</u>	<u>25</u>	<u>0</u>	
Catfish: blue.			
Lakes E. V. Spence (Coke) and Fort Phantom Hill (Jones)	5	18	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Catfish: channel and blue catfish, their hybrids, and subspecies.		"	
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
<u>Trinity River (Polk and San Jacinto) from the Lake Livingston dam to and including Shawnee Creek.</u>	<u>10</u> (in any combination)	<u>12</u>	<u>No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.</u>
Community fishing lakes, Bellwood (Smith), Dixieland (Cameron), and Bell Street (Tom Green).	5 (in any combination)	12	
Catfish: flathead			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			
Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	<u>10</u> [No Limit]	Possession limit is 50. <u>From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.</u>

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
<u>Lake Texoma (Cooke and Grayson).</u>	<u>37</u> (in any combination)	<u>10</u>	<u>Possession limit is 50.</u>
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Shad: gizzard and threadfin shad.			
The Trinity River below Lake Livingston between Polk and San Jacinto Counties.	500 (in any combination)	No Limit	Possession Limit 1,000 in any combination.
Sunfish: Bluegill, redear, green, warmouth, and longear sunfish, their hybrids and subspecies.			
Purtis Creek State Park Lake (Henderson and Van Zandt).	25 (in any combination)	7	
<u>Trout: Rainbow and brown trout, their hybrids, and subspecies.</u>			
<u>Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.</u>	<u>1</u>	<u>18</u>	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
<u>Walleye.</u>			
<u>Lake Texoma (Cooke and Grayson).</u>	<u>5</u>	<u>18</u>	

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

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 summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Monday, March 17, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

AGENDA:

A Prehearing Conference is scheduled for the above date and time in SOAH DOCKET NUMBER 473-97-0472-Application of THE LOWER COLORADO RIVER AUTHORITY to a mend its Certificate of Convenience and Necessity (CCN) to authorize proposed transmission line in Williamson County, Texas (PUC Docket Number 16801).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: March 3, 1997, 1:00 p.m.

TRD-9702951

Wednesday, May 7, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

AGENDA:

A Hearing on the Merits is scheduled for the above date and time in SOAH DOCKET NUMBER 473-97-0393- JOINT APPLICATION OF CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY AND SOUTHWESTERN ELECTRIC POWER COMPANY for approval of Preliminary Integrated Resource Plans and for Related Good Cause Exceptions (PUC Docket Number 16995).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: March 4, 1997, 3:59 p.m.

TRD-9703008

Texas Department on Aging

Thursday, March 13, 1997, 8:00 a.m.

Texas Department on Aging, 4900 North Lamar Boulevard, Room 4429

Austin

Audit and Finance Committee

AGENDA:

Consider and possibly act on: Call to order. Minutes of January 16, 1997 meeting. Budget report. Consider the following and make recommendations to Board: Change the expenditure categories of the budget/expenditure format to be consistent with Uniform Statewide Accounting system; Recommendation of the Administrative Law Judge regarding disposition of the issuance of disallowance to the Alamo Area Council of Governments; Internal Audit of the TDoA United States Department of Agriculture (USDA) Cash Program. Audit updates-internal and State Auditor. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, (512) 444-2727.

Filed: March 5, 1997, 9:29 a.m.

TRD-9703034

Thursday, March 13, 1997, 9:30 a.m.

Texas Department on Aging, 4900 North Lamar Boulevard, Room 5501

Austin

Board on Aging

AGENDA:

I. Consider and possibly act on: Call to order. Minutes of January 16, 1997 meeting. Chairman's, Executive Director's reports. Public testimony. Select representative for Citizens Advisory Council from Central Texas region. Audit and Finance Committee-Budget report; Change expenditure categories of budget format to be consistent with Uniform Statewide Accounting System; Recommendation of the Administrative Law Judge regarding disposition of the issuance of disallowance to the Alamo Area Council of Governments; Internal Audit of the TDoA United States Department of Agriculture Cash Program; Audit updates-internal and State Auditor. Executive Director workplan performance report-Executive session. Board resolutions. Board member travel.

II. Reports. Legislative update-Consider action to support additional legislative funding requests of the senior volunteer programs; Options for Independent Living Advisory Committee; Governor's Conference on Aging Committee; Texas Silver Haired Legislature; TDoA/American Association for Retired Persons Collaborative Committee; General announcements. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, (512) 444-2727.

Filed: March 5, 1997, 9:30 a.m.

TRD-9703035

◆ ◆ ◆
Texas Commission on Alcohol and Drug Abuse (TCADA)

Thursday, April 10, 1997, 9:00 a.m.

911 B Pegues Place, Woodbine Treatment Center

Longview

Regional Advisory Consortium (RAC), Region 4

AGENDA:

Call to order; welcome and introductions of guests; approval of minutes; TCADA update and comments; old business; new business; public comment; and adjournment.

Contact: Heather Harris, 9001 North IH 35, Suite 105, Austin, Texas 78753, (512) 349-6669.

Filed: March 5, 1997, 8:33 a.m.

TRD-9703028

◆ ◆ ◆
Friday, April 11, 1997, 9:00 a.m.

201 North Magnolia Street, Woodville Inn, Dogwood Parlor Room, Highway 69 Downtown

Woodville

Regional Advisory Consortium (RAC), Region 5

AGENDA:

Call to order; welcome and introductions of guests; approval of minutes; TCADA update and comments; old business; new business; public comment; and adjournment.

Contact: Heather Harris, 9001 North IH 35, Suite 105, Austin, Texas 78753, (512) 349-6669.

Filed: March 5, 1997, 8:32 a.m.

TRD-9703027

◆ ◆ ◆
Texas Bond Review Board

Tuesday, March 11, 1997, 10:00 a.m.

Clements Building, Committee Room 5, Fifth Floor, 300 West 15th Street

Austin

Planning Session

AGENDA:

I. Call to Order

II. Approval of Minutes

III. Discussion of Proposed Issues

A. University of North Texas-Consolidated University Revenue-Refunding Bonds, Series 1997

B. Texas State University System, Lamar University- Combined Fee and Revenue System Refunding Bonds, Series 1997

C. Texas Department of Housing and Community Affairs-Multifamily Housing Revenue Bonds (Canyon Crest Apartments Project) Series 1997

IV. Other Business

Discussion of legislative action/schedules

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: March 3, 1997, 4:16 p.m.

TRD-9702963

◆ ◆ ◆
Tuesday, March 11, 1997, 10:30 a.m.

Clements Building, Committee Room 5, Fifth Floor, 300 West 15th Street

Austin

AGENDA:

I. Call to Order

II. Consideration of Proposed Issue

Board of Regents of the University of North Texas-Consolidated University Revenue Refunding Bonds, Series 1997

III. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: March 3, 1997, 4:16 p.m.

TRD-9702965

◆ ◆ ◆
Texas Cancer Council

Friday, March 21, 1997, 10:00 a.m.

American Cancer Society-Dallas, 8900 West John Carpenter Freeway
Dallas

Board of Directors-Planning and Program Development Committee

AGENDA:

The Committee will discuss and possibly act on: minutes of the November 6, 1996 meeting; staff proposal and adoption of committee review process; priorities for FY 1998 initiatives; review of concept papers for FY 1998 initiatives; update on FY 1997 Action Plan and the Texas Cancer Plan; priorities, process, and desired outcomes of the Council planning retreat; next meeting date; other business; and adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Sue Marshall, at (512) 463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily F. Untermeyer, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: March 4, 1997, 9:20 a.m.

TRD-9702970

State Employee Charitable Campaign

Wednesday, March 12, 1997

1117 Trinity, Room 144T

Austin

Local Employee Committee

AGENDA:

Welcome and Introductions

Awards Ceremony Planning

1997 Campaign Strategy

1996-1997 Budget Approval

Local Campaign Manager Selection

Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, extension 25.

Filed: March 4, 1997, 3:58 p.m.

TRD-9703005

Wednesday, March 12, 1997, Noon

1212 North Velasco

Angleton

Local Employee Committee

AGENDA:

I. Update on Final Campaign Number

II. Overview of SECC for new members

III. LEC Responsibilities

IV. Selection of LCM

Contact: Esther M. Bernard, P.O. Box 1959, Angleton, Texas 77516-1959, (409) 849-9402, Fax (409) 848-0259

Filed: March 5, 1997, 8:19 a.m.

TRD-9703023

Thursday, March 13, 1997, 3:00 p.m.

901 Ross Avenue

Dallas

Local Employee Committee

AGENDA:

1. Orientation

2. Review LCM Applications

Contact: Esther M. Bernard, P.O. Box 1959, Angleton, Texas 77516-1959, (409) 849-9402; Fax (409) 848-0259

Filed: March 5, 1997, 8:19 a.m.

TRD-9703025

Friday, March 14, 1997, 3:00 p.m.

4000 Southpark Drive, Suite 1200

Tyler

Local Employee Committee

AGENDA:

I. Call to Order

II. Review of 1996 Budget

III. Review of 1996 LCM Expenses

IV. Review 1997 application for LCM

V. Appoint 1997 LCM

Contact: Ron Greathouse, 4000 Southpark Drive, Suite 1200, Tyler, Texas 75703-1744, (903) 581-6376, Fax (903) 581-6462.

Filed: March 5, 1997, 8:19 a.m.

TRD-9703022

Tuesday, March 18, 1997, 1:00 p.m.

Abilene State School, 2501 Maple Street

Abilene

Local Employee Committee

AGENDA:

I. Call to Order

II. Select Local Campaign Manager

III. Report on 1996 Campaign

IV. Discussion of 1997 Campaign

V. Approve 1997 Budget

VI. Schedule next meeting and discuss agenda

Contact: Elizabeth Gray, 240 Cypress, Abilene, Texas 79604-0082, (915) 677-1841, Fax (915) 677-1847.

Filed: March 5, 1997, 8:19 a.m.

TRD-9703024

◆ ◆ ◆
General Land Office

Monday, March 14, 1997, 2:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Veterans Land Board

AGENDA:

Approval of previous board meeting minutes; consideration of all the steps necessary for the execution of a forward transaction to refund the State of Texas Veterans Land Bonds, Series 1984; consideration of all the steps necessary for the execution of a forward transaction to refund the State of Texas Veterans Land Bonds, Series 1989; consideration of all the steps necessary for the execution of a fixed-to-floating interest rate swap in connection with the State of Texas Veterans Housing Assistance Program, Fund II series 1996 Taxable Refunding Bonds.

Contact: Linda K. Fisher, 1700 North Congress, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 3, 1997, 11:12 a.m.

TRD-9702938

◆ ◆ ◆
Texas Department of Insurance

Monday, April 7, 1997, 10:00 a.m.

3333 Guadalupe, Tower 1, Room 100

Austin

AGENDA:

The Commissioner of Insurance will hold an open meeting under Docket Number 2285 on April 7, 1997 at 10:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider the manual rate filing for commercial risks and classes of risks submitted by the Texas Catastrophe Property Insurance Association. Interested persons may present either oral or written comments on the filing at the open meeting.

Copies of the manual rate filing are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the filing, please contact Angie Arizpe at (512) 463-6326 (refer to Reference Number P-0297-6).

Comments on the filing must be submitted no later than April 4, 1997 to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment

should be submitted to Phil Presley, Chief Actuary, P.O. Box 149104, MC 105-5, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 21.49, which requires notification to the *Texas Register* of the manual rate filing and exempts the proceeding from the contested case hearing procedures in Article 1.33B, Insurance Code and Chapter 2001, Government Code.

Contact: Sylvia Gutierrez, 333 Guadalupe Street, Austin, Texas, (512) 463-6327.

Filed: March 5, 1997, 9:28 a.m.

TRD-9703032

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Texas Department of Licensing and Regulation

Thursday, March 25, 1997, 1:15 p.m.

Kemper National Insurance Companies 14550 Torrey Chase Boulevard, Fifth Floor

Houston

Board of Boiler Rules Task Force on Controls and Safety Devices for Automatically Fired Boilers

AGENDA:

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Discussion
5. Next Meeting
6. Adjourn

All facilities are accessible to persons with disabilities. Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Barbara Stoll at (512) 475-2858 at least two working days prior to the meeting so that appropriate arrangements can be made.

Contact: George Bynog, 920 Colorado, Austin, Texas 78711, (512) 463-7365.

Filed: March 4, 1997, 10:48 a.m.

TRD-9702981

◆ ◆ ◆
Wednesday, March 26, 1997, 9:30 a.m.

Kemper National Insurance Companies, 14550 Torrey Chase Boulevard, Fifth Floor

Houston

Board of Boiler Rules Task Force on Nonwelded Boilers

AGENDA:

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Adoption of Minutes of July 30, 1996

- 5. Discussion
- 6. Next Meeting
- 7. Adjourn

All facilities are accessible to persons with disabilities. Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Barbara Stoll at (512) 475-2858 at least two working days prior to the meeting so that appropriate arrangements can be made.

Contact: George Bynog, 920 Colorado, Austin, Texas 78711, (512) 463-7365.

Filed: March 4, 1997, 10:48 a.m.

TRD-9702982

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Texas State Board of Examiners of Psychologists

Wednesday, March 19, 1997, 8:30 a.m.

333 Guadalupe, Suite 2-400A

Austin

Complaints Review Committee # Two

AGENDA:

Complaints Review Committee # Two of the Board will meet to discuss, consider and vote on recommendations for disposition of various complaints. The Committee will also go into Executive Session to take confidential interviews concerning pending complaints pursuant to §551.084, Texas Government Code, V.T.C.S., 1996, as well as Executive Session to seek legal advice pursuant to §551.071, Texas Government Code, V.T.C.S., 1996.

Contact: Sherry L. Lee, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

Filed: March 4, 1997, 2:25 p.m.

TRD-9702993

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Public Utility Commission of Texas

Friday, March 21, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket Number 17140- Application of Multitechnology Services, Inc. (MTS) for a Service Provider Certificate of Operating Authority (SPCOA). Applicant intends to provide local dialtone, enhanced calling features, and enhanced services through the resale of services provided by the underlying carriers or through the provisioning of services on facilities provided by MTS. Applicant's requested SPCOA geographic area includes the boundaries of the following LEC exchanges: Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company of Texas, United Telephone Company of Texas, Inc., Sugarland Telephone Company, Lufkin-Conroe Telephone Exchange, Inc., and any other incumbent LEC or certified telecommunications provider with over 31,000 access lines. Persons who wish to intervene

or otherwise participate in these proceedings should make appropriate filings or comments to the commission by March 14, 1997.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7152.

Filed: March 3, 1997, 10:50 a.m.

TRD-9702936

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Friday, March 21, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket Number 17153- Application of Advanced Radio Telecom Corporation (ART) for a Certificate of Operating Authority (COA). Applicant intends to provide "last mile" connectivity for business customers over fixed wireless broadband, high speed digital telecommunications circuits. ART will operate as an intraexchange, or local carrier, with services offered on both an interstate and intrastate basis. ART initially will offer dedicated, non-switched services. ART intends to introduce fully-switched local services at an indefinite date in the future, on a common carrier basis. ART requests that it be granted unlimited authority to provide local switched as well as special and dedicated services within the state. Applicant's requested COA geographic area includes the State of Texas. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by March 14, 1997.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7152.

Filed: March 3, 1997, 10:50 a.m.

TRD-9703014

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Railroad Commission of Texas

Tuesday, March 11, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

1. Recommendation regarding creation of a task force to develop a model LP-gas municipal ordinance.
2. Appointment of a representative to the National Fire Protection Association Pamphlet Committee.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7033.

Filed: March 3, 1997, 2:57 p.m.

TRD-9702957

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Texas State Soil and Water Conservation Board

Wednesday, March 12, 1997, 8:00 a.m.

Red Lion Hotel-Airport, 6121 North IH35 at US Highway 290, Salon A

Austin

AGENDA:

Minutes from January 24, 1997; District Director Appointments; Name Change Request from Harris Soil and Water Conservation District Number 442; Public Information/Education Report; Legislative Update; State Board Member Elections; Request from Association of Texas Soil and Water Conservation Districts; Report on 1997 NACD National Convention; State Level Agreement Between the Natural Resources Conservation Service and the Texas State Historic Preservation Officer; Allocation of Statewide 503 Cost-Share Funds; Division and Reorganization of Nueces-Jim Wells-Kleberg-Kenedy Soil and Water Conservation District #311; Reports from Agencies and Guests; Section 319 Status Report; Senate Bill 503 Status Report; USDA North Bosque River Project; Coastal Management Plan; Board Member Travel; Human Resources Update; 1998-1999 Biennium Legislative Appropriation Request; Fiscal Year 1997 Expenditure Report for Six Months Ending February 28, 1997; Status Report on District Financial Statements and Audits; Status Report on Current Performance Measure Audit; Cooperative Brush Management Proposal; Next Regular State Board Meeting — May 21, 1997.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 78503, (817) 773-2250-TEX-AN 820-1250.

Filed: March 3, 1997, 4:16 p.m.

TRD-9702962

Texas Turnpike Authority

Tuesday, March 11, 1997, 10:30 a.m.

Administration Office, 3015 Raleigh Street

Dallas

Board of Directors (by telephone conference call)

AGENDA:

The agenda includes approval of minutes of the Board of Directors meeting of February 26, 1997; consideration of interlocal/interagency agreements involving engineering, procurement and construction matters related to the Dallas North Tollway System, the 183-A Turnpike, the Southwest Parkway, the Trinity Parkway, the S11 45/Loop 1 Turnpike and the SH 130 route turnpike; consideration of award of engineering design and service contracts and supplemental agreements for the Dallas North Tollway System, the 183-A Turnpike, the SH 130 Turnpike, the SH 45/Loop 1 Turnpike and the Southwest Parkway; Executive Session-Pursuant to Chapter 551, Subchapter D, Texas Government Code: (a) Subsection 551.071(1), advice from counsel and TTA personnel about pending or contemplated litigation and/or settlement offers related to the Dallas North Tollway system, (b) §§551.071, 551.072, and 551.073, deliberations concerning real property value, purchase, exchange, lease, gift, donation, and/or negotiated settlement included in Right-of-Way Appraisal/Offer/Purchase List Number 72 and advice from counsel concerning negotiations/settlements/offers related to the Dallas North Tollway System, the 183-A Turnpike, or the Southwest Parkway, (c) §551.074, deliberations concerning appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of various staff persons

and positions, (d) §551.075, briefing by TTA Staff and questioning of TTA staff related to the Dallas North Tollway System and other TTA operations; consideration of acceptance of ROW appraisal/offer/purchase list Number 72 related to the Dallas North Tollway System, the 183-A Turnpike, and the Southwest Parkway; consideration of TTA legislative proposals, (a) discussion of legislative proposals that may be recommended by the TTA Directors, (b) consideration of actions relative to legislative proposals, positions or directives. The complete agenda is attached.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: March 3, 1997, 1:22 p.m.

TRD-9702952

University Interscholastic League

Thursday, March 6, 1997, Noon

Thompson Conference Center, 26th and Red River Streets

Austin

Waiver Review Board

AGENDA:

AA. Request for a waiver of the Parent-Residence Rule by Feliza Miller representing Pleasanton High School in Pleasanton, Texas.

BB. Request for a waiver of the Parent-Residence rule by Nick Mosen representing Coronado High School in El Paso, Texas

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: March 3, 1997, 10:04 a.m.

TRD-9702934

University of North Texas/University of North Texas Health Science Center

Monday, March 10, 1997, 3:00 p.m.

University of North Texas, Avenue C at Chestnut, Administration Building, Board Room

Denton

Board of Regents

AGENDA:

UNT: Resolution Authorizing the Vice President for Finance and Business Affairs, in Consultation with the University's Financial Advisor and Bond Counsel, to Proceed with the Refinancing of the University's Outstanding Consolidated University Revenue Refunding Bonds, Series 1987 by Awarding the Sale of the University's Consolidated University Revenue Refunding Bonds, Series 1997, in the Aggregate Principal Amount of \$8,230,000; Eagle Student Services Center; Fouts Field Renovation Project

Contact: Jana Dean, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: March 5, 1997, 9:27 a.m.

TRD-9703031

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Board of Vocational Nurse Examiners

Monday, Tuesday, March 10-11, 1997, 9:00 a.m.

Hobby Building, Tower II, Room 225, 333 Guadalupe Street

Austin

Board Meeting

EMERGENCY REVISED AGENDA:

VIII. New Business

C. Rule Changes:

Rule 235.42- Amendment

Rule 239.19- Amendment

REASON FOR EMERGENCY: Error- did not include Rule 239.19 in original submission.

Contact: Marjorie A. Bronk, 333 Guadalupe, Suite 3-400, Austin, Texas 78701, (512) 305-8100.

Filed: March 3, 1997, 2:58 p.m.

TRD-9702958

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Texas Workforce Commission

Tuesday, March 11, 1997, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; Public comment; staff reports, update on activities relating to Skills Development Fund and other activities as determined by the Acting Executive Director; discussion, consideration and possible action regarding potential and pending applications for certification and recommendations to the Governor of local workforce development boards for certification; discussion, consideration and possible action regarding recommendations to TCWEC of strategic and operational plans submitted by local workforce development boards; discussion, consideration and possible action regarding the transition of child care programs to workforce development boards; presentation and discussion of Audit Report #97-006-20 on Regional Office Administration; Discussion, consideration and possible action regarding possible transitional employment benefits for TWC employees displaced from state employment by H.B. 1863; discussion, consideration and possible action regarding a state's right to determine base period for unemployment insurance wage credit and other related matters; discussion, consideration and possible action on adoption of TWC rule relating to waiver requirements (40 TAC §801.2); Executive session pursuant to Texas Government Code §551.074 to discuss personnel matters with executive staff, and other pending litigation; actions, if any, resulting from executive session; consideration and action on whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; consideration and action on higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 11; and set date of next meeting.

Contact: Esther Hajdar, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: March 3, 1997, 2:48 p.m.

TRD-9702956

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Regional Meetings

Meetings filed March 4, 1997

Austin Transportation Study, Policy Advisory Committee Executive Committee, met at Municipal Annex Building, Large Conference Room, 301 West Second Street, Austin, March 7, 1997 at 11:00 a.m. Information may be obtained from Michael R. Aulick, 301 West Second Street, Austin, Texas 78701, (512) 499-2275. TRD-9702984.

Austin Transportation Study, Policy Advisory Committee, met at Joe C. Thompson Conference Center 26th and Red River, Room 1.102, Austin, March 10, 1997 at 6:00 p.m. Information may be obtained from Michael R. Aulick, 301 West Second Street, Austin, Texas 78701, (512) 499-2275. TRD-9703012.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors called meeting, met at 1124A-Regal Row, Austin, March 7, 1997 at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, fax: (512) 282-7016. TRD-9702967.

Bexar—Medina—Atascosa Water Control and Improvement District One, Board of Directors, met at 226 State Highway 132, Natalia, March 10, 1997 at 8:30 a.m. Information may be obtained from John W. Ward, III, P.O. Box 170, Natalia, Texas 78059, (210) 665-2132. TRD-9702990.

Brazos Valley Workforce Development Board, Executive Committee, met at 1706 East 29th Street, Bryan, March 6, 1997 at 3:30 p.m. Information may be obtained from Angela Alaniz, P.O. Drawer 4128, Bryan, Texas 77805, (409) 775-4244, fax: (409) 775-3466. TRD-9702935.

Canyon Regional Water Authority, Regular Board Meeting, met at Guadalupe Fire Training Facility, 850 Lakeside Pass Drive, New Braunfels, March 10, 1997 at 7:00 p.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass, New Braunfels, Texas 78130-8233. (210) 609-0543. TRD-9702986.

Colorado County Appraisal District, Board of Directors, will meet at 400 Spring Street, Grand Jury Room, Columbus, March 11, 1997 at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9702950.

Concho Valley Council of Governments, Economic Development District, met at 5014 Knickerbocker Road, San Angelo, March 5, 1997 at 4:00 p.m. Information may be obtained from Troy Williamson, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9702937.

Cypress Springs Water Supply Corporation, Board of Directors, met at the Office of Cypress Springs Water Supply Corporation, 4430 Highway 115, South of Mount Vernon, March 10, 1997, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860-3400. TRD-9702975.

Dallas Housing Authority, Board of Commissioners, will meet at the Melrose Hotel, 3015 Oaklawn Avenue, Dallas, March 13, 1997.

at 8:00 a.m. Information may be obtained from Betsy Horn, 3939 N. Hampton Road, Dallas, Texas 75212, (214) 951-8302. TRD-9703002.

Dallas Area Rapid Transit, I-635 HOV Lane Grand Opening, Lincoln City Club, Lincoln Center, met at 5440 LBJ Freeway, Dallas, March 7, 1997 at 4:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9702987.

Deep East Texas Council of Governments, Board of Directors and Grants Application Review Committee, will meet at Highway 190 West, San Jacinto County, Point Blank, March 20, 1997 at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9703018.

Education Service Center, Region V, Board, met at 2295 Delaware Street, Beaumont, March 5, 1997 at 1:00 p.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703-4299, (409) 838-5555. TRD-9702955.

Grand Parkway Association, Board of Directors, will meet at 5757 Woodway, 140 East Wing, Houston, March 13, 1997 at 8:30 a.m. Information may be obtained from L. Diane Schenke, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9702976.

Lee County Appraisal District, Appraisal Review Board, will meet at 218 East Richmond Street, Giddings, March 12, 1997 at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9702949.

Kendall Appraisal District, Appraisal Review Board, will meet at 121 South Main Street, Boerne, March 18, 1997 at 9:00 a.m. Information may be obtained from Leta Schlinke, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, fax: (210) 249-3975. TRD-9702973.

Liberty County Central Appraisal District, Appraisal Review Board, will meet at 315 Main Street, Liberty, March 13, 1997 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9703017.

Manville Water Supply Corporation, Regular Board Meeting, will meet at 108 North Commerce Street, Coupland, March 11, 1997 at 7:00 p.m. Information may be obtained from Tony Graf, 108 N. Commerce Street, Coupland, Texas 78615, (512) 272-4044. TRD-9703026.

Permian-Basin Regional Planning Commission, Workforce Development Board, will meet at 2910 La Force Boulevard, Midland, March 12, 1997 at 10:00 a.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9703004.

Red Bluff Water Power Control District, Board of Directors, met at 111 West Second Street, Pecos, March 10, 1997 at 1:00 p.m.

Information may be obtained from Jim Ed Miller, 111 West Second Street, Pecos, Texas 79772, (915) 445-2037. TRD-9702983.

San Patricio Appraisal District, Board of Directors, will meet at 1146 East Market, Sinton, March 13, 1997 at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9702996.

Sharon Water Supply Corporation, Annual Membership, will meet at the Winnsboro City Auditorium in Winnsboro Near the Rodeo Arena in Winnsboro, March 17, 1997, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342-3525. TRD-9703001.

Tri County Special Utility District (SUD), Board of Directors, met at Highway Seven East, Marlin, March 10, 1997, 7:00 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, (817) 803-3553. TRD-9702977.

Wheeler County Appraisal, Board of Directors, met at 103 East Texas, Courthouse Square, Wheeler, March 10, 1997, at 5:00 p.m. Information may be obtained from Larry Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9702978.

Meetings Filed March 5, 1997

Erath County Appraisal District, Board of Directors, met at 1390 Harbin Drive, Stephenville, March 10, 1997, at 8:00 a.m. Information may be obtained from Angi Couch, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9703033.

Kendall Appraisal District, Board of Directors, Budget Committee, met at 121 South Main Street, Boerne, March 10, 1997, at 5:30 p.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax (210) 249-3975. TRD-9703040.

Lometa Rural Water Supply Corporation, Board of Directors, met at 506 West Main Street, Lometa, March 10, 1997, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158 Lometa, Texas 76853, (512) 752-3505. TRD-9703041.

South Plains Association of Governments, Executive Committee will meet at 1323 58th Street, Lubbock, March 11, 1997, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9703045.

South Plains Association of Governments, Board of Directors will meet at 1323 58th Street, Lubbock, March 11, 1997, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9703039.

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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Health

Notice of Public Hearing for the Home and Community Support Services Agencies Rules

The Texas Department of Health will hold a public hearing to receive public comments on the proposed rules (25 Texas Administration Code, Chapter 115) concerning the home and community support services agencies at 9:00 a.m., Monday, March 17, 1997, in the Lecture Hall, Room K-100, Main Building, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756

Comments will be accepted for a period of 30 days after publication of the proposed rules in the March 14, 1997 *Texas Register* issue. Comments on the proposed rules may be submitted to Julia R. Beechinor, Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, phone (512) 834-6647, fax (512) 834-6714.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702934

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: March 3, 1997

Health and Human Services Commission

Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 96-19, Amendment Number 520.

The amendment clarifies current Primary Home Care reimbursement methodology practices. The amendment is effective September 1, 1996.

If additional information is needed, please contact Kathy Hall, Texas Department of Human Services at (512) 438-3702.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702966

Marina S. Henderson

Executive Deputy Commissioner

Health and Human Commission

Filed: March 4, 1997

Texas Department of Human Services

Open Solicitation for Hardeman County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2443), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in *Hardeman County*, County # 099, identified in the *January 24, 1997*, issue of the *Texas Register* (22 TexReg 985) for the six month continuous period (*July 1996 - December 1996*): §§93.4, 91.6, 91.5, 92.5, 93.1, 91.9. Potential contractors desiring to construct a 90-bed nursing facility in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Gary L. Allen, Certification, Enrollment, & Billing Services, Long Term Care-Regulatory, Mail Code (Y-976), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5:00 p.m., April 10, 1997, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential

contractor will pay liquidated damages if the 180-day and/or 18-month deadline(s) described in 40 TAC §19.2443(q) are not met. The signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 180-day deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 18-month deadline is not met, liquidated damages are an additional 5.0% of the estimated total cost of the proposed or completed facility. Fourth, there must be acceptable written documentation that the preliminary architectural plans for the proposed or completed facility have been submitted to the Architectural Section of TDHS. Each application must be complete at the time of its receipt. TDHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703019

Glenn Scott

Legal Services

Texas Department of Human Services

Filed: March 4, 1997

Texas Department of Insurance

Filing Notification Pursuant to the Insurance Code Article 21.49, Texas Catastrophe Property Insurance Association

The Commissioner of Insurance will hold an open meeting under Docket Number 2285 on April 7, 1997 at 10:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider the manual rate filing for commercial risks and classes of risks submitted by the Texas Catastrophe Property Insurance Association. Interested persons may present either oral or written comments on the filing at the open meeting.

Copies of the manual rate filing are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the filing, please contact Angie Arizpe at (512) 463-6326 (refer to Reference Number P-0297-6).

Comments on the filing must be submitted no later than April 4, 1997 to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Phil Presley, Chief Actuary, P.O. Box 149104, MC 105-5, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 21.49, which requires notification to the *Texas Register* of the manual rate filing and exempts the proceeding from the contested case hearing procedures in Article 1.33B, Insurance Code and Chapter 2001, Government Code.

Issued in Austin, Texas, on March 5, 1997.

TRD-9703036

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: March 5, 1997

Texas Lottery Commission

Request for Proposals

The purpose of this Request for Proposals (RFP) is to obtain proposals for Executive Search Services for the Texas Lottery Commission.

The purpose of this Request for Proposals (RFP) is to obtain proposals from executive search firms for a broad-based nationwide search to identify a diverse pool of exceptional candidates who each meet the criteria established in the attached Job Posting for Executive Director of the Texas Lottery Commission (hereinafter referred to as the Texas Lottery), Position #020297. This Job Posting is hereby incorporated by reference for all purposes as if the same were set out verbatim herein.

Proposers responding to this RFP are expected to provide the Texas Lottery with information, evidence and demonstrations that will permit awarding a contract in a manner that best serves the interests of the Texas Lottery.

This RFP is issued by the Texas Lottery. The Texas Lottery is the sole point of contact with regard to all procurement and contractual matters relating to the services described herein. The Texas Lottery is the only office authorized to clarify, modify, amend, alter or withdraw the specifications, terms and conditions of this RFP and any contract awarded as a result of this RFP.

Schedule Of Events

The time schedule for awarding a contract under this RFP is shown below. The Texas Lottery reserves the right to amend the schedule. March 11, 1997, 8:00 a.m. - RFP Issued. March 14, 1997, 4:00 p.m. - Deadline For Receipt: Letter Of Intent To Propose. March 17, 1997, 4:00 p.m. - Deadline For Receipt: Written Questions March 19, 1997 - Answers to Written Questions Issued. March 24, 1997, 4:00 p.m. - Deadline For Receipt: Proposal March 31, 1997 - Announcement of Apparent Successful Proposer.

To obtain a copy of the RFP, please contact: Terry J. Johnson, Senior Attorney, Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630, (512) 371-4935 or by Fax (512) 371-4989.

Issued in Austin, Texas, on March 4, 1997.

TRD-9703029

Michelle Guerrero

Administrative Assistant

Texas Lottery Commission

Filed: March 4, 1997

Texas Department of Mental Health and Mental Retardation

Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation will hold a public hearing at 2:00 p.m. on Tuesday, April 1, 1997, in Room 240 of TDMHMR Central Office, located at 909 West 45th Street, Austin, Texas. The purpose of this hearing will be to accept oral and written testimony concerning the proposed new

rules governing the TDMHMR In-Home and Family Support Program (Chapter 401, Subchapter L).

The proposed new rules are published in this issue of the *Texas Register*. A copy of the proposal may be requested from TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711 or by calling (512) 206-4516.

Individuals requiring an interpreter for the hearing impaired should contact Sheila Wilkins in the Office of Policy Development, by calling (512) 206-4516 at least 72 hours prior to the hearing.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702985

Ann K. Utley

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: March 4, 1997

Public Utility Commission of Texas

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a new PLEXAR-custom service for Doctor's Hospital in Port Arthur, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for a New PLEXAR-Custom Service for Doctor's Hospital in Port Arthur, Texas, pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 17129.

The Application. Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-custom service for Doctor's Hospital in Port Arthur, Texas. The geographic service market for this specific service is the Beaumont local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702945

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 3, 1997

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a 114 station addition to the existing PLEXAR-custom service for Webb County in Laredo, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for a 114 station addition to the existing PLEXAR-Custom Service for Webb County in Laredo, Texas, pursuant to Pub-

lic Utility Commission Substantive Rule 23.27. Tariff Control Number 17134.

The Application. Southwestern Bell Telephone Company is requesting approval for a 114 station addition to the existing PLEXAR-custom service for Webb County in Laredo, Texas. The geographic service market for this specific service is the Laredo local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702946

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 3, 1997

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for a 90 station addition to the existing PLEXAR-custom service for Longview Bank & Trust in Longview, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for a 90 station addition to the existing PLEXAR-Custom Service for Longview Bank & Trust in Longview, Texas, pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 17131.

The Application. Southwestern Bell Telephone Company is requesting approval for a 90 station addition to the existing PLEXAR-custom service for Longview Bank & Trust in Longview, Texas. The geographic service market for this specific service is the Longview local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702947

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 3, 1997

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for a new PLEXAR-custom service for Laredo Independent School District in Laredo, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for a new PLEXAR-Custom Service for Laredo Independent School District in Laredo, Texas, pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 17130.

The Application. Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-custom service for Laredo Independent School District in Laredo, Texas. The geographic service market for this specific service is the San Antonio local access and transport area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702948

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 3, 1997

◆ ◆ ◆
Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28.

Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on or after March 10, 1997, an application for approval of promotional rates, pursuant to Public Utility Commission Substantive Rule 23.28.

Tariff Title and Number: Application of Central Telephone Company of Texas (Centel) for Approval of Promotional Rate Offering Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 17137.

The Application: Central Telephone Company of Texas proposes to offer a promotional Call Forwarding Services Package which combines Call Forwarding-Busy and Call Forwarding-No Answer features to customers for 30 days at no charge.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702995

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 4, 1997

◆ ◆ ◆
Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on or after March 10, 1997, an application for approval of promotional rates, pursuant to Public Utility Commission Substantive Rule 23.28.

Tariff Title and Number: Application of United Telephone Company of Texas, Inc. (United) for Approval of Promotional Rate Offering Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 17138.

The Application: United Telephone Company of Texas, Inc. proposes to offer promotional rates for Call Forwarding-Busy or No Answer service which combines Call Forwarding-Busy and Call Forwarding-No Answer features into one service offering to customers for 30 days at no charge.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702994

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 4, 1997

◆ ◆ ◆
Public Notices of Interconnection Agreement

On January 24, 1997, Southwestern Bell Telephone Company (SWB) and Preferred Carrier Services, Inc. (Preferred Carrier) collectively referred to as Applicants filed a joint application for approval of an interconnection agreement under the Federal Telecommunications Act of 1996 (FTA) (Public Law Number 104-104, 110 Statutes 56 (1996), (to be codified at 47 U.S.C. §§151 et seq.) and the Public Utility Regulatory Act of 1995 (PURA95) (Texas Revised Civil Statutes Annotated article 1446c-0 Vernon Supplement 1997). The joint application has been designated Docket Number 16949. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 18 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the Applicants. The comments should specifically refer to Docket Number 16949. As a part of the comments, an interested person may request that a

public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 21, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, an Administrative Law Judge (ALJ) of the commission will determine whether to conduct further proceedings concerning the joint application. The ALJ shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The ALJ may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the Applicants, if necessary, and briefing and oral argument. The ALJ may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Consumer Affairs at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 16949.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702953

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 3, 1997

On January 31, 1997, Southwestern Bell Telephone Company (SWB) and Intermedia Communications, Inc. (ICI) collectively referred to as Applicants filed a joint application for approval of an interconnection agreement under the Federal Telecommunications Act of 1996 (FTA) (Public Law Number 104-104, 110 Statutes 56 (1996), (to be codified at 47 U.S.C. §§151 et seq.) and the Public Utility Regulatory Act of 1995 (PURA95) (Texas Revised Civil Statutes Annotated article 1446c-0 Vernon Supplement 1997). The joint application has been designated Docket Number 16999. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the

public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 18 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the Applicants. The comments should specifically refer to Docket Number 16999. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 21, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, an Administrative Law Judge (ALJ) of the commission will determine whether to conduct further proceedings concerning the joint application. The ALJ shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The ALJ may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the Applicants, if necessary, and briefing and oral argument. The ALJ may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Consumer Affairs at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 16999.

Issued in Austin, Texas, on March 3, 1997.

TRD-9702954

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 3, 1997

Texas Department of Transportation
Request for Proposals

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract Number 19-745P5006: Preparation of construction plans, specifications, and estimates (PS&E) for proposed construction of freeway main lanes and frontage roads, on US 71 in Bowie County, from US 59 to the Arkansas State Line (Texarkana).

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (903) 799-1214, by mail at P.O. Box 1210, Atlanta, Texas 75551-1210, or hand delivered to TxDOT, Atlanta District Headquarters, 701 East Main, Atlanta, Texas, 75551. Letters of interest will be received until 5:00 p.m. on Friday, March 21, 1997. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and contract number 19-745P5006. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive a Request for Proposal packet. TxDOT will not issue Request for Proposal packet without receipt of letter of interest.)

Proposal Submittal Deadline: Proposals for Contract Number 19-745P5006 will be accepted until 5:00 p.m., Friday, April 18, 1997, at the TxDOT Atlanta District Headquarters previously mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Dennis M. Beckham, P. E., District Design Engineer at (903) 799-1201 or fax (903) 799-1214.

Issued in Austin, Texas, on March 4, 1997.

TRD-9702979

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Filed: March 4, 1997

Texas Workforce Commission

Notice of Intent to Review Catalogue

The Texas Workforce Commission (TWC) intends to review catalogue offerings for the following:

Primary Offer, Project Phase 1:

Information Technology Architecture Assessment

Appeals and Commission Appeals Redesign Feasibility Study.

Mandatory Offer, Project Phase 2:

Staff categories and rates for an Appeals and Commission Appeals Redesign

Offeror requirements for phase 1 include, but are not limited to:

Conduct an assessment of the current TWC Information Technology architecture

Make Information Technology strategy recommendations

Review Appeals and Commission Appeals business processes and system requirements

Analyze technology and development alternatives

Make recommendations for technological solutions and development strategies

Appeals and Commission Appeals System requirements include, but are not limited to:

Generate electronic appeal requests from local offices, self service terminals and public kiosks,

Create electronic case files for appeals cases,

Track appeals and commission appeals,

Extract data from existing TWC mainframe Unemployment Insurance systems,

Schedule appeals hearings and hearing locations and maintain Commission Appeals docket,

Assign cases to hearings officers and attorneys,

Image and verify appeals documents received from appellants, local TWC offices and other TWC departments,

Digitally record and store appeals hearings

Enable hearings officers and commission attorneys to create and edit case decisions and summaries,

Print notice of hearings and decisions for mailing to appellants and interested parties,

Facilitate remote hearing officers and attorneys,

Generate required case listings, reports and statistics,

Enable appellants to inquire about appeals and commission appeals cases via TWC IVR systems

Interfaces to existing TWC UI systems, including Benefits and Tax.

In order to be considered for this procurement, a vendor must be a Qualified Information Systems Vendor (QISV) approved by the Texas General Services Commission (GSC), at (512) 463-3035. Interested vendors are responsible for ensuring that they meet GSC criteria as a QISV. TWC will issue a request for offers to QISVs whose catalogue offerings best fit the requirements of the agency within the two weeks following publication of this notice. The agency may cancel the procurement if it is deemed to be in the best interest of the State of Texas to do so.

Once the offer has been accepted by TWC, the vendor is to begin project phase 1 May, 1997.

Vendors capable of meeting the above requirement who are interested in this acquisition may contact:

Jane Haney

Texas Workforce Commission

Applications Development & Maintenance

101 East 15th Street, Room 526T

Austin, Texas 78778

Fax (512) 463-2442

Phone (512) 463-2482

Issued in Austin, Texas, on March 4, 1997.

TRD-9703009

Esther Hajdar

Director of Legal Services
Texas Workforce Commission
Filed: March 4, 1997



Texas Register Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

- Chapter 285 \$25 update service \$25/year (*On-Site Wastewater Treatment*)
 Chapter 290 \$25 update service \$25/year (*Water Hygiene*)
 Chapter 330 \$50 update service \$25/year (*Municipal Solid Waste*)
 Chapter 334 \$40 update service \$25/year (*Underground/Aboveground Storage Tanks*)
 Chapter 335 \$30 update service \$25/year (*Industrial Solid Waste/Municipal
Hazardous Waste*)

Update service should be in printed format 3 1/2" diskette 5 1/4" diskette

Texas Workers Compensation Commission, Title 28

- Update service \$25/year

Texas Register Phone Numbers

	(800) 226-7199
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/ Copies and Certifications	(512) 463-5578
Direct Access	(512) 463-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections Information	(512) 463-5650
Statutory Documents Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Public Officials	(512) 463-5552
Uniform Commercial Code Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

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.

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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.

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7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
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34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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