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TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 11 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.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.

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.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: 1-800-328-9352.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

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

How to update To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704..... 950, 1820

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

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the *TAC* number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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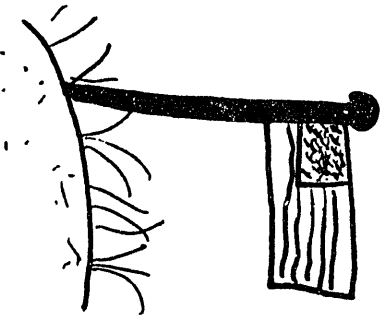
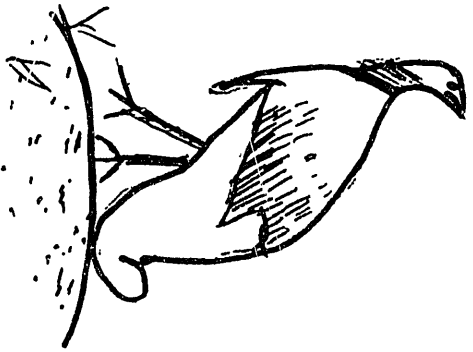
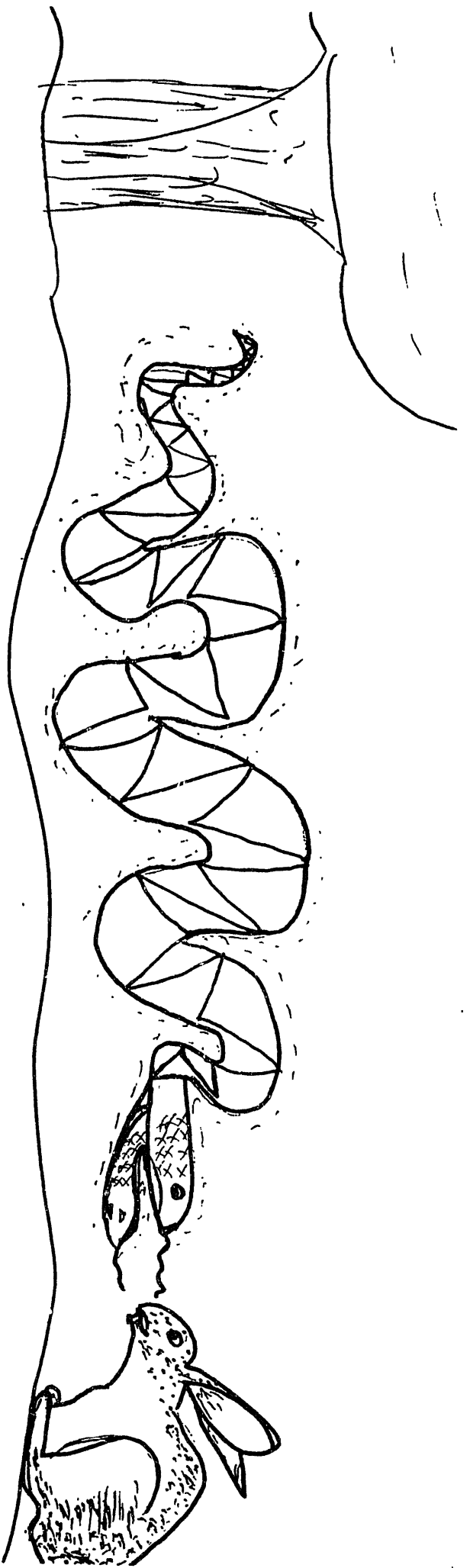
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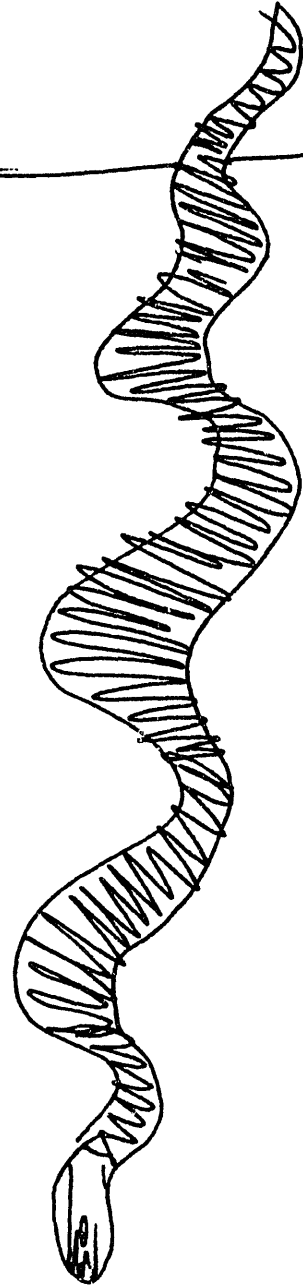
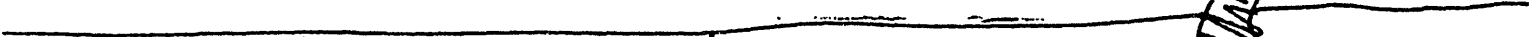
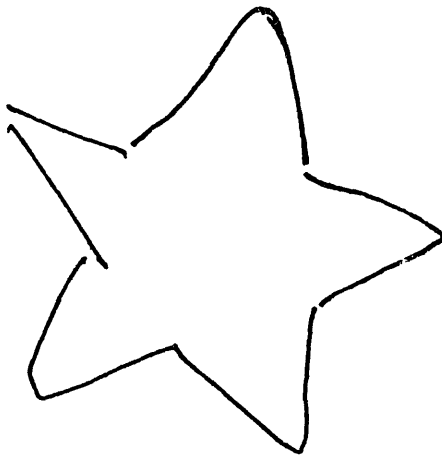
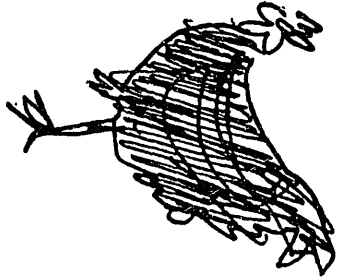
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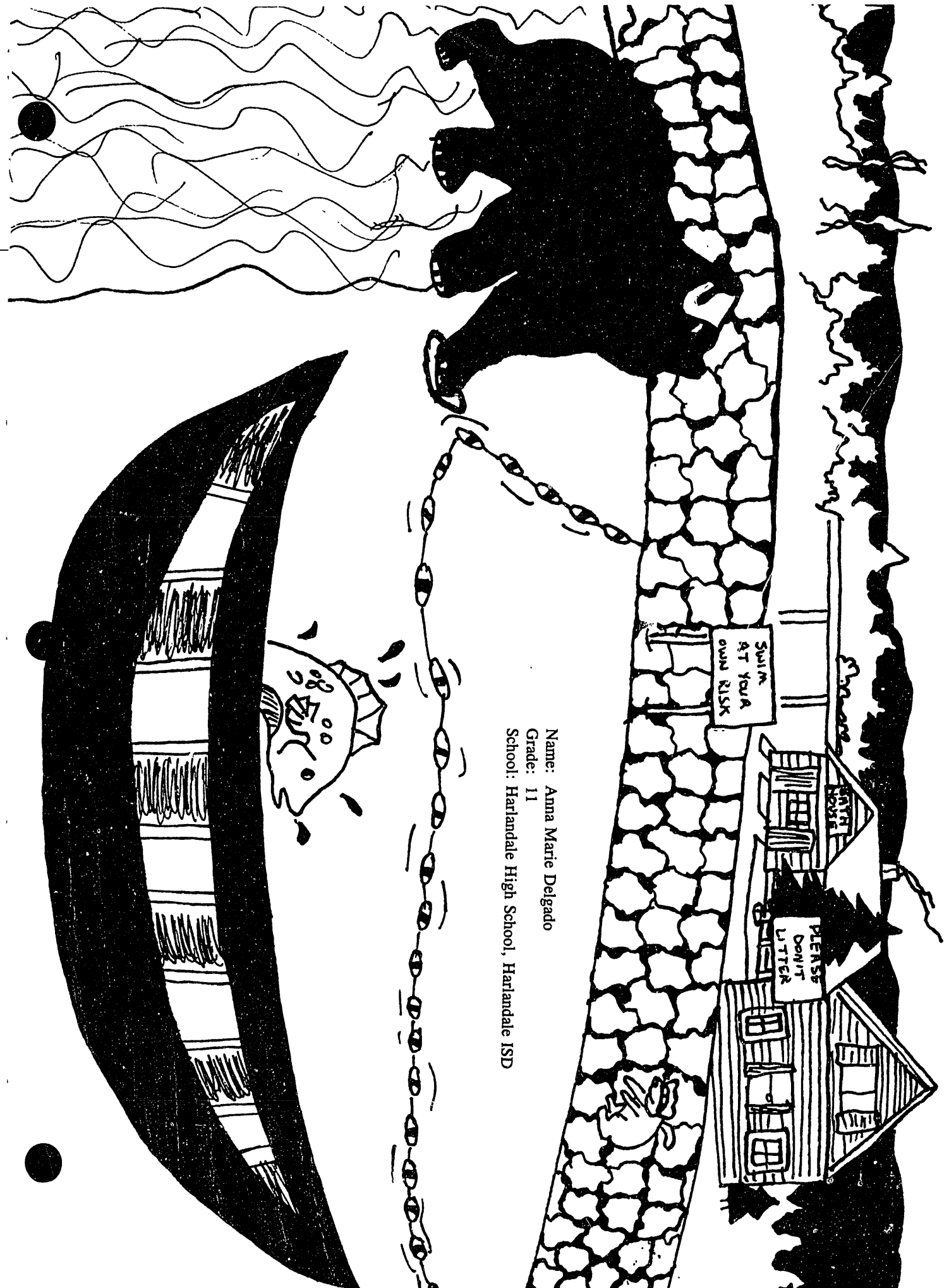


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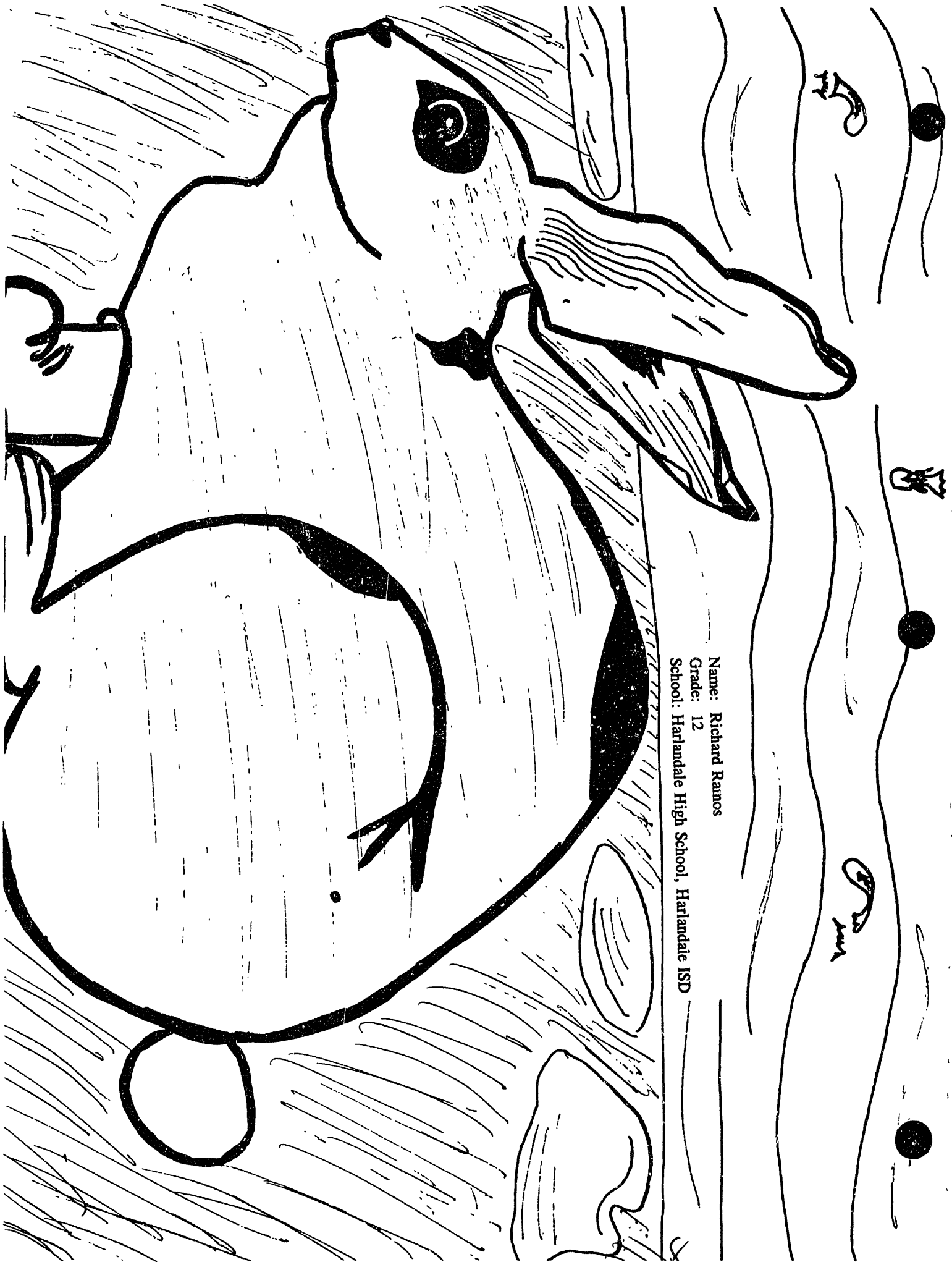




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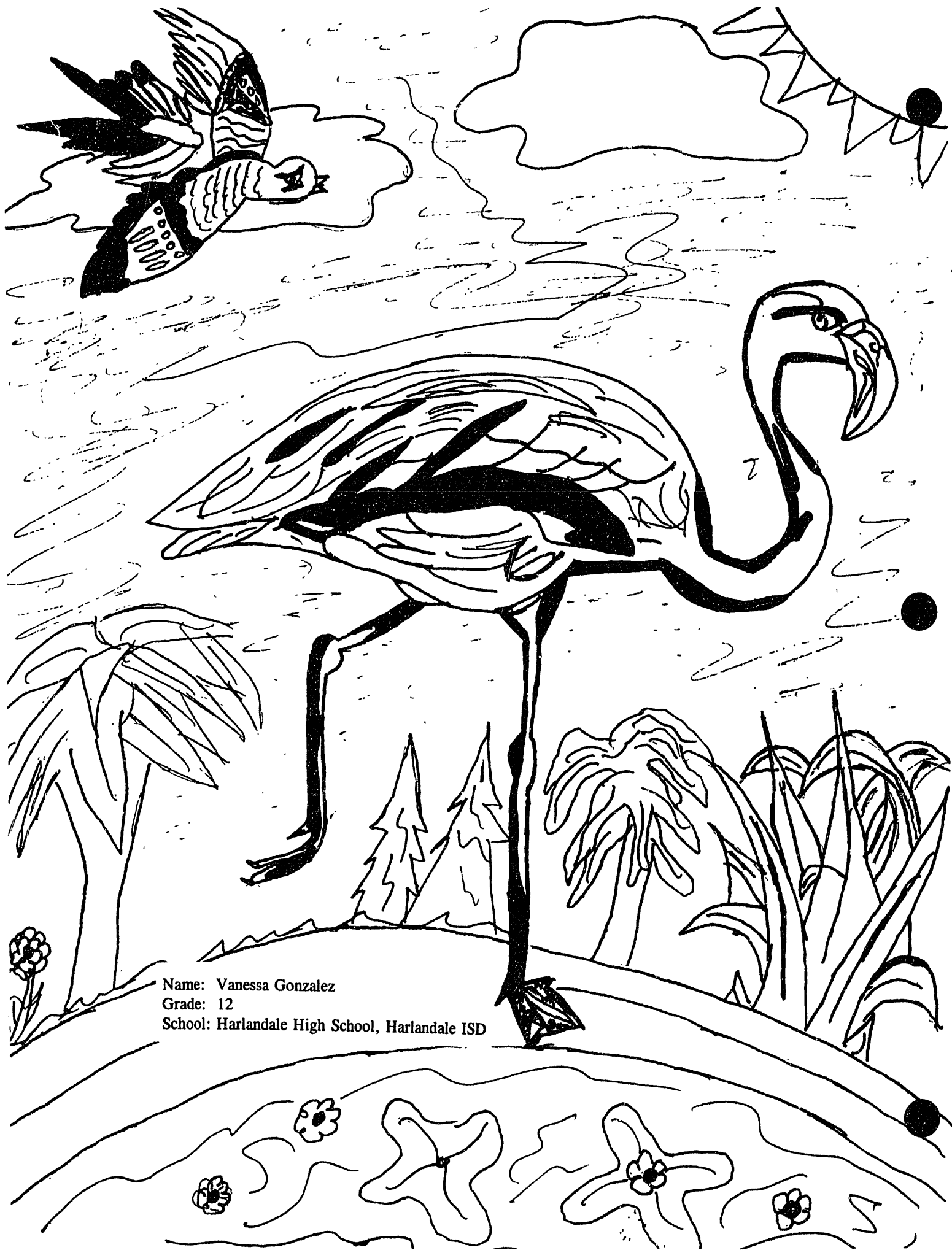
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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Texas Ethics Commission Opinions

AOR-279. The Texas Ethics Commission has been asked to consider whether a member of the legislature may use political contributions to pay for using an airport owned by a corporation in which the legislator has an interest.

AOR-280. The Texas Ethics Commission has been asked to consider the following four questions about "revolving door" provisions: 1. Does Government Code, §572.054 apply to a former General Counsel of the Texas Department of Insurance? 2. Is a former General Counsel of the Texas Department of Insurance prohibited from appearing on a matter before the Department on his or her own behalf in the first year after leaving the Department? 3. Is a former General Counsel of the Texas Department of Insurance prohibited from consulting on a pro bono basis regarding a matter with which he or she was directly concerned during the period of service? 4. Is a former General Counsel of the Texas Department of Insurance prohibited from representing a nonprofit entity before the Department for compensation under Insurance Code, Article 1.06C in the first year after leaving the Department?

Issued in Austin, Texas, on January 31, 1995.

TRD-9501493

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: February 6, 1995



AOR-281. The Texas Ethics Commission has been asked to consider whether a former employee of a state agency may accept employment with a private company. The former state employee's job duties would include providing training for individuals who are seeking certification by the state agency for which the formerly state employee worked.

AOR-282. The Texas Ethics Commission has been asked to consider the following questions: 1. The Gifts to a Public Service statute prohibits the conferring of a benefit on a governmental official. Similarly, the Government Code, §305.024 prohibits the gifts of cash to a member of the legislature or executive branch. Although married couples in Texas are affected by community property laws, this should not lead to the conclusion that payment to a spouse for the performance of bona fide labor can be construed in any manner as conferring a benefit on a governmental official or a cash gift. Is there a legal problem relative to these statutes when the payment from the lobbyist to the spouse is conditioned explicitly on the performance of contractually agreed-upon work? 2. The spouse will financially participate in the actual cost of the office space and related expense (supplies, secretarial assistance, telephone charges, FAX costs). The methodology for determining how much the spouse should pay for office space will be a simple proportional calculation based on total square footage of space being used for the spouse's actual office area and a pro-rate share of the cost for the common area space (workrooms, reception area, etc.). The spouse will contribute to the cost of secretarial help based on the number of hours of work performed for the spouse and the secretarial help's hourly wage. Payment for copying will be based on a per-page

charge according to actual incremental costs (amortized cost of copying machine, paper, toner, etc.), and the proportional cost for use of a FAX machine will be the monthly amortized cost divided by the number of persons using the machine. The spouse will pay for directly-incurred expenses like long-distance telephone calls, paper, etc. Is this a legally sufficient methodology for having the spouse participate financially in the overall operation of the lobbying office? Is there any violation of any law within the jurisdiction of the Ethics Commission related to the spouse's financial participation in these office expenses so long as the spouse's payments accurately reflect the accrual of actual expenses and there is no subsidy on the part of the registrant? 3. Section 572.023 specifies the items that must be disclosed through a financial statement by a member of the legislature or executive branch. Subsection (12) appears to pertain to legal entities like law firms. I do not believe it should apply to a situation in which a spouse registers under Chapter 305 and enters into a contractual work relationship with another registered lobbyist. Is this a correct interpretation? If not, must the member of the legislature or executive branch report the spouse's financial relationship with the registered lobbyist who is paying for contractually agreed-upon labor?

AOR-283. The Ethics Commission has been asked to consider whether the moratorium on political contributions in the Election Code, §253.034 applies to a state district judge.

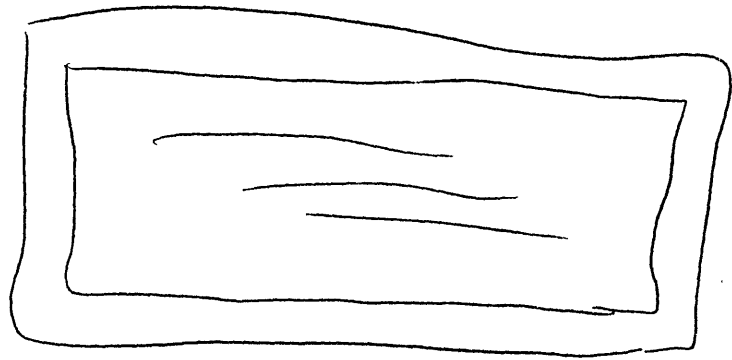
Issued in Austin, Texas, on February 2, 1995.

TRD-9501494

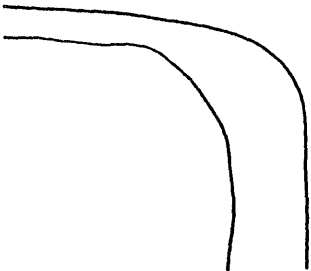
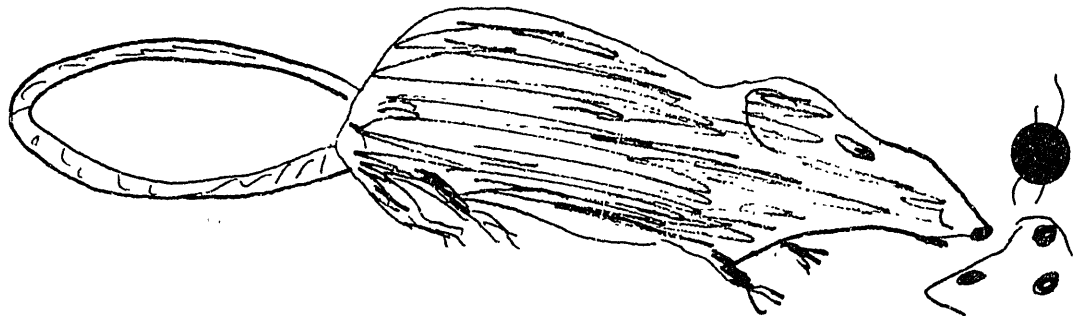
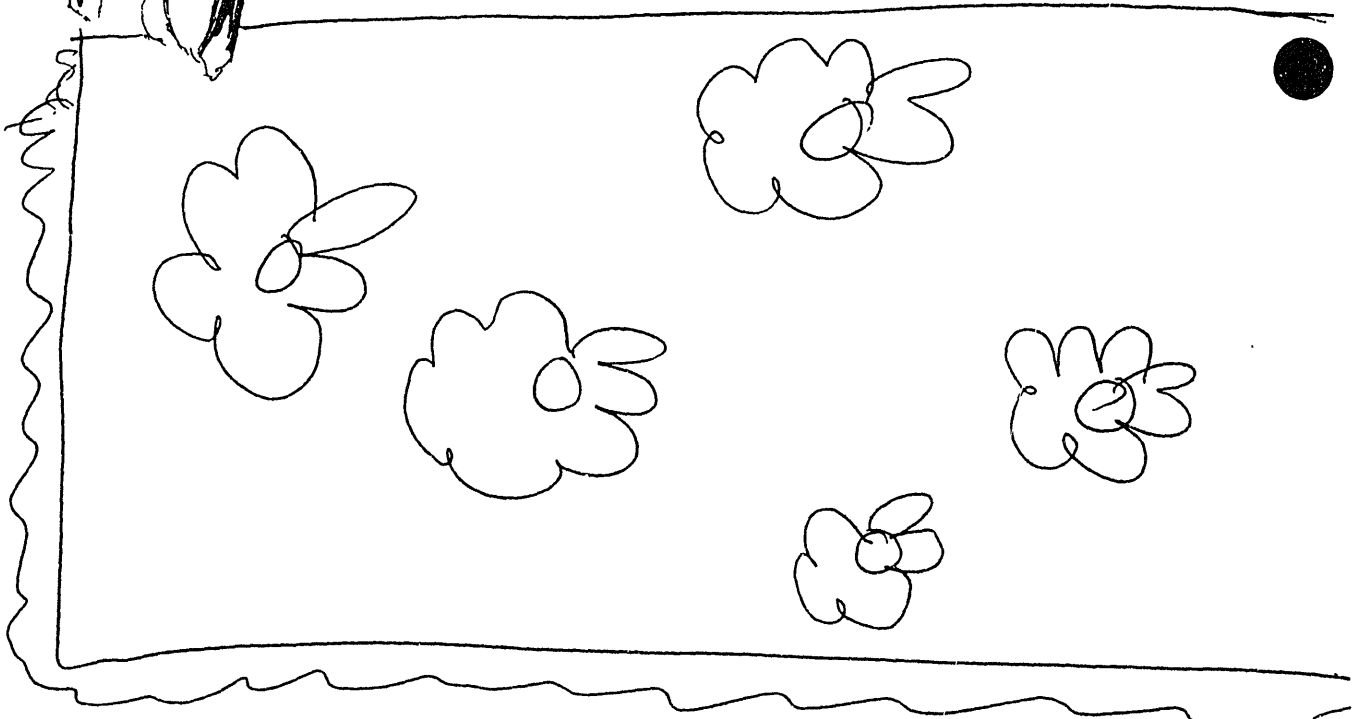
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Filed: February 6, 1995





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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 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

Minimum Standards for Accreditation of [Public] Libraries in the State Library System

• 13 TAC §§1.75, 1.81, 1.86,

The Texas State Library and Archives Commission proposes new rule §1.86, and amendments to §1.75 and §1.81, concerning the standards for accreditation of non-public libraries in the state library system. With the passage of House Bill 1589 (Acts 73rd Legislature—Regular Session §155) in the last legislative session, membership in the Texas Library System can now be offered to non-public libraries (those libraries operated by public school districts, institutions of higher education, or units of state or local government). These rules and amendments specify the criteria for the accreditation of these libraries as members of the state library system.

Edward Seidenberg, director, Library Development Division, has determined that for each of the first five years the sections are in effect there will no fiscal implications for state and local government as a result of enforcing or administering the sections.

Mr. Seidenberg also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of these rules will be that these types of libraries will have an opportunity to join the Texas Library System, if the contracting organizations agree to accept non-public libraries as members. This will enhance the sharing of library materials and will improve services to residents of the region. All proposed amendments and additions have been reviewed by the Library Systems Act Advisory Board. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Edward Seidenberg, Director, Library Development Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927, within 30 days of publication in the *Texas Register*.

The new section and the amendments are proposed under the Government Code, §441.136, that provides the Texas State Library and Archives Commission with the authority to adopt rules for the administration of the Texas Library System.

The Government Code, §441.121 to §441.138, are affected by the proposed new rule and amendments.

§1.75. [Public Library:] Nondiscrimination. A [public] library shall have on file at the state library a statement certifying that no person shall be excluded from participation in or denied the benefits of the services of that library on the grounds of race, color, or national origin.

§1.81. Quantitative Standards for Accreditation of Library. Minimum requirements for [major resource system] membership of public libraries in the Texas Library System:

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

§1.86. Standards for Accreditation of Libraries Operated by Public School Districts, Institutions of Higher Education, or Units of State or Local Government. These standards for accreditation apply only to non-public libraries that are operated by a public school district, institution of higher education, or unit of state or local government. The standards for accreditation of public libraries are specified in §1.81 of this title (relating to Quantitative Standards for Accreditation of Library).

(1) Governing bodies of these libraries shall agree to make library resources accessible to all residents of the system without user fees. Systems that propose to admit these libraries as members shall submit, as part of their annual program of service, a plan and budget for the sharing of library materials that shall include, at mini-

mum, an active program of interlibrary lending by all member libraries.

(2) These non-public libraries may participate in system projects that are cooperative in nature, such as resource sharing projects, projects to establish union catalogs, and continuing education programs. These libraries shall not participate in projects designed for the exclusive benefit of an individual library, such as collection development allocations and equipment purchases.

(3) Any library eligible for membership in the Texas Library System under this subsection will be accredited by the following standards:

(A) For libraries operated by a public school district:

(i) the district must submit written verification from the Texas Education Agency that it meets the standards specified in 19 TAC 63.11 "Requirements for School Library Media Programs";

(ii) the district must submit written verification that it is academically accredited by the Texas Education Agency. Districts classified as academically unaccredited are ineligible for membership in the Texas Library System;

(iii) the district must submit an annual report regarding the operation of its library, in accordance with the timetable and conditions specified in §1.85 of this title (relating to Annual Report).

(iv) The unit of membership in the Texas Library System shall be the school district.

(B) For libraries operated by an institution of higher education:

(i) the institution must submit written verification that it is accredited by an accrediting agency recognized by the Texas Higher Education Coordinating Board;

(ii) the institution must submit an annual report regarding the oper-

ation of its library, in accordance with the timetable and conditions specified in §1.85 of this title (relating to Annual Report).

(iii) The unit of membership in the Texas Library System shall be the campus library. Community college districts shall apply as a single unit; other institutions with campus libraries in multiple locations in one county shall apply as a single unit. Libraries affiliated with professional schools that demonstrate they are administered and budgeted independently of the campus library may apply for separate membership.

(C) For special libraries operated by a unit of state or local government (refers to libraries that are not public libraries, or not operated by a public school district or institution of higher education), the library must:

(i) be operated by a recognized governmental unit, such as a state agency, county, municipality, or special district;

(ii) have expenditures of at least \$5,000 per year;

(iii) have at least 7,500 items of library materials;

(iv) have a facility or portion of a facility that is used for the library program and is open at least 20 hours per week;

(v) have a staff member serving as a head librarian who is employed in library duties at least 20 hours per week;

(vi) submit an annual report regarding the operation of the library, in accordance with the timetable and conditions specified in §1.85 of this title (relating to Annual Report).

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 1, 1995.

TRD-9501334 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 463-5460

System Advisory Council

• 13 TAC §1.112

The Texas State Library and Archives Commission proposes an amendment to §1.112, concerning the election of advisory councils and the appointment of lay representatives for libraries in the state library system. With the passage of House Bill 1589 (Acts 73rd

Legislature-Regular Session §155) in the last legislative session, membership in the Texas Library System can now be offered to non-public libraries (those libraries operated by public school districts, institutions of higher education, or units of state or local government). This amendment specifies the procedures and requirements for appointment of lay representatives by members of the state library system.

Edward Seidenberg, director, Library Development Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Seidenberg 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 enforcing the section will be that these types of libraries will have an opportunity to join the Texas Library System, if the contracting organizations agree to accept non-public libraries as members. This will enhance the sharing of library materials and will improve services to residents of the region. All proposed amendments and additions have been reviewed by the Library Systems Act Advisory Board. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Edward Seidenberg, Director, Library Development Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Government Code, §441.136, that provides the Texas State Library and Archives Commission with the authority to adopt rules for the administration of the Texas Library System.

The Government Code, §§441.121-441.138, are affected by the proposed amendment.

§1.112. Advisory Council Election. The governing body of each system member [library of the system] shall biennially elect or appoint a lay representative for the purpose of electing council members. A lay representative may be any person not employed as a staff member [by] in the [public] library he or she is to represent. Each governing body may also elect or appoint an alternate lay representative who may perform the duties of the representative in his or her absence. An alternate lay representative may not be elected to the advisory council. The major resource center shall have one member on the council. Thereafter, the representatives in an annual meeting shall elect members of their group to fill council vacancies arising due to expiration of terms of office. The term of office for representatives and alternates shall be the state fiscal year.

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 3, 1995.

TRD-9501439 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 463-5450

Part IV. Texas Antiquities Committee

Chapter 41. Practice and Procedure

• 13 TAC §41.5, §41.11

The Texas Antiquities Committee (Committee) proposes amendments to §41.5 and §41.11, concerning Definitions, and Location and Discovery of Cultural Resources and Landmarks. These changes are needed to clarify and streamline rules related to the location and discovery of archeological sites and to limit potential adverse impacts to significant archeological sites on public lands in Texas. The changes to §41.5, concerning Definitions, include an amendment/clarification of what minimum age criterion cemeteries or human burials need to meet to be classified as historic under the Antiquities Code. Additionally, a definition for the term designated historic district was added to this section of the rules. The changes to §41.11, concerning Location and Discovery of Cultural Resources and Landmarks, include amendments which clarify and limit the type and scale of development projects which would be reviewed under the jurisdiction of the Antiquities Code, prior to construction. A list of project categorical exclusions as proposed will limit the total number of projects that need to be reviewed and save time/costs for all parties involved in the location and protection of significant cultural resources in Texas.

Dr. James E. Bruseth, deputy state historic preservation officer, has determined that for the first five-year period the rules are effect there may be some minor fiscal implications for state or local government as a result of enforcing or administering the rules. Those implication may occur as a result of less money or time being spent by state or local governments in managing the protection of cultural resources, due to the proposed potential decrease in the number of development projects being reported to the Department of Antiquities Protection for review.

Dr. Bruseth also has determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of administering the rule will be more efficient regulations related to the protection of significant cultural resources. There will be no effect on small businesses. There are no anticipated new economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Dr. James E. Bruseth, Deputy State Historic Preservation Officer, Texas Historical Commission, Department of Antiquities Protection, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendments are proposed under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), §191.02, which provides the Texas Antiquities Committee with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

Title 9, Natural Resource Code is affected by these proposed amendments.

§41.5. Definitions. The following words and terms, when used in this chapter and the Antiquities Code of Texas, shall have the following meanings, unless the context clearly states otherwise. Designated historic district areas of archeological or historical significance indicated by listing on the National Register of Historic Places, designated as State Archeological Landmarks, or identified by State agencies, counties, and municipalities as historically sensitive areas. State agency, county, and municipality historically sensitive areas include designations by local landmarks commissions and by local preservation ordinances.

Archeological Site—Any place containing evidence of human activity, including but not limited to the following:

(A) (No change.)

(B) Non-habitation sites. Non habitation sites result from use during specialized activities and may include standing structures. Descriptions of each kind of site are given.

(i)-(iv) (No change.)

(v) Cemeteries and burials, marked and unmarked, are special locales set aside for burial purposes. Cemeteries contain the remains of more than one person placed in a regular or patterned order. Burials, in contrast, may contain the remains of one or more individuals located in a common grave in a locale not formerly or subsequently used as a cemetery. The site area encompasses the human remains present and also gravestones, markers, containers, coverings, garments, vessels, tools, and other goods which may be present. Cemeteries and burials that are publicly-owned and are of prehistoric origin (i.e., dating prior to A.D. 1500), or classified as historic, are protected under the Antiquities Code. Cemeteries are considered historic if there are interments within the cemetery that are at least one

hundred years ago. Individual burials within a cemetery are not considered historic unless the interments were buried at least 50 years ago.

(vi)-(x) (No change.)

§41.11. Location and Discovery of Archeological [Cultural] Resources and Landmarks. The Texas Natural Resource Code of 1977, Title 9, Heritage, Chapter 191, Antiquities Code of Texas, §191.002 (relating to Declaration of Public Policy), declares that it is the public policy and in the interest of the State of Texas to locate archeological sites and other cultural resources, in, on, or under any land within the jurisdiction of the State of Texas. The Antiquities Code, §191.051 (relating to Powers and Duties In General) directs the committee to provide for the discovery and/or scientific investigation of publicly owned cultural resources. The Antiquities Code of Texas, §191.174 (relating to Assistance from State Agencies, Political Subdivisions, and Law Enforcement Officers), further directs the committee, state agencies, political subdivisions of the state, and law enforcement agencies to work together to locate and protect cultural resources when deemed prudent, necessary, and/or in the best interest of the State. To achieve these mandates, the committee reviews construction plans for projects on public lands prior to development to determine the project's potential impact to cultural resources and invokes its power to issue and supervise survey level antiquities permit investigations in accordance with the Antiquities Code, §191.054 (relating to Permit for Survey and Discovery, Excavation, Restoration, Demolition, or Study and Supervision). These mandates and the review of construction plans may be accomplished in the following manner.

(1) Project notification. Public agencies should notify the committee [at least 60 days] in advance of proposed public development projects that could take, alter, damage, destroy, salvage, or excavate [publicly owned cultural resources and/or landmarks.] archeological sites or other cultural resources and/or landmarks on non-federal public land in Texas. The notification should contain a brief written scope of work and a copy of the appropriate to graphical quadrangle map with the project boundaries clearly marked. Specific notification requirements for certain types of activities are also described as follows for counties and municipalities. State agency and other political subdivision compliance can be tailored to specific agency programs through Memoranda of Understanding or Agreement, as outlined in §41.15 of this title (relating to Memoranda of Understanding and Agreement). Many development activities have little, if

any, impact upon cultural resources, and therefore are not subject to prior review by the committee. These projects are listed in subparagraphs (A) and (B) of this paragraph under paragraph (2) of this section.

(2) Categorical exclusions.

(A) Project review for counties and municipalities. Except for activities inside designated historic districts as defined in §41.5 of this title (relating to Definitions), only development projects that impact an area larger than 5 acres, or disturb more than 5,000 cubic yards, whichever measure is triggered first, require advance review by the committee.

(B) Development activities within designated historic districts. Development activities on county or municipal property that are within designated historic districts, as defined in §41.5 of this title (relating to Definitions), or on, or within recorded archeological sites, that disturb more than 5 cubic yard of soil, despite areal extent, require advance notice to the committee. No disturbance of known historic burials, as defined in §41.5 of this title (relating to Definitions), on public land is allowed without prior notice to the committee. If historic burials are discovered during development activities, all activities affecting the burials must stop and the committee must be contacted immediately.

(2) Categorical exclusions. Many activities conducted on non-federal public land have little, if any, chance to damage archeological sites, and therefore do not require prior notification of the committee. These activities are listed in subparagraphs (A)-(L) of this paragraph:

(A) water injection into existing oil and gas wells;

(B) replacement of pipelines in highly disturbed right-of-ways or old pipeline trenches;

(C) upgrading of electrical transmission lines where there will be no new disturbance of the existing easement;

(D) seismic exploration activity where there is no ground preparation or disturbance;

(E) building and repairing fences that do not require construction or modification of associated roads, fire breaks, or previously disturbed ground;

(F) road maintenance that does not involve widening or lengthening the road;

(G) installation or replacement of meter taps;

(H) controlled burning of fields;

(I) animal grazing;

(J) plowing, if the techniques are similar to that used previously;

(K) installation of monuments and sign posts unless in the boundaries of designated historic districts; and

(L) maintenance of existing trails.

(3) [(2)] Project review. Unless otherwise outlined previously in paragraph (1) of this section Project notification, the [The] committee will respond within 30 days upon receipt of the review request. The committee shall review submitted documentation and notify the public agency of the possible need for survey level investigations to locate cultural resources situated in the proposed development tract. If the committee does not respond within 30 days, the public agency may proceed without further notice to the committee. Expedited reviews (24 hours) will be accommodated on a case by case basis in emergency situations.

(4)[(3)] Survey procedure. If a survey investigation is needed, a Principal Investigator should perform the investigations under an Antiquities Permit in accordance with §§41.17, 41.20, and 41.24 of this title (relating to Issuance of Permits, Archeological Permit Categories, and Reports Relating to Archeological Permits).

(5)[(4)] Construction discovery. Contractors working on public lands who discover archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria listed in §§41.6-41.10 of this title (relating to Specific Criteria for Evaluating Historic Structures; Specific Criteria for Evaluating Archeological Sites; Guidelines for Recognizing Archeological Sites; Specific Criteria for Evaluating Caches and Collections; and Specific Criteria for Evaluating Shipwrecks as State Archeological Landmarks) shall report such discovery to the state agency or political subdivision owning or controlling the property and to the Texas Antiquities Committee, P.O. Box 12276, Austin, Texas

78711-2776. Upon notification, the committee staff may initiate designation proceedings if it determines the site to be a significant cultural or historical property or the committee staff may issue a permit for mitigative archeological investigations or any other investigations. The cost of a proper investigation, excavation, or preservation of such a landmark or potential landmark will be borne by the owner or developer of the property rather than by the committee.

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 3, 1995.

TRD-9501433 Mark H. Denton
Staff Archeologist
Texas Antiquities
Committee

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 463-5711

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• 13 TAC §41.15

(Editor's Note: Due to technical problems, the following rule is being omitted from this issue of the Texas Register. The rule will be published in the February 14, 1995. The earliest date of adoption is March 13, 1995.

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 3, 1995.

TRD-9501432 Mark H. Denton
Staff Archeologist
Texas Antiquities
Committee

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 463-5711

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**TITLE 16. ECONOMIC
REGULATION**

**Part I. Railroad
Commission of Texas**

**Chapter 5. Transportation
Division**

**Subchapter C. Household
Goods Carriers**

• 16 TAC §5.101, §5.124

The Railroad Commission of Texas proposes new §5.101, concerning definitions, and §5.124, concerning bills of lading to be issued. This proposal is made as part of a comprehensive revision of Chapter 5 in light

of recent legislative changes to statutes concerning regulation of transportation and to reorganize the commission's rules into concise subchapters for each category of the rules.

Jackye Greenlee, assistant director, Central Operations, Transportation/Gas Utilities Division, has determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing the sections.

Gary W. Elkins, hearings examiner, has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of administering the proposed sections will be to establish a system for regulating household goods carriers, including requirements for safety and insurance, and to achieve greater compliance by a reorganization of rules into concise subchapters. There will be no effect on small businesses as a result of enforcing the proposed sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments may be submitted to Gary W. Elkins, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the Texas Register.

The new sections are proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the commission to prescribe rules and regulations for the operations of motor carriers.

The following is the article that is affected by the proposed sections: Texas Civil Statutes, Article 911b.

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

Cab card—A document issued by the commission, continuously maintained in a motor vehicle, identifying that vehicle as operating under a specific certificate of public convenience and necessity or permit.

Certificate—A certificate of public convenience and necessity issued by the commission.

Commission—The Railroad Commission of Texas.

Director—The director of the Transportation/Gas Utilities Division of the Railroad Commission of Texas. Any act or function assigned to the director by the commission may be delegated by the director.

Household goods—Personal effects and property used or to be used in a dwelling when it is a part of the equipment or supply of such dwelling, not including property moving from a factory or store, except such property as the householder has purchased with intent to use in the householder's dwelling and which is transported at the request of, and the transportation

charges paid to the carrier by, or on behalf of the householder.

Household goods carrier—Any person, firm, corporation, company, copartnership, association or joint stock association, and their lessees, receivers, or trustees appointed by any court whatsoever owning, controlling, managing, operating, or causing to be operated, any motor-propelled vehicle used in transporting household goods for compensation or hire over any public highway in this state where, in the course of such transportation, a highway between two or more incorporated cities, towns, or villages is traversed. Provided, that the term "household goods carrier" as used in these regulations shall not include, and these regulations shall not apply to, motor vehicles engaged in the transportation of property for compensation or hire between points:

(A) wholly within any one incorporated city, town, or village;

(B) wholly within an incorporated city, town, or village and all areas, incorporated or unincorporated, wholly surrounded by such city, town, or village;

(C) so situated that the transportation is performed wholly within an incorporated and immediately adjacent unincorporated area without operating within or through the corporate limits of more than a single incorporated city, town, or village, except to the extent provided in this title; or

(D) wholly within the limits of a base incorporated municipality and any number of incorporated cities, towns, and villages which are immediately contiguous to said base municipality.

Permit—A contract carrier permit issued by the commission.

Person—An individual, firm, partnership, corporation, company, association, or joint stock association, or other legally appointed receivers or trustees.

§5.124. Bills of Lading to be Issued.

(a) Upon receipt of freight, a household good carrier shall issue and deliver, or cause to be issued and delivered, to the shipper a bill of lading. All bills of lading shall comply with, be governed by, and have the consequences stated in the Uniform Commercial Code of Texas and any other applicable and effective provisions of the statutes. All property transported by household goods carriers between points in Texas shall be subject, except in cases where such terms and conditions are in conflict with the laws of the State of Texas, to all terms and conditions of the uniform bill of lading, as set forth in this section:

(1) Section 1 of contract terms and conditions.

(A) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(B) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes. Except in case of carrier's negligence, no carrier or party in possession of all or any of the property herein described shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack of capacity of any highway, bridge, or ferry, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

(C) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done

by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in the case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

(2) Section 2 of contract terms and conditions.

(A) No carrier is bound to transport said property by any particular schedule train, vehicle, or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(B) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing the bill of lading, or carrier on whose line the loss, damage, injury, or delay occurred, or carrier in possession of the property when the loss, damage, injury, or delay occurred, within nine months after delivery of the property (or, in the case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(C) Any carrier or party liable on account of loss of or damage to any

of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance; provided, that the carrier reimburse the claimant for the premium paid thereon.

(3) Section 3 of contract terms and conditions. Except where such service is required as result of carrier's negligence, all property shall be subject to necessary coo­perage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered, and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

(4) Section 4 of contract terms and conditions.

(A) Property not removed by the party entitled to receive it within the free time (if any) allowed by tariff lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, or property not received, at time tender of delivery of the property to the party entitled to receive it has been made, may be kept in vessel, vehicle, car, depot, warehouse, or place of business of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery or other available point, or if no such warehouse is available at point of delivery or at other available storage facility, at the cost of the owner and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. In the event consignee cannot be found at address given for delivery, then in that event, notice of the placing of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other address given on the bill of lading for notification, showing the warehouse in which such property has been placed, subject to the provisions of this subparagraph.

(B) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it upon tender of delivery, or said consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier; provided, that the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped, order notify, the name of party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. Provided, that 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(C) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deteriorations, sell the same to the best advantage at private or public sale; provided, that if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires before the property is sold.

(D) Where the procedure provided for in this section is not possible, it is agreed that nothing contained in said section shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(E) The proceeds of any sale made under this regulation shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(F) Property destined to or taken from a station, wharf, landing, or other place at which there is no regularly appointed freight agent, shall be entirely at risk of owner after unloaded from cars, vehicles, or vessels or until loaded into cars, vehicles, or vessels, and, except in case of carrier's negligence when received from or delivered to such stations, wharfs, landings, or other places, shall be at owner's risk until the cars are attached to, and after they are detached from locomotive or train or until loaded into and after unloaded from vessels, or if property is transported in motor vehicle trailers or semi-trailers, until such trailers or semi-trailers are attached to, and after they are detached from power units. Where a carrier is directed to unload or deliver property transported by motor vehicle at a particular location where consignee or consignee's agent is not regularly located, the risk after unloading, or delivery, shall be that of the owner.

(5) Section 5 of contract terms and conditions. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

(6) Section 6 of contract terms and conditions. Every party, whether the principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

(7) Section 7 of contract terms and conditions.

(A) The owner or consignee shall pay the freight and arrearage, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided, that where the carrier has been instructed by the

shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee:

(i) is an agent only and has no beneficial title in said property; and

(ii) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges.

(B) If the consignee has given to the carrier erroneous information as to whom the beneficial owner is, such consignee shall himself be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at time of shipment the payment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

(8) Section 8 of contract terms and conditions. If this bill of lading is issued on the order of the shipper or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

(9) Section 9 of contract terms and conditions. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation herein of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

(b) Contents of Bills of Lading. Each bill of lading shall show in addition to any other information required by law the following information:

(1) The number of the bill of lading.

(2) The name of the issuing carrier.

(3) The date the shipment was received by the carrier.

(4) The name and address of the shipper.

(5) The points of origin and destination.

(6) The name and address of the consignee.

(7) The number and an exact description of the commodity, goods, articles, packages, or property tendered and received for transportation, showing separately those items of differing classification and those which are subject to varying rates or charges.

(8) The weight, volume, or measurement of the property tendered and received for transportation according to the lawfully applicable rates and charges shown separately by classification.

(9) Where applicable, the actual, declared, or release valuation of the shipment on which the bill of lading was issued.

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 6, 1995.

TRD-9501502 Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 463-7094

Subchapter G. Tow Trucks

• 16 TAC §5.504

The Railroad Commission of Texas proposes new §5.504, concerning exemptions. This proposal is made as part of a comprehensive revision of this title in light of recent legislative changes to statutes concerning regulation of transportation and to reorganize the commission's rules into concise subchapters for each category of the rules.

Jackye Greenlee, assistant director, Central Operations, Transportation/Gas Utilities Division, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal implications for state or local governments or small businesses as the result of enforcing the proposed new section.

Gary W. Elkins, hearings examiner, has determined that for each year of the first five

years the proposal is in effect the public benefit anticipated as a result of the proposal will be to permit the proposed adoption of new rules in the present location of this subchapter and to reorganize the current structure of the motor transportation regulations and to achieve greater compliance by a reorganization of rules into concise subchapters. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Gary W. Elkins, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Tow Truck Act, Texas Civil Statutes, Article 6687-9b, which authorizes the commission to adopt rules, in the interest of public safety, that provide registration and insurance requirements for the operation of tow trucks.

The following is the article that is affected by the proposed section: Texas Civil Statutes, Article 6687-9b.

§5.504. Exemptions. The following vehicles are excluded from regulation under the Act and exempted from registration under the Act:

(1) As to out-of-state tow trucks only:

(A) a tow truck that is registered under the motor vehicle registration laws of another state;

(B) a tow truck that is operated in connection with and based at a towing business located in another state;

(C) a tow truck that is registered with a department or agency of another state;

(D) a tow truck that is regulated under the laws of another state that, as to the operation of tow trucks, has established standards that equal or exceed the requirements of the Texas Tow Truck Act; and

(E) a tow truck that is operated only temporarily or occasionally on the highways of this state.

(2) The following are also exempted from the provisions of this subchapter:

(A) a tow truck owned by and used exclusively in the service of the United States, the State of Texas, a county, a city, or a school district;

(B) a light commercial vehicle having a manufacturer's rated capacity of one ton or less to which a chain, strap or rented tow bar or towing device is affixed and that is operated by an individual not in an automotive or motor vehicle business;

(C) a vehicle that is towing a race car, a motor vehicle for exhibition, or an antique motor vehicle, and is not being operated as part of a business or profession;

(D) a recreational vehicle, as defined by the Texas Commercial Drivers License Act (Texas Revised Statutes, Article 6687b-2), including subsequent amendments to that definition, towing another vehicle for a noncommercial purpose;

(E) a commercial transport vehicle that is capable of hauling four or more motor vehicles;

(F) a vehicle used only for towing motorcycles and which is incapable of towing any other type vehicle;

(G) a non-tow truck or tow device used by a rental car agency to move vehicles for customer use;

(H) a non-tow truck or tow device used in agricultural operations for agricultural purposes; and

(I) a non-tow truck or tow device owned by a licensee of the Motor Vehicle Board of the Texas Department of Transportation in transporting a vehicle owned by the licensee or a customer of the licensee.

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 6, 1995.

TRD-9501503

Mary Ross McDonald
Director, Legal
Division-Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 463-7094

◆ ◆ ◆
**Subchapter H. Vehicle Storage
Facilities**

• **16 TAC §5.602**

The Railroad Commission of Texas proposes new §5.602, concerning definitions. This pro-

posal is made as part of a comprehensive revision of this title in light of recent legislative changes to statutes concerning regulation of transportation and to reorganize the commission's rules into concise subchapters for each category of the rules.

Jackye Greenlee, assistant director, Central Operations, Transportation/Gas Utilities Division, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal implications for state or local governments or small businesses as the result of enforcing the proposed new section.

Gary W. Elkins, hearings examiner, has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of the proposal will be to achieve greater compliance by a reorganization of rules into concise subchapters. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Gary W. Elkins, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the Vehicle Storage Act, Texas Civil Statutes, Article 6687-9a, which authorize the commission to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities.

The following article is affected by the proposed section: Texas Civil Statutes, Article 6687-9a.

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

Act-The Vehicle Storage Facility Act, Texas Civil Statutes, Article 6687-9a, concerning vehicle storage facilities.

Commission-The Railroad Commission of Texas.

Day-Twenty-four continuous hours.

Director-The director of the Transportation/Gas Utilities Division of the commission or his or her designee.

Fence-An enclosure of wood, chain link, iron, concrete, masonry, or other department-approved construction placed around a space used to store vehicles and designed to prevent intrusion and escape.

Preservation-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. Reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, or convertible tops, are included in the fee for storage of a vehicle, as set forth in §5.619(f) of this title (relating to Technical Requirements-Storage Fees/Charges), and do not constitute "preservation." A vehicle storage facility

operator will be entitled to charge a fee for preservation if, in addition to the requirements set forth in §5.607 of this title (relating to Responsibilities of the Licensee-Storage Requirements), the vehicle storage facility operator performs, at a minimum, the following duties:

(A) conducts a written inventory of any unsecured personal property contained in the vehicle;

(B) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; and

(C) obtains motor vehicle registration information for the vehicle from the Texas Department of Transportation.

Principal-An individual who:

(A) holds personally, or as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) more than \$25,000 of the fair market value of a business;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, is through share, stock, or any other manner, or includes voting rights;

(D) is a member of the board of directors or other governing body of a business; or

(E) serves as an elected officer of a business.

Vehicle-A motor vehicle subject to registration under the Certificate of Title Act, Texas Civil Statutes, Article 6687-1, or any other device designed to be self-propelled or transported on a public highway and which is towed or transported to a vehicle storage facility without the owner's consent.

Vehicle owner-A vehicle owner is:

(A) a person in whose name the vehicle is registered under the Certificate of Title Act, Texas Civil Statutes, Article 6687-1;

(B) a person in whose name the vehicle is registered under General

Laws, Acts of the 41st Legislature, Second Called Session, 1929, Chapter 88, Texas Civil Statutes, Article 6675a-2, §2, or a member of the person's immediate family;

(C) a person who holds the vehicle through a valid lease agreement; or

(D) an unrecorded lienholder with a right to possession.

Vehicle storage facility—A garage, parking lot, or any facility owned or operated by a person other than a governmental entity, except as provided in §5.619(f) of this title (relating to Technical Requirements—Storage Fees/Charges), for storing or parking ten or more vehicles. Ten or more vehicles shall mean the capacity to park or store ten or more vehicles a year.

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 6, 1995.

TRD-9501504

Mary Ross McDonald
Assistant Director, Legal
Division—Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 463-7094

Part IX. Texas Lottery Commission

Chapter 402. Bingo Regulation and Tax

• 16 TAC §402.545

The Texas Lottery Commission proposes an amendment to §402.545, relating to licenses for the conduct of bingo games. The proposed amendment clarifies that a temporary license may be issued to any organization not holding an annual license to conduct bingo, as well as to any organization holding an annual license.

Richard Sookiasian, budget analyst, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Donald Wilson, charitable bingo director, has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be to clarify that an organization not holding an annual license to conduct bingo may conduct bingo under a temporary license in accordance with the provisions of this rule and, to clarify that any organization holding an annual license may also obtain a temporary license to conduct

bingo for times, dates, and/or locations other than those times, dates, and/or locations which the organization already has approval to conduct in accordance with its annual license. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The amendment is proposed under Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and Texas Government Code, §467.102, which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code, Chapter 467 and the laws under the commission's jurisdiction.

The statute that is affected by the proposal is Texas Civil Statutes, Article 179d, §12

§402.545. *Licenses, Fees, and Bonds for Conduct of Bingo and Commercial Lessor.*

(a) Annual license to conduct bingo games.

(1) Application. An organization which desires to conduct bingo on a regular basis must apply to the Texas Lottery [Alcoholic Beverage] Commission (commission) for an annual license to conduct bingo. The application must be made on a form prepared by the commission and must contain all the information required by that form.

(2)-(5) (No change)

(b) (No change.)

(c) Temporary license to conduct bingo games.

(1) Any organization not holding an annual license to conduct bingo which desires to conduct bingo on a limited basis must apply to the commission for a temporary license. The application must contain the same information and be made on the same form used by applicants for an annual license. The complete application with required attachments should be filed with the commission at least 30 days in advance of the first bingo game that will be played under the temporary license. An organization holding an annual license to conduct bingo shall apply no less than seven working days in advance of the proposed game, provided that the only proposed change is the date, time and/or location.

(d)-(m) (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 6, 1995.

TRD-9501499

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 323-3791

• 16 TAC §402.554

The Texas Lottery Commission proposes an amendment to §402.554, concerning instant bingo. The proposed amendment relates to requiring the phasing out of the seal of the Texas Alcoholic Beverage Commission and the phasing in of the seal of the Texas Lottery Commission on instant bingo cards in accordance with the rule's implementation schedule.

Richard Sookiasian, budget analyst, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Marc Garcia, audit director, has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be to establish improved accounting and auditing controls available to the Texas Lottery Commission in order for it to exercise adequate control and supervision of bingo games attended by the public in Texas. It is further anticipated that a long-term effect of this rule may be to enhance net proceeds at the charity bingo level. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The amendment is proposed under Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and Texas Government Code, §467.102, which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code, Chapter 467 and the laws under the Commission's jurisdiction.

The statute that is affected by this rule is Texas Civil Statutes, Article 179d, §16.

§402.554. *Instant Bingo.*

(a) (No change.)

(1) (No change.)

(2) Instant bingo card—A device used to play a specific game of chance consisting of an individual card, the face of which is initially hidden from view to conceal numbers. Each individual card must:

(A) bear an impression of the commission's seal with the words "Texas Lottery [Alcoholic Beverage] Commission" engraved around the margin and a five-pointed star in the center;

(B) (No change.)

(C) be imprinted in no less than nine-point type with the words "Authorized by the Texas Lottery [Alcoholic Beverage] Commission";

(D)-(G) (No change.)

(3) (No change.)

(b) Approval of cards.

(1) (No change.)

(2) Prototypes or examples of all cards must be presented to the Texas Lottery [Alcoholic Beverage] Commission in Austin for review. If granted, approval extends only to the specific card or series approved. If the card is modified in any way, except only in series number, it must be resubmitted to the commission for approval.

(3) (No change.)

(c) Manufacturing requirements.

(1) Manufacturers of instant bingo cards must manufacture, assemble, and package each deal in such a manner that none of the winning cards, nor the location or approximate location of any of the winning cards, can be determined in advance of opening by any means or device including any pattern in manufacture, printing, color variations, assembly, packaging markings, or by the use of a light. All winnings and losing numbers conforming with designated numbers on the instant bingo card must be randomly selected. Each manufacturer must supply proof of random selection to the Texas Lottery [Alcoholic Beverage] Commission by detailed description of the manufacturing process, and is subject to inspection by the commission or its designee.

(2)-(6) (No change.)

(d)-(g) (No change.)

(h) Implementation schedule. The requirement that instant bingo cards have printed on them the seal of the Texas Lottery [Alcoholic Beverage] Commission and the words "Texas Lottery [Alcoholic Beverage] Commission" shall be implemented according to the following [same] schedule [as provided for printing the commission seal on disposable paper cards in the emergency amendment to §55.558(f) of this title (relating to Seal Required on Disposable Bingo Cards)].

(1) Effective January 1, 1995, a manufacturer shall not sell or otherwise furnish instant bingo cards not bearing the seal of the Texas Lottery Commission and the manufacturer's name, trade name, or trademark to distributors for use in Texas.

(2) Effective October 1, 1995, a distributor shall not purchase, sell or otherwise distribute instant bingo cards which do not bear the seal of the Texas Lottery Commission and the name, trade name, or trademark of the manufacturer.

(3) Effective January 1, 1996, a licensed organization shall not purchase or otherwise obtain or use instant bingo cards which do not bear the seal of the Texas Lottery Commission and the manufacturer's name, trade name, or trademark for use in Texas.

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 6, 1995.

TRD-9501500

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 323-3791

◆ ◆ ◆
• 16 TAC §402.558

The Texas Lottery Commission proposes an amendment to §402.558, relating to the seal required on disposable bingo cards, specifically relating to phasing out the Texas Alcoholic Beverage Commission seal and phasing in the Texas Lottery Commission in accordance with an implementation schedule.

Richard Sookiasian, budget analyst, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Marc Garcia, audit director, has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be to establish improved accounting and auditing controls available to the Texas Lottery Commission in order for it to exercise adequate control and supervision of bingo games attended by the public in Texas. It is further anticipated that a long-term effect of this rule may be to enhance net proceeds at the charity bingo level. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The amendment is proposed under Texas Civil Statutes, Article 179d, §16, which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and Texas Government Code, §467.102, which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code, Chapter 467 and the laws under the commission's jurisdiction.

The amendment affects Texas Civil Statutes, Article 179d, §16.

§402.558. Seal Required on Disposable Bingo Cards.

(a) For the purposes of this section, a disposable bingo card is a card made of paper or other suitable material which is designed or intended for use of a single bingo occasion; provided that this section shall not apply to cards furnished for use in promotional bingo games conducted in accordance with the Bingo Enabling Act, §39, [and §55.560 of this title (relating to Promotional Bingo).] which cards may not contain a seal.

(b) The face of every disposable bingo card used, sold, or otherwise furnished in this state shall bear an impression of the State of Texas and a star of five points encircled by olive and live oak branches and the words "Texas Lottery [Alcoholic Beverage] Commission," in accordance with detailed specifications, available on request from the Texas Lottery [Alcoholic Beverage] Commission (commission). The face of each card shall also have printed on it the name of the manufacturer or a trade name or trademark which has been filed with the commission.

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

(f) The requirements that all cards have printed on the face of the card the seal of the Texas Lottery [Alcoholic Beverage] Commission and the name of the manufacturer, a trade name, or a trademark shall be implemented according to the following schedule.

(1) Effective January 1, 1995, a [A] manufacturer shall not sell or otherwise furnish disposable cards not bearing the seal of the Texas Lottery [Alcoholic Beverage] Commission and the manufacturer's name, trade name, or trademark to distributors for use in this state [after December 31, 1989]. This requirement also applies to any manufacturer who assembles and collates disposable cards for sale in Texas, but only the name, trade name, or trademark of the original manufacturer who printed the card face shall be printed on the card face.

(2) Effective October 1, 1995, a [A] distributor shall not purchase sell, or otherwise distribute disposable cards which do not bear the seal of the Texas

Lottery [Alcoholic Beverage] Commission and the name, trade name, or trademark of the manufacturer [after December 31, 1989.] for use in this state. [A distributor may continue to sell cards which bear the comptroller's seal and do or do not bear the manufacturer's name, trade name, or trademark to licensed organizations in this state until March 31, 1990.]

(3) Effective January 1, 1996, a [A] licensed organization shall not purchase or otherwise obtain or use disposable cards which do not bear the seal of the Texas Lottery [Alcoholic Beverage] Commission and the manufacturer's name, trade name, or trademark for use in this state [after March 31, 1990].

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 6, 1995.

TRD-9501501 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 323-3791

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 239. Contested Case Procedure

Reinstatement Process

• 22 TAC §239.54

The Board of Vocational Nurse Examiners proposes an amendment to §239.54. The amendment is proposed to bring this rule into consistency with other rules. Also, it clarifies additional sanctions that can be imposed following disciplinary action.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk 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 nurses who have met all requirements for licensure and have current knowledge or practice as a licensed vocational nurse. There will be no effect on small businesses. There is no anticipated

economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

§239.54. Board Action Possible Upon Reinstatement.

(a) After evaluation, the board may:

(1) deny reinstatement of a suspended or revoked license;

(2) reinstate a suspended or revoked license and probate the practitioner for a specified period of time [under specific conditions];

(3) authorize reinstatement of the suspended or revoked license;

(4) require the satisfactory completion of a specific program of remedial education approved by the agency; and

(5) require monitoring of the applicant's nursing practice as specified by the Board.

(b) A nurse whose license has been suspended or revoked for more than five years shall be required to repeat the vocational nursing program and shall take and pass the national licensure examination prior to activation of his or her license or show evidence of practice as a licensed vocational nurse in another state or practice as a registered nurse in this state or another state within the past five years.

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 3, 1995.

TRD-9501447 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 835-2071

TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

Part III. Texas Youth Commission

Chapter 88. Special Management Programs

• 37 TAC §88.1, §88.3

The Texas Youth Commission (TYC) proposes new §88.1 and §88.3, concerning special management and treatment program for assaultive youth, and intensive resocialization program. New §88.1 will allow youth who pose a serious threat to life, property, self, staff, or other youth, to be moved to a special management and treatment program in TYC institutions for aggressive and assaultive behaviors. New §88.3 replaces the existing §91.73 which is being simultaneously proposed for repeal. The new section, which allows for qualified youth in TYC high restriction facilities to be moved to the intensive resocialization program at Giddings State School, for staff to gain control, and youth to receive intensive treatment, is being moved to a more appropriate chapter.

John Franks, Director of Fiscal Affairs, 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.

Mr. Franks 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 sections will be that youth who engage in activities which incite and cause major disruption and endangerment of staff and youth will be better served by placement in highly structured treatment programs. 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.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new sections are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rules implement the Human Resource Code, §61.034.

§88.1. Special Management and Treatment Programs for Assaultive Youth.

(a) Policy. The Texas Youth Commission (TYC) provides a special program known as special management and treatment programs for assaultive youth. The program is provided within each institution for youth whose continued presence in the

general population poses a serious threat to life, property, self, staff, or other youth. Youth who do not respond to regular program services including security admission for short-term crisis intervention, may be admitted to a special management and treatment program for aggressive and assaultive behaviors. The program is comprised of a strong counseling component and a system of graduated reintegration into the general population. The program is housed in the security unit.

(b) Rules.

(1) Admission Criteria. Youth eligible for the special management and treatment program are youth who instigate or engage in one or more of the following behaviors:

(A) assault of TYC staff;

(B) one or more serious assaults on a student resulting in bodily injury;

(C) willful destruction of property;

(D) escape with exacerbating circumstances, e.g., aggravated assault, arson, or possession of a weapon;

(E) serious self-abusive or suicidal behavior.

(2) Admission Procedure.

(A) Primary service worker (PSW) recommends admittance to special management program.

(B) The fact finding portion of a level II hearing is held to determine the facts of the youth's behavior.

(C) Following an interview with the youth, the psychologist recommends to the superintendent placement of the youth in the special management program if he/she determines that:

(i) youth poses a continuing risk for assaultive behavior, injury to self and/or destruction of property; and

(ii) less restrictive intervention is unlikely to manage the risk.

(D) Primary service worker (PSW), social service administrator (SSA) and psychologist develop an individual treatment plan. Release is based on the youth meeting specific performance objectives in each phase and individualized behavioral objectives.

(E) The special services committee reviews and approves the plan.

(F) The superintendent or assistant superintendent approves admittance to the program.

(G) A youth who has once successfully completed the program shall not be returned unless admission criteria has been met for a different incident.

(3) Program Requirements. The program is designed for a maximum of four treatment/reintegration phases of one week each. A shorter term program may be utilized. At the end of each week the student's progress will be evaluated and the PSW, SSA and psychologist will determine phase promotion, demotion or retention. Release earlier is based on the youth's performance in meeting individualized objectives and requirements of each phase. Movement through each phase is based on successful completion of performance objectives of the previous phases. The phase program may initially be modified if recommended by the psychologist and approved by the superintendent or assistant superintendent.

(4) Completion and Release.

(A) A youth is released when progress reviews indicate that performance objectives for each phase have been met or when a youth has been in the program for 28 days, whichever occurs first unless an extension has been approved.

(B) When an extension of the 28 days is determined to be necessary because the youth continues to pose a serious threat, or has failed to progress through the treatment phase, a request for extension and justification for such action may be submitted to the director of programs and mental health services and director of institutions or director of community services as appropriate.

(C) The program for any individual youth shall not be extended beyond 28 days unless approved by the director of programs and mental health services and director of institutions or director of community services as appropriate.

(D) The director of psychology or his/her designated member of the psychology staff shall review the file weekly and provide a written report to the assistant superintendent regarding implementation of the treatment plan and recommendation for continuation/discontinuation. Failure of the program to be implemented

as designed shall be cause for the youth to be dismissed from security unless implementation was precluded due to non-compliance of the student.

§88.3. Intensive Resocialization Program.

(a) Policy. The Texas Youth Commission (TYC) operates an intensive resocialization treatment program at the Giddings State School (GSS). The program is highly restrictive and is operated on the Giddings State School campus in a unit separate from other units and campus activities.

(b) Rules

(1) Admissions Criteria.

(A) Youth eligible for the intensive resocialization program are:

(i) Giddings State School youth classified as sentenced offenders or violent offenders who have intentionally exhibited aggressive, destructive, and assaultive behavior and have not responded less restrictive treatment interventions; and whose immediate behavior meets one of the following criteria:

(I) assault of TYC staff;

(II) serious assault of a TYC student which results in bodily injury;

(III) willful destruction of property;

(IV) escape with exacerbating circumstances, e.g., aggravated assault, arson or possession of a weapon;

(ii) youth in any other TYC institution who, while in that placement, assaulted TYC staff causing serious bodily injury.

(B) The admission decision is based on the following considerations:

(i) severity of the incident;

(ii) previous behavior indicating a continuing course of conduct;

(iii) previous interventions attempted;

(iv) sufficiency of other less restrictive interventions at this time;

(v) probability of success in the Giddings Intensive Resocialization Program (GIRP); and

(vi) amenability to treatment.

(2) Admission Procedure.

(A) The fact finding portion of the appropriate hearing, a level I hearing for non-GSS youth or a level II hearing for GSS youth, is held to determine the facts of the youth's behavior.

(B) The Special Services Committee of the sending facility recommends that the youth be referred to the GIRP, and the referral is approved or denied by the sending superintendent.

(C) The GIRP admission review staff submits a recommendation regarding admission to the superintendent or director of institutions as appropriate (see subparagraph (E) of this paragraph).

(D) Except as provided in subparagraph (E) of this paragraph, admission approval by the GSS superintendent or assistant superintendent is required.

(E) Youth in institutions other than GSS may be admitted with the approval of the director of institutions.

(3) Release.

(A) Each youth remains in program for a minimum of 30 days and must successfully complete specific objectives. Reintegration is individual and graduated.

(B) The intensive resocialization program treatment team reviews progress weekly and determines when objectives have been met sufficiently to progress through levels and when release from the program has been earned. The team approves return to regular program or sending institution. Youth in the program from other facilities are returned to the security unit of the sending facility for completion of reintegration phases.

(C) Progress reviews and reintegration of a youth back to the sending institution are coordinated by GIRP staff and sending Special Services Committee and monitored by the directors of psychology.

(4) Program Requirements. Privileges afforded in the regular program may be restricted in the following areas:

(A) Types of clothing worn may be controlled. Wearing of outdoor shoes may be limited to outdoor activity.

(B) Visitation may be restricted to adult family members and attorneys.

(C) Incoming calls may be restricted to those of parents or guardians and attorneys.

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 3, 1995.

TRD-9501414 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 483-5244

Chapter 91. Discipline and Control

Control

• 37 TAC §91.73

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

The Texas Youth Commission (TYC) proposes the repeal of §91.73, concerning resocialization program. The repeal will allow the rule to be moved to a new chapter and renumbered.

John Franks, Director of Fiscal Affairs, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Franks also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the placement of the rule in a more appropriate chapter. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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

§91.73. Intensive Resocialization Program.

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 3, 1995.

TRD-9501413 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 483-5244

Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Rulemaking

• 37 TAC §141.52

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

The Texas Board of Pardons and Paroles proposes the repeal of §141.52, concerning the suspension of board rules.

The repeal is proposed because the board believes that all persons or parties in addition to those persons or parties who have a direct interest in the board's rules should have input concerning rule suspension.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be inapplicable as the public is relatively unaffected by this particular repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to the Board of Pardons and Paroles Rules Committee in care of Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with authority to promulgate rules consistent with the Code.

No other code or amendment is affected by the proposed repeal.

§141.52. Suspension of Rules.

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 3, 1995.

TRD-9501395

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 406-5613

• 37 TAC §141.52

The Texas Board of Pardons and Paroles proposes new §141.52, concerning the suspension of board rules.

The new section is proposed because the board believes that all persons or parties in addition to those persons or parties who have a direct interest in the board's rules should have input concerning rule suspension.

Michael F. Miller, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Miller 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 enforcing the section will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to the Board of Pardons and Paroles Rules Committee in care of Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with authority to promulgate rules consistent with the Code.

No other code or amendment is affected by the proposed new section.

§141.52. Suspension of Rules. The board may suspend the provisions of any procedure or rule when the enforcement of the rule would unduly complicate or prolong the process and the suspension would be in the best interest of the public and the board.

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 3, 1995.

TRD-9501396

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 406-5613

• 37 TAC §141.57

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

The Texas Board of Pardons and Paroles proposes the repeal of §141.57, concerning Petition for Adoption of Rules. The section is proposed for repeal because by means of a separate submission the board is simultaneously proposing a new version of §141.57 which will change the address to which petitions are to be sent because the Huntsville Board office is not a statutorily required office for the chairman, and to update the statutory reference in this rule to Government Code, §2001.021 as a way of encouraging persons to become knowledgeable of the relevant statutory law concerning petitions.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be inapplicable as the public is relatively unaffected by this particular repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to the Board of Pardons and Paroles Rules Committee in care of Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with authority to promulgate rules consistent with the Code.

The Government Code, §2001.021 is affected by this proposed repeal.

§141.57. Petition for Adoption of Rules.

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 3, 1995.

TRD-9501397

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 406-5613

• 37 TAC §141.57

The Texas Board of Pardons and Paroles proposes new §141.57, concerning Petition for Adoption of Rules.

The new section is proposed to change the address to which petitions are to be sent since the Chairman of the Board's office is not statutorily required to be Huntsville, and to update the statutory reference to Government Code §2001.021 as a way of encouraging prospective petitioners to become aware of the relevant statutory law concerning petitions.

Michael F. Miller, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Miller 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 enforcing the new section will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to the Board of Pardons and Paroles Rules Committee in care of Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with authority to promulgate rules consistent with the Code.

The Government Code, §2001.021 is affected by this proposed new section.

§141.57. Petition for Adoption of Rules.

(a) Any interested person may petition the board requesting the adoption of a rule.

(b) The petition shall be submitted in writing, must be initially identified as such, and comply with the following requirements:

- (1) Each rule requested must be requested by separate petition;
- (2) Each petition must state the name and address of the petitioner;
- (3) Each petition must be addressed to the board at its chairman's office;
- (4) Each petition shall include:

(A) A brief explanation of the proposed rule;

(B) The text of the proposed rule prepared in a manner to indicate the words to be added or deleted in the current text, if any;

(c) After receipt of a petition by the chairman of the board, the board shall consider the petition at a regular meeting and thereafter shall either deny it in writing, stating its reason for denial, or shall initiate rulemaking proceedings in accordance with §2001.021 of the Government Code. A petition may be denied for failure to comply with the petition requirements of this rule.

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 3, 1995.

TRD-9501398 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 406-5613

Chapter 145. Parole

Parole Process

• 37 TAC §145.6

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

The Texas Board of Pardons and Paroles proposes the repeal of §145.6, concerning required notice of the denial of parole.

The section is proposed for repeal because this change is necessary to bring the notification process into compliance with statutory law found at Code of Criminal Procedure Article 42.18 §(8).

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to the Board of Pardons and Paroles Rules Committee in care of Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under Code of Criminal Procedure, Article 42.18, §(g), which provides the Board of Pardons and Paroles with authority to promulgate rules consistent with the Code.

The Code of Criminal Procedure, Article 42.18, §8 is affected by this proposed repeal.

§145.6. Denial of Parole.

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 3, 1995.

TRD-9501399 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 406-5613

• 37 TAC §145.6

The Texas Board of Pardons and Paroles proposes new §145.6, concerning required notice of the denial of parole.

The new section is proposed to bring the notification process into compliance with statutory law found in Code of Criminal Procedure, Article 42.18, §8.

Michael F. Miller, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Miller 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 enforcing the section will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to the Board of Pardons and Paroles Rules Committee in care of Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Code of Criminal Procedure, Article 42.18, §(g), which provides the Board of Pardons and Paroles with authority to promulgate rules consistent with the Code.

The Code of Criminal Procedure, Article 42.18, §8 is affected by this proposed new section.

§145.6. Denial of Parole. If the board or a board panel denies parole the inmate shall be notified in writing.

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 3, 1995.

TRD-9501400 Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 406-5613

Chapter 149. Mandatory Supervision

Rules and Conditions of Mandatory Supervision

• 37 TAC §149.2

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

The Texas Board of Pardons and Paroles proposes the repeal of §149.2, concerning restitution. The section is proposed for repeal because the procedures described in it are no longer required functions of the Texas Board of Pardons and Paroles, as these functions have been transferred to the Texas Department of Criminal Justice-Pardons and Paroles Division.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Miller also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to the Board of Pardons and Paroles Rules Committee in care of Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under the Code of Criminal Procedure, Article 42.18, §(g), which provides the Board of Pardons and Paroles with authority to promulgate rules consistent with the Code.

The Code of Criminal Procedure, Article 42.037(h) and Article 42.18, §15(b)(2) is affected by this proposed repeal.

§149.2. Restitution; Monthly Amount; Payment; Alteration.

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 3, 1995.

TRD-9501401

Michael F. Miller
General Counsel
Texas Board of Pardons
and Paroles

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 406-5613

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**Part IV. Texas
Commission for the
Blind**

**Chapter 163. Vocational
Rehabilitation Program**

Subchapter E. Consumer Participation in Cost of Services

• **40 TAC §§163.60-163.66**

The Texas Commission for the Blind proposes new §§163.60-163.66, concerning the commission's Vocational Rehabilitation Program. The new rules are the result of rewriting Chapter 163 to remove language no longer applicable and to reorganize the chapter into an arrangement consistent with the agency's federal state plan, which will allow for orderly expansion as new federal and commission procedures are implemented.

The new sections are the commission's procedures for determining a consumer's participation, if any, in the cost of their services. The rules in Subchapter E are the result of previous rulemaking and have not substantively changed in the recodification.

Pat D. Westbrook, executive director, 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.

Mr. Westbrook 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 sections will be an organized rule base that conforms to federal requirements to assure full benefits to the state and persons receiving services under the program. There will be no effect on small businesses. The economic cost to persons who are required to comply with the rules is determined by their plan of services and income.

Questions about the content of this proposal may be directed to Jean Wakefield at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P.O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

The new sections are proposed under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1993, as amended, which authorizes the commission to consider the financial need of persons for the purpose of determining the extent of their participation in the costs of vocational rehabilitation services.

The new sections affect Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, §91.053, concerning Cooperation With Federal Government, and §91.055, concerning Eligibility for Vocational Rehabilitation Services.

§163.60. Purpose of Subchapter. The purpose of this subchapter is to establish consumer participation in service costs to encourage the consumer's commitment to a vocational rehabilitation goal, to create a cooperative relationship between the consumer and the commission, and to maximize the commission's limited funds.

§163.61. Scope of Subchapter. All vocational rehabilitation services are subject to this subchapter except the following:

- (1) assessment for determining eligibility and priority for services, except for vocational rehabilitation services other than those of a diagnostic nature provided under an extended evaluation;
- (2) assessment for determining vocational rehabilitation needs;
- (3) counseling, guidance, and referral services by commission staff;
- (4) employment assistance services by commission staff;
- (5) training at Criss Cole Rehabilitation Center (includes transportation to and from the center);
- (6) vocational rehabilitation teacher services (including consumable supplies);
- (7) reader and interpreter services;
- (8) orientation and mobility services;
- (9) tuition and fees; and
- (10) services paid for or reimbursed by a source other than the commission.

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

Dependent—A person age 18 or older carried as a dependent by the parents, foster parents, legal guardian, or conservator for income tax purposes during the current tax year.

Economic Resources—Net monthly income and liquid assets.

Family—The consumer, including consumers who are minors or dependents; the consumer's parents or legal guardians; and all persons residing in the household for whom the consumer or parents or legal guardians have legal and/or financial responsibility.

Liquid assets—Cash, bank accounts, and stocks and bonds, including certificates of deposit unless it is in a retirement account recognized by the Internal Revenue Service, such as an IRA or a Keogh.

Minor—A person who is:

(A) adjudged legally incompetent; or

(B) under the age of 18, unmarried, and normally dependent upon parents, foster parents, or a legal guardian or conservator; or

(C) under the age of 18 and married, but who is not living with the spouse, and whose major source of income is from parents or legal guardians.

Monthly income—Income derived from:

(A) wages and salaries, after deductions for:

- (i) income tax;
- (ii) social security tax;
- (iii) one qualified retirement program;
- (iv) health insurance premiums; and
- (v) trade or professional dues and assessments;

(B) contributions received on a regular basis from family, persons, or organizations;

(C) net rentals from property;

(D) scholarships and fellowships;

(E) public assistance payments;

(F) assistance from private welfare agencies;

(G) income from stock dividends and bond interest;

(H) income from child support payments;

(I) income from self-employment, which is defined as gross receipts, minus allowable Internal Revenue Service expenses, from one's own business which results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include the cost of goods purchased, rent, utilities, wages and salaries paid, and business taxes (not personal income taxes or self-employment social security taxes);

(J) any available pension or insurance, including Social Security Disability Income (SSDI); health/hospitalization insurance plans; workers' compensation; veterans' benefits; Old Age and Survivors Insurance (OASI) from the Social Security Administration; labor union insurance and/or health and welfare benefits; and unemployment compensation; and

(K) participation in savings plans.

Net monthly income—Monthly income, less allowed adjustments described in §163.65 of this title (relating to Allowed Adjustments to Calculate Net Monthly Income).

§163.63. General Procedures.

(a) The commission informs applicants of the rules on consumer participation in the cost of services upon application.

(b) All applicants and consumers, regardless of their economic resources, are asked if they can pay for any part of their rehabilitation program.

(c) Participation in the cost of services is determined after the eligibility requirements contained in §163.11 of this title (relating to Eligibility) and order of selection criteria contained in Subchapter D of this title (relating to Order of Selection for Payment of Services) have been applied and approved.

(d) Participation in the cost of services is determined by the economic resources of all persons meeting the definition of family.

(e) The purchase of occupational tools and sophisticated technological equipment cannot always be anticipated before a consumer is employed. If special equipment needs are discovered after the consumer starts to work and without the equipment the consumer's job would be verifiably in jeopardy, consumer participation in the cost of purchase is based on the level of participation immediately preceding employment.

(f) Economic resources are evaluated at least annually or at any time the commission is purchasing a service and the commission has reason to believe the family's economic status has changed.

(g) The commission reserves the right through the executive director to waive any requirement under this subchapter.

§163.64. Maximum Allowable Amount

(a) Economic resources in excess of the amount allowed by the commission must be used to pay for the cost of vocational rehabilitation services. Maximum allowable amounts are contained in an Economic Resources Table available at any commission office and may be obtained in accordance with §163.3 of this title (relating to Public Access to Forms and Documents).

(b) The maximum allowable amount may fluctuate according to relevant factors, such as established federal and state poverty levels, the funds available to the commission for services, and the number of persons meeting the definition of family.

§163.65. Allowed Adjustments to Calculate Net Monthly Income. It is not the intent of the commission to impose a financial hardship upon a family, therefore, monthly income is adjusted to net monthly income by subtracting the following:

(1) rent or home mortgage payments;

(2) medical payments as a result of disability and/or illness of family member;

(3) prescribed family medications and diets; and

(4) family obligations imposed by court order.

§163.66. Refusal to Disclose Economic Resources. Applicants and persons included in the definition of family have the right to not disclose their economic resources. When this information is not disclosed, economic resources are determined by the commission to be in excess of the allowable amounts.

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 6, 1995.

TRD-9501498

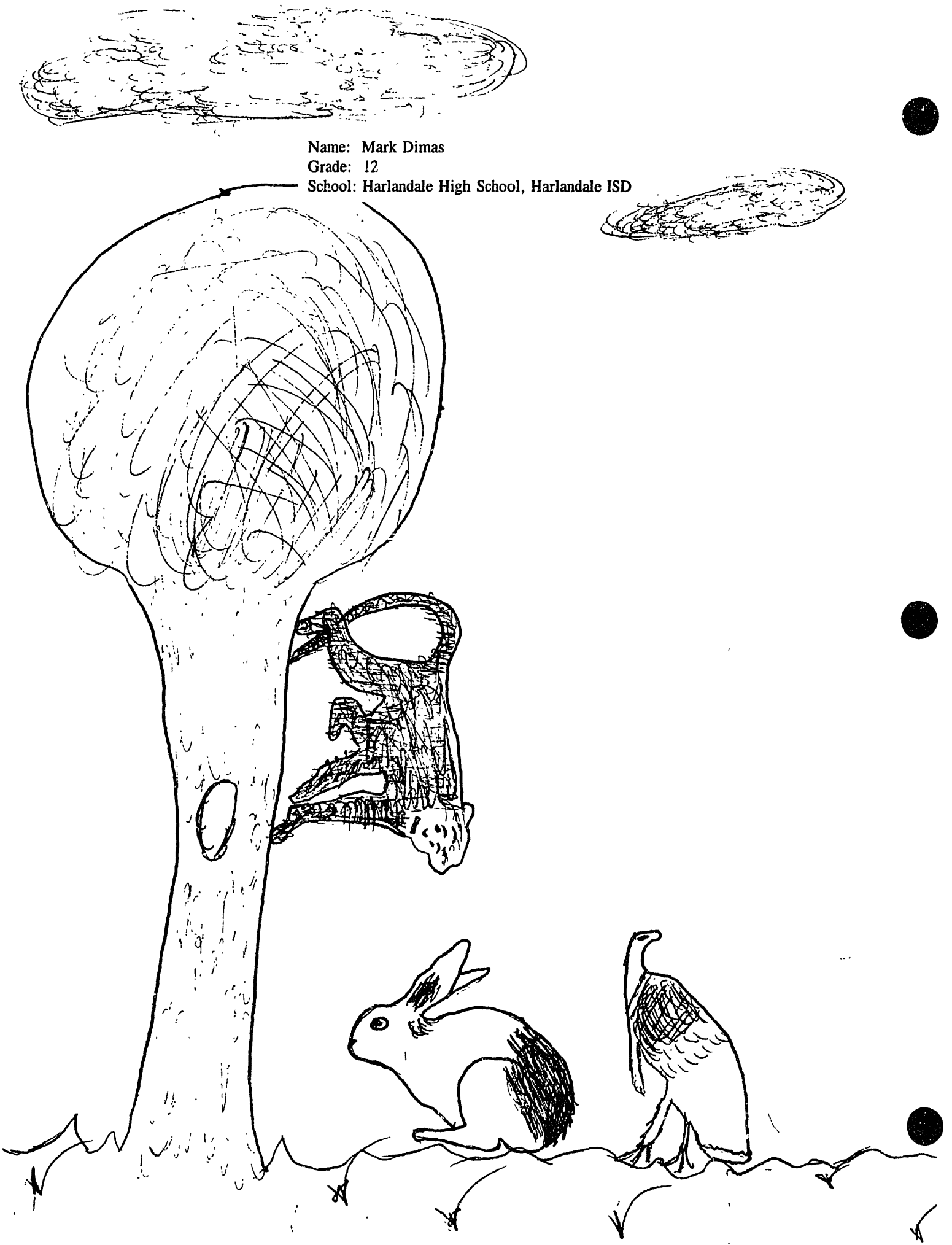
Pat D. Westbrook
Executive Director
Texas Commission for the
Blind

Earliest possible date of adoption: March 13, 1995

For further information, please call: (512) 459-2611



Name: Mark Dimas
Grade: 12
School: Harlandale High School, Harlandale ISD



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 19. EDUCATION Part I. Texas Higher Education Coordinating Board

Chapter 1. Agency Administration

Subchapter B. Hearings and Appeals

• 19 TAC §1.22

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption a proposed new §1.22, which appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8906). The effective date of this withdrawal is February 6, 1995.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501486 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: February 6, 1995

For further information, please call: (512)
483-6160

Chapter 7. State Postsecondary Review Program

Subchapter A. General Provi- sions

• 19 TAC §§7.1-7.5

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption a proposed new §§7.1-7.5, which appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8907). The effective date of this withdrawal is February 6, 1995.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501487 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: February 6, 1995

For further information, please call: (512)
483-6160

Subchapter B. Institutional Re- views

• 19 TAC §§7.21-7.25

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption a proposed new §§7.21-7.25, which appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8912). The effective date of this withdrawal is February 6, 1995.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501488 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: February 6, 1995

For further information, please call: (512)
483-6160

Subchapter C. State Review Standards and Procedures

• 19 TAC §7.41, §7.43

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption a proposed new §7.41 and §7.43, which appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8914). The effective date of this withdrawal is February 6, 1995.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501489 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: February 6, 1995

For further information, please call: (512)
483-6160

Subchapter D. Peer Review Standards and Procedures

• 19 TAC §§7.61-7.63

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption a proposed new §§7.61-7.63, which appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8918). The effective date of this withdrawal is February 6, 1995.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501490 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: February 6, 1995

For further information, please call: (512)
483-6160

Subchapter E. Initial and Final Reports

• 19 TAC §§7.81-7.83

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption a proposed new §§7.81-7.83, which appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8919). The effective date of this withdrawal is February 6, 1995.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501491 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: February 6, 1995

For further information, please call: (512)
483-6160

Subchapter F. Administrative Review

• 19 TAC §§7.101-7.143

The Texas Higher Education Coordinating Board has withdrawn from consideration for permanent adoption a proposed new §§7.101-7.143, which appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8921). The effective date of this withdrawal is February 6, 1995.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501492 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: February 6, 1995

For further information, please call: (512)
483-6160



Name: Patricia Corona
Grade: 12
School: Harlandale High School, Harlandale ISD

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Records and Reports

• 16 TAC §23.12

The Public Utility Commission of Texas adopts an amendment to §23.12, with changes to the proposed text as published in the August 26, 1994, issue of the *Texas Register* (19 TexReg 6693).

This amendment adds a new subsection §23.12(e) to the Substantive Rules concerning submission of cost allocation manuals by local exchange companies (LECs). The cost allocation manual requires that the utilities who are also engaged in non-regulated activities should separately allocate costs of such non-regulated activities and those of regulated activities. The purpose of the cost allocation manual is to prevent cross-subsidization of non-regulated activities by the revenues generated from regulated activities.

Comments were filed by the Texas Telephone Association (TTA), Curtis Blakely and Company and Bolinger, Segars, Gilbert, and Moss, (jointly CB & Company and BSGM), Texas Statewide Telephone Cooperative, Inc. (TSTC), Office of Public Utility Counsel (OPC), and Southwestern Bell Telephone Company (SWB).

All of the parties filing comments recommended changes to the published rule. The proposed rule was revised to accommodate a majority of suggestions offered by the commenters.

OPC proposed two new paragraphs. The first, would include language indicating that nothing in §23.12(e) or in the cost allocation matrix would relieve LECs from their burden of meeting the requirements of the Texas Civil Statutes, Article 1446c (Public Utility Regulatory Act or PURA) §41(c)(1). OPC was concerned that LECs may argue that compliance with the CAM deems any expense to be recoverable in a rate case. The commission shares OPC's concern. The purpose of this rule is to obtain LEC cost allocation information, and not to approve a LEC's affiliate transactions. Therefore, the commission

agrees to add a new paragraph §23.12(e)(8) to include OPC's suggestion. The added new paragraph §23.12(e)(8) clarifies that complying with reporting requirements of this subsection does not imply that the affiliate transactions meet the requirements of the PURA.

The second addition proposed by OPC would add language requiring that a copy of CAM-related information filed with the Federal Communications Commission (FCC) also be filed with the commission. OPC suggested that this additional information will aid in analyzing issues if conflicts between FCC filings and filings with the commission arise in the future. The commission agrees with OPC that the information would be useful in analyzing conflicts. Therefore, the commission adds §23.12(e)(4)(E) to incorporate OPC's suggested language.

TTA commented that proposed §23.12(e)(1) conflicted with proposed §23.12(e)(4)(A) in requiring all LECs to annually file a cost allocation manual with the commission. Subparagraph §23.12(e)(4)(A) required annual updates after the initial CAM is filed with the commission. TTA preferred allowing updates to be filed after the initial CAM filing. The commission believes that it would promote more efficient use of the commission's resources to require filing of a complete CAM on a yearly basis, thereby avoiding the burden on the commission staff of maintaining the correct sections of a Company's CAM and avoiding confusion due to possible misfilings of the updates. Therefore, the commission has deleted the reference in §23.12(e)(4)(A) regarding allowing the filing of updates to the CAM after the initial CAM has been filed. With this change, no conflicts exist between §23.12(e)(1) and §23.12(e)(4)(A).

For proposed paragraphs §23.12(e)(1) and (2), SWB and TTA presented clarifying language regarding the reference to the CAM allocating costs. The commission agrees that the suggested wording would help clarify the purpose of allocating costs between a LEC's regulated activities and its other activities in the cost allocation manual. Therefore, the commission makes the suggested changes to §23.12(e)(1) and (2).

SWB proposed that §23.12(e)(2) be changed to include additional language clarifying filing procedures for a Class A LEC such as Southwestern Bell. SWB sought explicit language for the procedures it must follow in filing its

CAM, and proposed language so that a Class A LEC shall follow the procedures set forth by the FCC for interstate cost allocations. In §23.12(e) the commission has not proposed to impose additional allocation procedures on Class A LECs such as SWB. Therefore, the commission agrees with SWB on its proposed language and incorporates the suggested change to §23.12(e)(2), clarifying the allocation procedures required for Class A LECs.

SWB recommended a change to §23.12(e)(3)(C). SWB proposed that the term incidental activities have the same meaning and application as that given by the FCC. The commission agrees with SWB's proposal and incorporates the suggested language to this subparagraph.

TTA proposed that the reporting requirements of the Earnings Monitoring Report, Schedule VI and Substantive Rule §23.11(f) be eliminated since that information will now be provided in subsections §23.12(e)(3)(D) and (E) and §23.12(e)(4)(D). The commission does not agree with TTA's proposal to eliminate reporting requirements contained in either the Earnings Monitoring Report or §23.11(f). The commission does, however, believe that duplication can be avoided by deleting the reporting requirement in this subsection and relying on affiliate information filed under the requirements of §23.11(f) and the Earnings Monitoring Report. Therefore, the commission has deleted subparagraphs §23.12(e)(3)(D) and (E). The commission will, however, continue to require filings pursuant to §23.12(e)(4)(D). This report will provide regulated/nonregulated information on a Part 32 account basis; information that has not been required by the commission in other reporting requirements.

SWB proposed amending §23.12(e)(3)(F) to indicate that the commission-approved cost allocation matrix would be inapplicable for Class A LECs, such as SWB. The commission agrees with SWB's proposal because Class A LECs already prepare a FCC approved CAM that is sufficient for the commission's purposes, and accordingly has amended renumbered §23.12(e)(3)(D) (published as §23.12(e)(3)(F)) to incorporate SWB's suggestion.

TTA proposed a change to §23.12(e)(3)(E) (published as §23.12(e)(3)(G)) to clarify that the time reporting procedures contained in the rule pertain only to the LEC's regulated telephone operating units. The commission

agrees with TTA's proposal and has amended this subsection accordingly.

Addressing §23.12(e)(4), TTA proposed that LECs be allowed more time for the initial filing, due on June 1, 1995. TTA is concerned that if the rule becomes effective on March 1, 1995, and the initial filing is due June 1, 1995, LECs would have only 90 days to complete the initial filing. TTA proposed that the rule should allow for the companies to file the initial CAM 180 days after the effective date of this rule. The commission agrees with TTA on the need for additional time for the initial filing. Therefore, the commission has amended §23.12(e)(4) to provide additional time for the initial CAM filings.

TSTCI stated that the filing requirements in §23.12(e)(4) go beyond the filing requirements adopted by the FCC in CC Docket 86-111, and impose an additional filing requirement on the small LECs. TSTCI urged that all LECs with 31,000 or less access lines be exempted from the annual CAM filing requirement. TSTCI proposed that the rule be amended to allow companies to prepare and maintain CAMs, and to allow the commission staff to request a copy of the CAM if necessary to review a company. The commission does not agree with TSTCI's arguments. The FCC in CC Docket 86-111 stated that the FCC was not convinced that small companies were unable to cross-subsidize their nonregulated activities. Furthermore, the FCC stated that they had no reason to believe that small LECs lack the natural incentive to shift costs and that their ability to cross-subsidize had so diminished as to remove all cause for regulatory concern. The commission is aware that both large and small LECs are involved in nonregulated activities that, from a cost allocation standpoint, can materially impact the LEC's reported regulated financials. With the concern of potential cross-subsidization in mind the commission believes that it is in the public interest for LECs to file cost allocation manuals with the commission on an annual basis. The filing of information proposed in §23.12(e) will provide to the public information on a LEC's allocations of costs using the commission's uniform cost allocation matrix. Additionally, other information required in subparagraphs §23.12(e)(4)(B)-(E) provides assurance to the public that the LECs are in compliance with the commission's rule. Therefore, the commission rejects TSTCI's suggestion to amend §23.12(e) to eliminate small LECs from the CAM filing requirement.

TTA suggested amending §23.12(e)(4) to change the basis of reporting. This subsection in the published version would require each LEC to file information for the preceding calendar year. TTA proposed to require information on methodologies to be applied on a prospective basis. The commission does not agree with this proposal. Conceptually, the rule is structured to require the LECs to file the CAM on June 1 of each calendar year such that the CAM contains information for the preceding year. Thus, the commission will be able to review the CAM, including the methodologies used during the preceding year. Should there be an area of concern identified by the commission, the LEC could be contacted and the issue could be discussed with that company. If a change in the

methodologies becomes necessary, the LEC would, in turn, make a change in allocation methodologies on a going forward basis. Based on this approach, the commission declines to change §23.12(e)(4).

Addressing subparagraphs §23.12(e)(4)(B)-(D), TTA discussed the requirements of these subsections in relation to the audit requirement in §23.12(e)(5). TTA's position was that the audit requirement is unnecessary and costly. TTA also stated that the requirements of §23.12(e)(4)(B)-(D) in addition to the audit requirement make both unnecessary and duplicative. If the audit is required, TTA proposed that §23.12(e)(4)(B)-(D) should be eliminated. If, however, the audit requirement is eliminated, TTA recommended that the requirements of §23.12(e)(4)(B)-(D) should be used as forms of assurance that the procedures are properly implemented by the companies. Additionally, TTA stated that the commission can obtain further assurance that CAM procedures are accurately implemented through its own compliance audit program if questions about specific companies arise in the future.

TSTCI also opposed the audit requirement. Instead, TSTCI proposed that in §23.12(e)(4)(C) an attestation statement signed by an officer of an LEC be deemed sufficient. In support of its proposal, TSTCI stated that only an attestation statement is required for the Earnings Monitoring Report. TSTCI stated that if the officer's attestation is sufficient for the Earnings Monitoring Report, then it should be sufficient for cost allocation reporting purposes.

Regarding the audit requirement, the commission is persuaded by TTA's arguments that §23.12(e)(4)(B)-(D) will provide a sufficient level of assurance that CAM procedures are being properly implemented and that it would avoid the cost of an audit of the CAM and the accompanying regulated/nonregulated comparative percentage report. Therefore, the commission deletes published §23.12(e)(5) to eliminate the audit requirements.

Responding to TSTCI's proposal, the commission believes that a greater level of information is required beyond an attestation statement. The Earnings Monitoring Report does require an attestation statement, but that report also requires that the financials be tied back to audited financial statements, a condition the commission is not requiring in this rule. Therefore, the commission declines to amend subparagraphs §23.12(e)(4)(B)-(D).

Regarding the requirements on Class A utilities, the commission clarifies that renumbered §23.12(e)(5)(A) (published as §23.12(e)(6)(A)) would continue to require that a complete copy of the FCC-CAM, including the audit report on FCC's Report 43-03, be filed with the commission. The commission clarifies that deletion of published §23.12(e)(5) of this rule would not waive the requirement for Class A companies to file a copy of the audit report.

TTA proposed additional clarifying language in §23.12(e)(4)(C). TTA asserted that the intent of the attestation statement is to indicate that the company's CAM was followed

throughout the year. TTA proposed to clarify §23.12(e)(4)(C). The commission agrees with TTA's proposal and has amended §23.12(e)(4)(C) to include TTA's suggestion.

Regarding §23.12(e)(4)(D), TTA proposed clarifying the term capital. The commission agrees with the proposed change by TTA and has amended §23.12(e)(4)(D) accordingly.

TTA expressed concerns over disclosing nonregulated information that it considers proprietary. TTA urged the commission to address the question of proprietary treatment of nonregulated information. The information required by this rule is not only of interest to the commission but also of interest to the public. Typically, whenever companies are required to submit information that is a trade secret, the companies are required to make a showing under the law to that effect to the commission to justify the withholding of information from the public. The commission has in the past protected companies' proprietary information on a case by case basis. The commission believes that amending the rule to protect proprietary information is unwarranted and doing so will likely encourage companies to be overcautious in protecting the information from public disclosure and consequently overburden the commission resources. Since a mechanism for protecting proprietary information is already in place at the commission, which has worked well, the TTA's concern is unwarranted.

Addressing the audit requirement contained in published §23.12(e)(5), TTA and CB & Company and BSGM expressed concerns about the audit standards. Since the commission has agreed to delete the audit requirements for all LECs, except Class A companies, it is not necessary to address these issues.

TTA proposed changes to published subparagraphs §23.12(e)(6)(A) and (B) relating to alternative filings. TTA stated that any intrastate requirements that are put into place should not conflict with the FCC requirements and impose duplicative or contradictory requirements. TTA proposed wording in these subsections which would clarify the requirement that a LEC follow an FCC-approved CAM. SWB also proposed amending published §23.12(e)(6)(A) to clearly state that a Class A LEC's filing with the commission of copies of pertinent FCC-filed materials should be deemed sufficient, without more, to satisfy the requirements of §23.12(e). SWB argued that to impose additional requirements would be unnecessary, burdensome and duplicative. The commission has amended subparagraphs §23.12(e)(5)(A) and (B) (published as §23.12(e)(6)(A) and (B)) to include TTA's suggested language.

TTA and SWB also recommended that class A LECs be exempted from the filing requirements of §23.11(e)(4)(B)-(D). The commission does not agree with this recommendation of TTA and SWB. The contention that any intrastate requirements that vary from the FCC's requirements are necessarily duplicative or contradictory is neither supported nor founded on any mandated FCC filing requirements. The FCC, in Docket 86-111, addressing the Cost Allocation Manual, stated that it was not requiring states to

use its procedures for intrastate ratemaking purposes. The FCC further stated that the procedures and rules relating to allocating regulated and nonregulated costs may be used as a guide for states electing to follow a regulatory approach similar to the FCC's. Finally, the FCC said that states will be free to employ different cost allocation methods and affiliate transaction rules in intrastate ratemaking, and to mandate that carriers keep any side records required for the states' regulatory purposes. The commission declines to accept the recommendation of TTA and SWB.

TTA proposed a change to §23.12(e)(6)(A) (published as §23.12(e)(7)(A)) to include activities relating to repair of customer premises equipment and/or inside wire, in addition to the current exceptions relating to a sale or installation. The commission agrees with the amendment and has added language to include repair under this subsection. TTA also proposed to include nonregulated activity relating to ownership of non-operating investments, such as a limited partnership interest. TTA stated that these nonregulated activities require insignificant allocations. Since an exception is allowed under §23.12(e)(6)(B) (published as §23.12(e)(7)(B)) for affiliate ownership of nonregulated activities, the commission does not agree with TTA that specific language needs to be included for activities such as limited partnership interests.

TTA also proposed language for an additional exemption for LECs who have operations in more than one state and who serve only a limited number of customers in Texas. While TTA did not submit any rationale for proposing this additional exception, the commission presumes the reason is related to instances where utilities serve a small number of Texas customers and the commission has relied on the regulatory oversight of other states. The commission does not object to this additional exception and has added §23.12(e)(6)(D) to include TTA's suggestions.

TSTCI proposed that two additional exceptions be included in §23.12(e)(6) (published as §23.12(e)(7)). TSTCI proposed that:

- (1) average schedule companies should not be required to file a CAM with the commission, and
- (2) the commission should exempt from the filing requirements the small LECs who have less than 31,000 access lines and less than 20% ownership of a nonregulated affiliate or have less than 20% of total operations related to nonregulated or affiliated transactions. Regarding the first proposal, TSTCI argued that since average schedule companies are not required to develop a CAM for interstate purposes they should be exempt for state purposes. The commission agrees with TSTCI's comments and has added §23.12(e)(6)(E) to exempt average schedule companies from the filing requirements of §23.12(e). Regarding the second proposed exception, The commission does not agree with TSTCI's proposal. Section 23.12(e)(6)(B) (published as §23.12(e)(7)(B)) is written with PURA,

§3(i) in mind regarding the percent level that is defined as an affiliate interest (5.0% or more). Because §23.12(e)(6)(B) (published as §23.12(e)(7)(B)) conforms with the definition of an affiliate interest as described in PURA, §3(i), The commission declines to include the suggested change to the rule.

TTA stated that published subsection §23.12(e)(8) requires prior Commission approval for a LEC to omit inapplicable Part 32 accounts and/or cost pools described in the CAM. TTA further stated that the commission staff indicated the intent of this subsection was to require commission approval for use of alternate Part 32 accounts and/or cost pools. TTA proposed alternative language to §23.12(e)(7) (published as §23.12(e)(8)) that accomplished the commission's intent. The commission disagrees with TTA's position that the current language in the rule does not accomplish the stated intent. The commission notes that TTA's proposed language achieves the same result as the current language of the rule. The commission declines to amend §23.12(e)(7) (published as §23.12(e)(8)).

An initial recommendation for adoption of the rule was filed with the commission on December 23, 1994. SWB and TTA filed comments in response to the initial recommendation. SWB and TTA stated that they are gratified that the commission incorporated several suggestions made by commenters and that adopting the rule as proposed in the initial recommendation would wisely strike a balance between the commission's stated objective in this proceeding and minimizing the administrative burden that would be placed on Class A LECs.

Cross Index to Statute, Article or Code: Texas Civil Statutes, Article 1446c.

§23.12. Financial Records and Reports.

- (a)-(d) (No change.)
- (e) Cost Allocation Manual.

(1) Cost allocation manual requirement. Each local exchange company (LEC) that provides regulated intrastate utility service and also provides nonregulated utility service or sells other services or products shall maintain and file with the commission annually a cost allocation manual (CAM) describing the methodology used for allocating its costs between its regulated activities and its other activities in accordance with this subsection.

(2) Allocation of costs. Notwithstanding any provision of this subsection to the contrary, each LEC shall maintain its accounts and subaccounts consistently with the content and titles prescribed in the Uniform System of Accounts for Telecommunications Companies as adopted and amended

by the Federal Communications Commission (FCC) for Class A utilities. Each LEC subject to the FCC Class A cost allocation manual (CAM) filing requirements shall apportion its total costs in each of the Part 32 accounts into regulated, nonregulated and other cost pools, as required by the FCC rules governing this allocation (FCC Rule 64.901-Allocation of Costs) and as filed in that LEC's CAM on file with the FCC. For such LECs, the Part 32 accounts, appropriate cost pools, and approved apportionment methods are set forth in the FCC-approved CAM filed by the Class A LECs. Each LEC not subject to the FCC Class A CAM filing requirements shall describe the methodology used to apportion its total costs in each of the Part 32 accounts into regulated, nonregulated and other cost pools. After initial assignment, costs included in the common cost pool shall be apportioned to the regulated and nonregulated cost pools utilizing the apportionment methods approved by the commission. The Part 32 accounts, appropriate cost pools, and approved apportionment methods are set forth in the commission-approved cost allocation matrix, which is available from the commission's central records office.

(3) Contents of CAM. The CAM filed with the commission by a LEC shall contain at least the following sections and information:

(A) Introduction—including a discussion of the cost accounting concepts, language, and applications utilized throughout the CAM;

(B) Nonregulated Activities—identifying each nonregulated product or service provided by the LEC and the accounts associated with each such nonregulated product or service;

(C) Incidental Activities—identifying all incidental activities of the LEC. Incidental activities shall be defined using the following four criteria:

- (i) the activity must be an outgrowth of regulated operations;
- (ii) the activity cannot constitute a separate line of business;
- (iii) the activity must have been traditionally treated as regulated for accounting purposes; and
- (iv) the total of all incidental activities' revenues must not exceed 1.0% of a carrier's total revenues;

(D) Costs Apportionment Table—identifying the LEC's specific methodologies, taken from the commission-approved cost allocation matrix, applied to each Part 32 account to apportion costs

between regulated activities and nonregulated activities. For Class A LECs, the appropriate cost pools and apportionment methods approved by the FCC shall be used; and

(E) Time Reporting Procedures—describing the time reporting system used by the LEC's regulated telephone operating units, how frequently the reporting system is updated, the methods used to train employees to report time accurately, and the methods used to implement, monitor, and reinforce accurate time reporting by employees.

(4) Filing requirements. The initial filing of information required in subparagraphs (A)-(E) of this paragraph shall be filed no later than August 15, 1995. For periods after the initial filing, each LEC shall file annually, by June 1st, with the commission the following information for the preceding calendar year:

(A) its CAM;

(B) estimates of the monetary costs or savings associated with any annual revisions by the LEC to its CAM, broken down with reference to particular affected Part 32 accounts;

(C) a statement signed by an officer of the LEC attesting to the fact that the CAM was followed throughout the year for regulatory reporting purposes;

(D) a regulated/nonregulated comparative percentage report. The report shall be broken down by Part 32 account, and shall be further broken down within each such account to indicate separately:

(i) the dollar amount of regulated and nonregulated revenues/expenses/invested capital(ratebase); and

(ii) the percentages (based on the total amount of revenues/expenses/invested capital(ratebase) within that account) of those revenues/expenses/invested capital(ratebase) that are generated by regulated activities and by nonregulated activities. The report shall present the information in a comparative form with the immediate prior year regulated/nonregulated comparative percentage report. The first report shall contain only first year information; and

(E) a copy of any audits, interpretive letters, reviews, or orders pertaining to the LEC's CAM or its application to transactions with affiliates or nonregulated lines of business which have been issued by the FCC.

(5) Alternative filings. Notwithstanding any provision of this subsection to the contrary:

(A) If the FCC requires a LEC to file a CAM regarding its interstate activities, and that LEC uses the same allocation basis for its intrastate costs as it does for its interstate costs, then the LEC shall meet the requirements of subsection (e)(3) of this section by filing with the commission annually by June 1st a complete copy of the CAM it filed most recently with the FCC, and, for purposes of developing and maintaining a CAM for its intrastate costs, shall follow the procedures set forth by the FCC for interstate cost allocation.

(B) If a LEC allocates its intrastate costs on the same basis on which an affiliate of the LEC allocates its interstate costs, and the affiliate files a CAM with the FCC, then the LEC shall meet the requirements of subsection (e)(3) of this section by filing with the commission annually by June 1st a complete copy of the CAM its affiliate filed most recently with the FCC, and, for purposes of developing and maintaining a CAM for its intrastate costs, shall follow the procedures set forth by the FCC for interstate cost allocation.

(6) Exceptions to CAM filing requirements:

(A) A LEC is not required to file the information specified in paragraph (4)(B) of this subsection if the only nonregulated activities in which the LEC engages are the sale or installation, and/or repair of customer premises equipment and/or inside wire.

(B) A LEC shall not be required to file the information specified in paragraph (4)(B) of this subsection solely on the basis of its ownership of less than 5.0% of the voting securities of a nonregulated entity (which entity would be an affiliate of the LEC if the LEC owned 5.0% or more of its voting securities).

(C) A LEC exclusively engaged in regulated activities is not required to file a CAM with the commission. Annually by June 1st, each such LEC shall file with the commission a statement signed by an officer of the LEC attesting to the fact that the LEC was engaged in only regulated activities throughout the preceding calendar year.

(D) A LEC is not required to file a CAM with the commission if the LEC's rates have been approved on a reciprocal basis, as provided for in §22.263 of the commission Procedural Rules.

(E) A LEC is not required to file the information specified in subsection (e) of this section if the LEC is considered an average schedule company for determining interstate revenue requirements.

(7) LEC flexibility. If a LEC subject to this subsection believes that certain Part 32 accounts, cost pools, or apportionment methods are not applicable to its activities, and further believes that its use of alternative accounts, cost pools, or apportionment methods would be in the public interest, then that LEC may apply to the commission for permission to use specifically identified alternative accounts, cost pools, or apportionment methods described in its application. If the commission finds that such alternative accounts, cost pools, or apportionment methods are in the public interest, then the commission may grant the application. Such an application by a LEC may be reviewed administratively.

(8) Costs of affiliate transactions. Nothing in this subsection, nor the commission-approved cost allocation matrix, shall relieve the LEC of its burden of proving in a proceeding pursuant to the Public Utility Regulatory Act, §42 or §43 that affiliate transactions meet the requirements of §41(c)(1) of the Act. The ability of an LEC to recover its affiliate transactions through the intrastate cost of service remains subject to §41(c)(1) of the Act.

This agency hereby certifies that the rule as adopted 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 6, 1995.

TRD-9501507

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: February 27, 1995

Proposal publication date: August 26, 1994

For further information, please call: (512) 458-0100

Quality of Service

• 16 TAC §23.69

The Public Utility Commission of Texas adopts Substantive Rule §23.69, Integrated Services Digital Network (ISDN), with changes to the proposed text as published in the August 26, 1994, issue of the *Texas Register* (19 TexReg 6695).

The public benefit anticipated as a result of enforcing this section will be the availability of ISDN that complies with national standards, at a reasonable price, to local exchange carriers' (LECs) customers. The Commission finds that at this time ISDN is not a replacement for "plain old telephone service" (POTS), but rather provides the public

switched telephone network with end-to-end digital connectivity. Examples of uses for ISDN are telecommuting, teleconferencing, distance learning, and telemedicine. The Commission finds that ISDN is an alternative to POTS, and as such, that ISDN should be made available to customers at a reasonable price, that it should be as accessible as possible to customers who want ISDN, that it should meet minimum standards of quality and consistency, and that it should be provided in such a manner that permits the LECs a reasonable opportunity to earn a reasonable return on invested capital. Because sufficient competition to encourage necessary network upgrades is not present, the Commission finds that adoption of this section is necessary to insure that the level of telecommunications service available to Texas citizens is adequate and efficient.

To fulfill the Commission's objectives that ISDN be made available to customers at a reasonable price, that it be as accessible as possible to customers who want ISDN, that it meet minimum standards of quality and consistency, and that it be provided in such a manner that permits the LECs a reasonable opportunity to earn a reasonable return on invested capital and to insure that the policies and procedures of the Commission provide that the level of telecommunications service available to Texas citizens is adequate and efficient, the Commission adopts this new section to establish the minimum criteria for the LECs' provision of ISDN to their customers. The section sets forth requirements for certain LECs to make ISDN available to customers and requirements for LECs to prepare plans for making ISDN available. The section requires that, at a minimum, all ISDN shall comply with National ISDN-1 and National ISDN-2 Standards. The new section establishes costing and pricing policies with respect to ISDN services. The section also sets forth the procedure for the LECs to comply with the policies set forth in the section. All LECs are required to comply with this section.

The following parties filed initial comments in response to the August 26, 1994, *Texas Register* publication of the proposed rule: AT&T Communications of the Southwest (AT&T); Department of Information Resources (DIR); Fort Bend Telephone Company (Fort Bend); General Services Commission (GSC); GTE Southwest Incorporated and Contel of Texas, Inc. (GTE); Joint Comments; MCI Telecommunications Corporation (MCI); Office of Public Utility Counsel (OPUC); Southwestern Bell Telephone Company (SWBT); Sugar Land Telephone Company (Sugar Land); Texas Statewide Telephone Cooperative (TSTCI); Texas Tech University Health Sciences Center (TTUHSC); and United Telephone Company of Texas, Inc. and Central Telephone Company of Texas (United), Joint Comments. The following parties filed reply comments: AT&T, GSC, GTE, OPUC, SWBT, Sugar Land, and Texas Southmost College (TSC).

The Commission Staff filed an initial recommendation on November 2, 1994. Comments in response to the initial recommendation were filed by AT&T, GTE, SWBT, Sugar Land, TSC, and TSTCI.

Late-filed comments were submitted by the Texas ISDN Users Group.

AT&T, GSC, MCI, OPUC, SWBT, TTUHSC, and TSTCI generally support the rule, with modifications. AT&T believes that the rule generally balances economic limitations and anticipated customer requirements in the context of the introduction of widespread digital capabilities to the telecommunications infrastructure of the state. MCI believes the rule strikes a fair balance between a purely market-driven deployment policy and one in which the Commission dictates to the LECs a specific deployment schedule for ISDN capabilities. OPUC is pleased with the Commission's proposed approach, which seeks to establish widespread availability of ISDN in the near-term, at affordable prices, with concrete plans for extending availability further by the end of the decade. SWBT is in general agreement with the Commission's proposed rule in that it offers an opportunity to determine whether the deployment of the ISDN-based services will create demand and a reasonable opportunity for the recovery of the investment. Generally, TSTCI is pleased with the proposed rule and believes that it is acceptable to the small telephone companies and cooperatives in Texas.

GTE and United do not support the rule. GTE recommends that the Commission allow the market forces to work. United firmly believes that public policy should encourage infrastructure modernization, but without requiring the deployment of a specific network platform.

Fort Bend, DIR, Sugar Land, and TSC do not comment as to general support. DIR respectfully suggests the PUC consider providing access to proposed rules and filing comments electronically. The comments filed by Sugar Land respond to particular issues related solely to that company.

GTE contends that the Commission does not have the authority under the Administrative Procedure Act (APA) to force a rate change upon GTE through a rulemaking proceeding. Therefore, GTE urges the Commission to limit the scope of this section to new ISDN applications only. GTE contends that the Commission is doing more than implementing or interpreting Commission policy in proposing this section and is, therefore, inappropriately mixing the functions of a contested case proceeding and a rulemaking proceeding. By forcing this change through a rulemaking, GTE believes that the Commission is effectively determining GTE's legal rights without affording it the due process safeguards of a contested hearing guaranteed by APA. GTE further comments that the fact that a hearing is available on GTE's forced application to changes its rates is not sufficient to protect its due process rights.

GTE opines that if the section is adopted as proposed, the Commission is creating a rebuttable presumption of unlawfulness regarding GTE's approved rates without affording GTE a hearing on this issue and that the Commission is also violating §42 and §43 of the Public Utility Regulatory Act (PURA). GTE contends the fact that the section creates a rebuttable presumption regarding the pricing of certain ISDN rate elements does

not cure the legal deficiencies. In proposing rates before the Commission, GTE believes that a utility has the right to make its case before a fair tribunal and that with this section the Commission has predisposed itself against any scenario other than the one adopted in the section.

AT&T believes that the section does not change rates, rather it merely generically states the Commission's policy with respect to the level of rates which it believes would be appropriate for ISDN services. Under the section, any actual change in or setting of rates will occur in a separate proceeding, thus complying with the requirements of PURA and the APA. AT&T points out that the Commission has previously considered and rejected similar "ratemaking in a rulemaking" arguments with respect to §23.23(d) (relating to Rate Design).

GSC submits that the fact is even if the section established a mandatory rate ceiling for basic rate interface (BRI) ISDN of 105% of long run incremental cost (LRIC), which it does not, such would not be setting a rate in a rule because the rule on its face requires the LEC to file tariffs in a subsequent contested case to establish the rates. According to GSC, the Austin Court of Appeals has indicated an agency has the discretion to determine whether setting policy should be done in a rule or in a contested case. See *State Board of Insurance v. Deffebach*, 631 S.W.2d 794,798,799-800 (Tex. App.-Austin 1982) writ ref'd n.r.e.

The Commission disagrees with the comments of GTE that the adoption of the section constitutes unlawful ratemaking by rulemaking. The Commission agrees with the comments of AT&T and GSC. The courts have held that the determination of whether to establish agency policy by notice and comment rulemaking or by ad hoc adjudication is a matter that is generally reserved to the informed discretion of the agency. The section does not purport to set the rates for any service. The section establishes the Commission's policy for ISDN services and directs the LECs to file tariffs to implement that policy. These tariffs are to be submitted under this section, which provides the opportunity for a contested case-type proceeding to set rates. It is in these subsequent tariff filings that new rates will be proposed and rates will be set in conformance with the new policy.

Since the Commission is not setting rates, but is announcing a statement of general applicability that implements, interprets or prescribes policy and describes the procedure for implementing that policy, it is appropriate to utilize the rulemaking procedures of the APA. The Commission determines that the notice and comment rulemaking procedure established by the APA is a more efficient and effective procedure for obtaining broad public participation and input in setting its policies for ISDN. The Commission's rulemaking authority under PURA is broad and includes the authority to establish rules and procedures for establishing new services and rates as the Commission is doing in this proceeding.

Further, the Commission disagrees with GTE that by adopting a policy that there is a rebuttable presumption with respect to pricing at

105% of LRIC, the Commission has predisposed itself against a scenario other than the one adopted in the section and that this is ratemaking in a rulemaking. The Commission notes that the rebuttable presumption policy is not a rate ceiling nor does it require that a LEC price at 105% of LRIC. The Commission believes that pricing of 100% to 105% of LRIC for BRI and foreign exchange (FX) arrangements supports the Commission's goal set forth in subsection (a). Therefore, if a LEC chooses to price BRI and/or FX at 105% of LRIC, the policy set forth in this section creates a rebuttable presumption that this pricing is appropriate.

Sugar Land notes that the section is unlawful if subsection (f)(2)(E), as proposed, specifies the effective date of the section to be the effective date of rate changes to existing ISDN services required to be revised under the section. In response to the comments of Sugar Land, subsection (f)(2)(E) is clarified to establish that the new rates would be set in the subsequent compliance filing required by this section.

SWBT disagrees with the determination by General Counsel that the Commission is authorized by PURA to promulgate the section. SWBT believes that because §61 of PURA expressly provides the conditions under which service improvements may be ordered, SWBT believes that the Legislature intended PURA §61 to be the only avenue by which the Commission could require a utility to make network improvements or interfere with the utility's management and control incident to ownership. Thus, according to SWBT, any rule or order requiring specific technology, under the pretense of ensuring efficient and adequate telephone service, is contrary to the express provisions in PURA §61.

OPUC comments that the Commission has the authority under PURA to require that LECs comply with their obligations to provide efficient and adequate telecommunications service. In responding to arguments regarding the Commission's authority raised in the service quality rulemaking, OPUC notes the Commission citation of PURA §18 as an express grant of jurisdiction and the Commission's belief that the legislature has already provided explicit guidance to this Commission concerning the development of telecommunications service in Texas.

AT&T and GSC support the position taken by the OPUC that the Commission does possess such authority. AT&T opines that the Commission has the authority under PURA §§18(b), 35(a) and (b), and 61 to ensure that the services of the LECs are adequate, efficient, reasonable and not substantially inferior to that which is provided in comparable areas and that this authority may be and has been implemented through quality of service standards. GSC comments that it would be a highly inappropriate narrowing of the Commission's powers under PURA §16 to say that PURA §61 does not empower the Commission to find that analog basic local service is "inadequate or is substantially inferior to" ISDN being provided in other states in the country.

As for Commission authority to require deployment of ISDN, OPUC notes that it is

disingenuous for the LECs, especially those that already offer ISDN services, to imply that the Commission has no authority to mandate widespread deployment. These companies (e.g., GTE and SWBT) filed their applications under existing Commission rules, specifically §23.26 relating to new service offerings. The Commission's new services rule, §23.26(c)(7),(d), and (f)(2), clearly requires the systemwide deployment of new services when they are introduced, unless a waiver of that requirement is granted. OPUC notes that those LECs may have been granted waivers of the systemwide requirement as part of their initial applications, but they did not attempt to claim that the requirement itself for systemwide deployment was beyond the Commission's authority. Systemwide deployment is the default policy for new services, and waiver exceptions must be justified on reasonable grounds. OPUC believes that to suggest that a new rule that would expand existing deployment (in effect reducing or eliminating the scope of deployment waivers) is beyond the Commission's authority simply ignores this standard element of the Commission's role in regulating the provision of new services and technologies.

The Commission rejects SWBT's argument that it is not authorized by PURA to promulgate this section. The Commission agrees with the comments of OPUC, AT&T, and GSC that the Commission does have the authority to promulgate this section. The Commission believes that the Legislature has already provided explicit guidance to this Commission concerning the development of telecommunications service in Texas. PURA §18(a) announces the broad public policy of the state to have adequate and efficient telecommunications service available to all citizens of the state. The Legislature expressly found that the telecommunications industry was changing through technological advancements and federal judicial and administrative actions. The Legislature granted the Commission the authority and power to formulate new rules, policies, and principles in order to protect the public interest in response to these changes. The Commission interprets this grant of authority as directing the Commission to insure that the level of "adequate and efficient telecommunications service" available to Texas citizens evolves over time in order to keep pace with the changes in technology. To insure that adequate and efficient telecommunications service is available to Texas citizens, the Commission believes that it is necessary to adopt this section establishing the minimum criteria for the LECs' provision of ISDN.

AT&T, GTE, TTUHSC, and OPUC believe that ISDN will benefit small businesses. AT&T states that the voice, data and video applications of ISDN will have substantial, positive impacts on small businesses. GTE comments that businesses can benefit from ISDN to whatever degree they utilize the digital loop. TTUHSC and OPUC believe that the advantage for small businesses is the potential to conduct business anywhere using the digital network. The Commission agrees with the commenters that ISDN will benefit small businesses.

United notes that in recent regulatory reform hearings, the Tennessee Public Service

Commission mandated the ubiquitous deployment of ISDN technology throughout the state. An editorial in the December 6, 1993, Communications Week, stated that since "ISDN has been available for purchase in Tennessee, users have bought 150 lines. Tennessee has about 2 million telephone lines in use." United believes that national trends are similar, with proportionately very few ISDN lines in service. SWBT believes that the comments of United concerning the Tennessee experience are particularly enlightening.

GTE notes that ISDN technology is being deployed in several metropolitan areas across the nation, and to a somewhat lesser extent in large residential areas, and that Commissions in Oregon, Washington, and Arizona have expressed formal interest in expanding the service for telecommuting purposes. However, according to GTE, no commission in any other state in which GTE operates has adopted rules mandating a specific service like ISDN.

According to TTUHSC, other states are concentrating on providing bandwidth and access, and ISDN is only one vehicle for providing this type of capacity.

OPUC believes that SWBT's deployment plans for ISDN are the most meager of any of the RBOCs, by a wide margin. OPUC points out that according to the March 1993 Bellcore ISDN deployment report, SWBT projected that only 23% of its access lines would have direct access to ISDN by 1995, by far the lowest deployment percentage of any RBOC. OPUC notes that SWBT's current ISDN offerings are available only in four cities within Texas and that SWBT has announced plans to make the service available in an additional 16 exchanges by the end of 1996, but doing so would still require the majority of customers to obtain service through a foreign serving office (FSO) or FX arrangement.

SWBT believes that the information provided by OPUC is misleading and does not represent the actual number of customers who have access to ISDN-based services without having to pay additional charges for FX access. SWBT notes that the 23% is for five states and not just Texas and that the number does not include the lines that have access to ISDN-based services via FSO access. SWBT points out that it is not charging customers any additional charges for FSO access within an exchange, and that OPUC gives no reasons why FSO access within an exchange is inadequate or why the LECs should bear the considerable additional expense to provide direct access to every customer in a metropolitan exchange. Using FSO access within exchanges, approximately 60% of SWBT's access lines in Texas will have BRI service by the end of this year (1994), which is the same percentage that Bell South projects for the end of 1995. SWBT further notes that with the 16 additional exchanges, approximately 80% of SWBT's access lines will have BRI service by the middle of 1996.

The Commission makes no changes to the section in response to the comments regarding the availability in other states. This section sets forth requirements for the availability of ISDN. In order to insure compatibility and

interconnection ability with customers in other states, the section requires that, at a minimum, all ISDN shall comply with National ISDN-1 and National ISDN-2 Standards. The section also provides policies for costing and pricing ISDN and sets forth a procedure for LEC compliance with the section. The Commission believes that this section is necessary to insure that the policies and procedures of the Commission provide that the level of telecommunications service available to Texas citizens is adequate and efficient.

GSC believes that ISDN is the next logical step in the evolution of the State's telecommunications infrastructure because it is digital technology; it is more reliable, of higher quality, and faster than analog-based data transmission; it is a mature standard and is available (and being deployed) now; it allows more functionality over a single access line; it conserves resources; it augments rather than replaces the public switched network; and it is the basis for future deployment of broadband ISDN.

AT&T believes that the wholesale replacement of analog copper lines with digital fiber optic lines in the immediate future is not technologically and financially feasible and that the technology for Asynchronous Transfer Mode (ATM) service, touted by some as the wave of the future, has not developed to the point that a switch supporting voice communications is even currently available. According to AT&T, ISDN is expected to be available to 50% of households nationwide by the end of this year. AT&T believes that ISDN, with its capabilities to provide a wide range of digital services in a cost-effective manner over existing copper lines, is a key interim step in the long-range move toward total digitalization of the network.

OPUC comments that ISDN is rapidly becoming the basic technological platform for telecommunications networks around the world, and that although the platform will undoubtedly evolve over time, there is no serious scenario that suggests ISDN deployment today, or even within five years, will become obsolete; rather, the ISDN platform will be built upon further and will remain useful indefinitely.

TTUHSC notes that the near term availability of such services neither interferes with nor obviates the need to continue planning and development of a comprehensive, state-of-the-art telecommunications infrastructure which addresses the current and future telecommunications needs of the State of Texas.

The Commission agrees with the comments of GSC, AT&T, OPUC, and TTUHSC that ISDN is the next step in the long range plan to move toward a digital network.

GTE believes that the section as presently proposed is inconsistent with the long range plan for development of telecommunications services as defined in Project Number 12141, Universal Service Infrastructure Development Policies for Telecommunications Utilities, and, in fact, proposed subsection (d)(4) essentially usurps the long-range plan by forcing deployment of a single technology. GTE recommends that this section be revised to be made consistent with the stated objectives

of that project. As proposed in Project Number 12141, an advanced telecommunications infrastructure should, in the short term, provide each Texan an opportunity to have end-to-end digital connectivity. In the longer term, an advanced telecommunications infrastructure would provide two-way, full-motion switched video and mobile communications capabilities to each Texan. The Commission disagrees with GTE and believes that the subsection (d)(4) and (5) requirement that each LEC prepare a plan describing its good faith effort toward making ISDN available or toward making available end-to-end digital connectivity that is equal to or superior to ISDN is wholly consistent with the Project Number 12141 proposal that, in the short term, a telecommunications infrastructure should provide each Texan an opportunity to have end-to-end digital connectivity.

AT&T urges the Commission to include in the section a requirement directing the complying LECs to include separate residential BRI schedules in the compliance tariff. AT&T notes that as long as a separate residential tariff exists for plain old telephone service, a separate tariff should be put in place for ISDN. GSC does not support AT&T's suggestion that there should be a separate residential tariff requirement because such a matter is more appropriately addressed in the subsequent compliance cases where specific tariff matters will be addressed. The Commission declines to make the change recommended by AT&T and agrees with GSC that the matter should be addressed in the subsequent compliance filings.

United believes that ISDN is a premium discretionary service, and as with other premium services, the cost of those services should be borne by the customers who order them and not the general body of ratepayers. TSTCI strongly believes that rates for any discretionary service should not be set at levels lower than what the market will pay and that it is inappropriate for the Commission to do so. GSC disagrees that ISDN is a premium discretionary service and asserts that ISDN should not be priced as high as possible as a premium discretionary service, because it is more than a mere new service and, in fact, is intended to be used by some as the sole way to maintain contact with the outside world via the telephone network. Because the Commission finds that ISDN is an alternative to POTS, the Commission agrees with GSC that ISDN should not be priced as high as possible as a premium discretionary service. However, the Commission also believes that the cost of ISDN services should be borne by the customers who order them and not the general body of ratepayers.

SWBT and GTE believe that there is an anticipated economic cost to persons who are required to comply with the section, because there is a cost to the LECs who offer the services and to the customers who must buy special equipment to utilize ISDN-based services.

SWBT notes that the LECs will be required to purchase the necessary equipment and software to provide ISDN-based services. GTE and United comment that the LECs will experience considerable loop treatment expense. AT&T notes that the section would not require

a LEC to recondition any loops automatically. Reconditioning is necessary only if the customer requests ISDN service. In addition, AT&T points out that the section allows the LECs to charge customers an additional charge where the provisioning of ISDN must be accomplished via an FX arrangement. Sugar Land states that the provision of every service addressed by the National ISDN-1 standards would require Sugar Land to invest an additional \$188,116 in hardware and software while National ISDN-2 would require an investment of approximately \$549,188. If the section requires that Sugar Land provide all services and features addressed by the National ISDN-1 and National ISDN-2 standards, it believes that the economic cost of this compliance should be noted in the cost statement accompanying the section. Sugar Land states that in addition to the costs of implementation of the service, there are also regulatory costs associated with the filing of tariffs for newly implemented ISDN services and/or the revision of existing tariffs for ISDN services already in effect.

The Commission disagrees with the comments of SWBT, GTE, and Sugar Land. It is clear that under PURA §§37-48 the Commission has the authority to establish just and reasonable rates for public utility services and that the rates include a reasonable return on public utility property that has been dedicated to a public use. The new section clearly provides a return to the LECs, as described in subsection (a), by allowing them to set a price for the ISDN service under procedures set forth in this section. Therefore, because the section provides a return to the LECs, there is no unrecovered economic cost to the LECs required to comply with this section. The Commission also agrees with AT&T that reconditioning of loops is required only when a customer requests ISDN services. Furthermore, reconditioning of loops is not required to provide ISDN service to every customer; therefore, reconditioning may not even be needed when a customer requests ISDN services. Also, the LECs may have already reconditioned loops in order to comply with other Commission rules, such as §23.61 (relating to Telephone Utilities).

SWBT and GTE state that existing CPE cannot be used in connection with the digital ISDN-based services and that customers will be required to purchase new CPE that is ISDN-capable costing \$400 to \$600 or more. AT&T disagrees, noting that individuals who purchase new CPE are obviously not doing so to "comply" with this section. They are engaging in the natural process of voluntarily upgrading equipment to take advantage of the modernized capabilities of the new telecommunications infrastructure. The Commission agrees with AT&T that individuals who purchase new CPE are not doing so to comply with this section. Therefore, there is no economic cost to customers to comply with this section.

Subsection (a) sets forth the purpose of the section.

SWBT believes that subsection (a) treats ISDN as a service rather than a technology and that this is incorrect. SWBT further believes that because ISDN is a new local loop and switch technology and not a service, it is

inappropriate to consider pricing policies for ISDN-based services using POTS as a standard. AT&T disagrees and believes that SWBT suggests that ISDN is little more than a line-side offering, while ISDN deployment, based on national standards, actually provides the means for digital interoperability across Texas and to the rest of the world. AT&T believes that the language in the proposed section more accurately captures the spirit of ISDN and should be retained. The Commission agrees with AT&T that, while ISDN is a new local loop and switch technology, the more important aspect of ISDN is that it provides the capabilities and advantages of end-to-end digital connectivity. Therefore, the Commission declines to revise the section as suggested by SWBT.

SWBT asserts that ISDN does not offer any service that cannot be obtained through some other service offering. AT&T disagrees noting that while other digital offerings may exist, the expense of those services, including the associated additional CPE necessary to use the service, cause the service to be an ineffective option for many prospective BRI users. The Commission concurs with AT&T.

TSTCI proposes that the language in subsection (a) be changed to state that ISDN services must recover their costs. AT&T believes the intent of the section that ISDN rates recover costs is clear. However, to the extent there is any question on this issue, AT&T would support TSTCI's suggestion. AT&T believes that the additional language should require compliance with the TSLRIC standard under §23.91, relating to long run incremental cost methodology for LECs. The Commission believes that the intent of the section that ISDN rates recover costs is clearly stated in subsection (f)(2)(A), and therefore no change is made in response to these comments.

AT&T proposes to delete the portion of the sentence in subsection (a) which reads "At this time, ISDN is not a replacement for 'plain old telephone service,' but rather" because individual customers who purchase ISDN will in many cases actually replace their POTS service with ISDN service. The Commission agrees with AT&T that individual customers who purchase ISDN may actually replace their POTS service with ISDN service. However, the Commission believes that from an overall policy perspective, the statement contained in subsection (a) is appropriate. The Commission, therefore, does not make the revision requested by AT&T.

From the position of a customer TTHSC concurs with both the purpose and direction of §23.69 as stated in subsection (a).

Subsection (b) sets forth the application of the section.

AT&T believes that subsection (b)(1) yields a less than clear understanding of the intended application of the section, in that the section does not clearly describe the anticipated treatment of LEC ISDN services that have been approved prior to the adoption of the section. AT&T requests that the Commission clarify the section to reflect its intent. In response to AT&T's comments, the Commission revises subsections (b), (g), and (h) to clarify the Commission's intent with respect to

the treatment of LEC ISDN services that have been approved prior to the adoption of this section. Subsection (h)(1)(A) sets forth the treatment of LECs required to comply with subsections (d)(1) and (2). Subsection (h)(1)(B) sets forth the treatment of LECs having tariffs in effect as of the effective date of this section but that are not subject to subsection (h)(1)(A). Subsection (h)(1)(D) sets forth the treatment of LECs not required to comply under subsections (h)(1)(A) and (h)(1)(B) and LECs required to comply under subsections (h)(1)(A) and (h)(1)(B) if such LECs offer additional ISDN services after initial compliance with the section. The Commission revises subsection (b)(1) to require that any LEC providing ISDN must do so in accordance with this section. Also, subsection (g) is revised to clarify the contents of the LEC's application.

Based on proposed subsections (e)(3) and (f)(2)(E), AT&T believes that LECs with existing ISDN services must, within 90 days after the effective date of the section, at least have in place a minimum service that complies with the section. The section as proposed required a compliance filing within 90 days. However, the date of compliance as proposed was January 1, 1996. Due to the revision of the subsection (d) availability date from January 1, 1996 to July 1, 1996, the Commission has revised subsection (h) to clarify that LECs with existing ISDN tariffs must file a compliance application within 270 days of the effective date of this section. The effective date for the tariffs and compliance under this section shall be no later than July 1, 1996.

AT&T believes that under the section the LECs are not obligated to pull existing, non-complying ISDN services down and their existing customers are entitled to receive those services until they cease taking the service for at least 30 days. However, after the effective date of the section, the rates for those pre-existing ISDN customers and all customers of the newly complying services must be established in accordance with the section. AT&T believes that under the section, LECs can also offer other "custom" ISDN services upon customer request, in addition to the ISDN services which comply with subsection (e) of the section, but that the section also appears to require that these additional services still be costed and priced in accordance with the section. The Commission agrees with AT&T's comments.

MCI notes that in view of the recent uncertainty occasioned by the Austin Court of Appeals decision in *Southwestern Bell Telephone Company, et al v. Public Utility Commission of Texas, et al*, Cause Number 3-93-552-CV (Unpublished) (September 21, 1994), in subsection (b)(1), the reference to §23.61 should be deleted and replaced with "the Public Utility Regulatory Act, Section 3(v) and as that term may be further defined by the Commission." The Commission disagrees with the comments of MCI. During the appeal process, §23.61 remains valid. If Commission rules are ultimately found to be invalid, the Commission will make appropriate revisions at that time. As long as the Commission continues to support its rule through the court process, it is not appropriate to treat an in-

terim judicial ruling as the final ruling on the matter. Therefore, subsection (b)(1) is not revised.

Subsection (c) sets forth the definitions.

AT&T believes that subsection (c)(1) should define B-Channel as an "ISDN bearer service channel," because ISDN B-Channels can operate at 56 Kbps or 64 Kbps, depending on the availability of SS7 capabilities. AT&T notes that the definition of BRI in subsection (c)(2) should be revised to read "one of the standardized access methods to ISDN, comprising two 64 Kbps B-Channels and one 16 Kbps D-Channel (2B + D)." AT&T believes that consistent with the foregoing discussion, the definition of Primary Rate Interface (PRI) in subsection (c)(12) should be revised to read "one of the standardized access methods to ISDN, the 1.544 Kbps PRI comprises either twenty-three 64 Kbps B Channels and one 64 Kbps D-Channel (23B + D) or twenty-four 64 Kbps B-Channels (24B) when the associated call signaling is provided by another PRI in the same group." The Commission agrees with the changes recommended by AT&T and subsection (c) is revised accordingly.

MCI believes that the reference in subsection (c)(5) to §23.61 should be deleted and replaced with "the Public Utility Regulatory Act, Section 3(v) and as that term may be further defined by the Commission." The Commission disagrees with the comments of MCI because §3(v) of PURA defines "local exchange company," while subsection (c)(5) defines "exchange area." Therefore, no revision is made to the subsection.

MCI believes that in order to underscore that ISDN constitutes a different telecommunications architecture, the word "architecture" should be inserted between the words "network" and "that" in subsection (c)(8). The Commission agrees with MCI and revises the section accordingly.

Subsection (d) sets forth the requirements for LECs to make ISDN available to their customers.

DIR, United, and GTE believe that Texas should not mandate one specific technical standard (e.g., ISDN) for implementation by the telephone companies or other communication service providers. DIR suggests that the language "making available end-to-end digital connectivity that is equal to or superior to ISDN" is the preferred terminology for all requirements under subsection (d). AT&T disagrees and observes that the section is necessary because the Commission must determine the level of service which is necessary and in the public interest for consumers because competition, which would otherwise spur the network upgrades, does not exist. The Commission rejects DIR's recommended change, disagrees with the comments of United and GTE, and agrees with the comments of AT&T that it is appropriate to mandate ISDN. Because sufficient competition to encourage necessary network upgrades is not present, the Commission finds that adoption of this section is necessary to insure that the level of telecommunications service available to Texas citizens is adequate and efficient. The Commission believes that ISDN is

the appropriate standard because its capability to provide a wide range of digital services in a cost-effective manner over existing copper lines makes ISDN a key and necessary interim step in the long-range move toward total digitalization of the network.

AT&T suggests that subsection (d) should be revised to add a requirement that ISDN also be made available by January 1, 1998 in all exchanges in which the LEC's digital switch is capable, as described by the switch maker's specifications, of being upgraded to provide ISDN. To ensure that uneconomic investment is not required, AT&T recommends that the section also specifically provide a waiver provision under which the LECs can avoid the obligation to upgrade the switch where the applicable costs and prospective demand figures show that the upgrade would not be economically justified. OPUC urges the Commission to require the LECs to make ISDN available in all exchanges served by digital central offices that are currently ISDN-compatible, regardless of the number of access lines served in any such exchange. Moreover, OPUC contends that the section should further mandate that all other exchanges served by digital central offices be upgraded to provide direct access to ISDN services as soon as the upgrade capability becomes available to the LEC. SWBT notes that AT&T does not offer any analysis as to why requiring the deployment of ISDN-based services in every exchange with a digital switch would be more in the public interest than the proposal contained in the section requiring ISDN-based services in exchanges of more than 50,000 lines and FX availability elsewhere. SWBT questions AT&T's motivations in recommending a broader deployment of ISDN-based services based upon the presence of digital switches as AT&T is a switch vendor and charges the LECs significant right-to-use fees to install and provide ISDN-based services on AT&T digital central office switches.

AT&T believes that where the necessary digital technology is already in place, the significant expense of replacing the switch can be avoided, and in those instances it is more likely that ISDN capabilities can be cost-effectively provided by upgrading the existing digital switch. OPUC believes that ubiquitous deployment of ISDN-based services is a cost-effective investment from a public interest point-of-view. SWBT notes that while it is true that a digital switch is required to provide ISDN-based services, it is not true that the mere presence of a digital switch allows the provision of ISDN-based services with minimal incremental costs. SWBT indicates that in order to provide BRI services in the 16 additional SWBT exchanges serving 50,000 or more lines, the capital cost to upgrade the existing switches will average over \$1,700 per BRI capable line to be served in the first two years. After all of the offices are equipped, SWBT estimates that each additional BRI equipped line will require approximately \$920 in capital investment. In addition, the estimated expense of adding the Digiline (SWBT's trade name for its BRI service offering) services to these existing digital switches is \$700 per line.

SWBT and GTE note that OPUC believes customers should not be required to pay any

thing for ISDN-based services other than the additional costs to enable the digital switches to handle ISDN-based services because customers have already funded through monopoly charges the major investment of the digital switches required to support ISDN. SWBT disagrees stating that the customers do not obtain an ownership interest in LEC assets by purchasing services from the LEC. GTE disagrees and comments that if the LECs are forced to replace noncapable digital offices with capable digital offices, the LECs' ratepayers will have to pay for the new switch as well as pay off the prior obligations owed on the former switch. OPUC points out that the FX or the FSO options allowed by subsection (d) require customers to obtain new telephone numbers to conform to the NXX code of the central office that ultimately serves them and that the section allows imposition of additional charges in the case of FX service. According to OPUC these policies, in cases where ISDN could be provided directly, are discrimination imposed upon the least advantaged regions of the state.

The Commission disagrees with the comments of AT&T and OPUC that the section should require that ISDN be made available in all exchanges served by digital central offices. The Commission believes that the section appropriately balances the availability of ISDN, using FX and FSO arrangements in some cases, with the cost of providing ISDN. Thus, the provisions of the section require certain LECs to make ISDN available to customers at a reasonable price. In its decision to allow FX and FSO arrangements, the Commission has considered OPUC's comment that the FX and FSO arrangements will require customers to obtain new telephone numbers. The Commission believes that at this time, this policy is necessary to balance the availability with the cost of providing ISDN. While it may be inconvenient for a customer to change his or her telephone number due to obtaining ISDN service through an FX or FSO arrangement, this policy will allow a customer to obtain ISDN service at a reasonable price.

GTE believes that it is critically important for the Commission to recognize that the impact of this section upon GTE and SWBT will not be the same. In contrast to SWBT, GTE states that most of its digital offices are equipped with GTD-5 switches. According to GTE, these switches cannot be upgraded to offer ISDN-BRI, and it will be at least two years before they can be upgraded. As such, GTE can presently provide ISDN only by replacing these digital switches or developing an overlay network. GTE points out that the Commission has already addressed GTE's unique situation regarding deployment of ISDN and in Docket Numbers 10635 and 11042 crafted a unique solution to meet that situation. The Commission adopts this section as its current policy regarding ISDN; therefore, the Commission declines to revise the section based upon GTE's comments that over two years ago the Commission addressed GTE's situation in Docket Numbers 10635 and 11042. The Commission notes, however, that a LEC may request a waiver of the requirements of this section, upon the showing of good cause, under §23.2

GTE and SWBT submit that there is no evidence that a sufficient demand for ISDN exists to support the costs incurred in a deployment of ISDN in exchanges having 50,000 or more access lines. SWBT believes that the January 1, 1996 date for availability of ISDN as required by subsection (d)(1) is completely arbitrary. While SWBT and GTE would prefer an additional year to deploy ISDN-based services, SWBT believes that a compromise of July 1, 1996 would be sufficient to help reduce the costs SWBT must pay to deploy ISDN based services in the required exchanges. SWBT claims that an arbitrary date for compliance with the section deprives SWBT of leverage in negotiations with equipment vendors. AT&T believes that any advantage accruing to vendors, if it exists at all, would be minimal because in the competitive equipment industry the leverage of the LEC in negotiations arises from the existence of competitive alternatives from other vendors, not from the ability of the LEC to indefinitely postpone equipment decisions. TSC requests that the projected date for installation of ISDN in Brownsville, Texas be moved from "no later than January 1, 1996," to right now or at the earliest possible date. TSC believes that SWBT has the equipment required for installation of ISDN in Brownsville and questions why the Brownsville area would have to wait 15 months or longer to obtain ISDN.

The Commission disagrees that the January 1, 1996 date is arbitrary. The Commission must balance the interests of the parties who want ISDN service as soon as possible with the interests of the LECs that believe that it is more appropriate to delay the availability of ISDN. The Commission believes that because ISDN is an alternative to POTS that provides the public switched network with end-to-end digital connectivity, ISDN should be made available to customers as soon as possible. However, the Commission recognizes SWBT's proposed compromise date of July 1, 1996, and revises the section accordingly.

Because the Commission accepts SWBT's compromise date of July 1, 1996, the Commission need not determine whether the required availability date deprives LECs of leverage with suppliers.

TSTCI is concerned with the definition of the word "available" in the second sentence of subsection (d)(1), since this definition may also apply to providers under subsection (d)(3). TSTCI members believe that it is more appropriate to provide a service within a reasonable time upon receipt of an order from a customer and that an arbitrary 30 day period is not realistic in all situations. AT&T believes that unless an effective justification for extending the period can be demonstrated, the 30-day period requirement should stand and TSTCI's recommendation should not be adopted. The Commission agrees with the comments of AT&T, believes that no justification for extending the period has been demonstrated, and therefore, makes no changes as a result of TSTCI's comment.

The Commission agrees with MCI's suggestion that reference to "the" LEC in subsection (d)(1) and (4) be changed to "each" LEC and the subsection is revised accordingly.

Although GTE offers no specific language changes for subsections (d)(2) or (3), the Company notes that these provisions could be subject to GTE's consent decree, which prohibits GTE from carrying traffic across LATA boundaries. In view of GTE's arguments, AT&T agrees that the section should provide for an automatic waiver of any obligations that would require relief from existing federal consent decrees. The Commission declines to revise the section to provide for a specific waiver process as suggested by AT&T. The Commission believes, however, that a LEC may request a waiver of the requirements of this section, upon the showing of good cause, under §23.2.

TSTCI commends the Commission on language in subsection (d)(3) that encourages LECs to work together so that facilities may be shared to make ISDN available to all consumers. AT&T believes that subsection (d)(3) should urge all telecommunications providers to work together to provide ISDN in areas it would otherwise not be available, at a minimum via FX-type arrangements. The Commission agrees with the comments of AT&T, and the section is revised accordingly.

TSTCI submits that subsection (d)(4) requiring a plan does not provide a standard for approval of the plan; nor does it provide an approval process of the plan; nor does it specify the details that the Commission wants addressed in such a plan. If the plan demonstrates that the ISDN is not a physically or economically sound investment, TSTCI believes that a LEC should be allowed to propose an ISDN availability date other than January 1, 2000, or prove that there is no need to deploy ISDN in its service area.

AT&T believes that the plan required by subsection (d)(4) should also include information as to the number and percentage of access lines in the LEC's service area for which ISDN would be available and the total number and percentage of customers that would be served via FX and FSO arrangements, respectively. OPUC believes that the plans that are submitted should include specific timetables for the upgrading of each exchange, along with the proposed steps and methods to be undertaken, with interim progress reports to be provided to the Commission demonstrating compliance with the plans and explaining any deviations. AT&T urges the Commission to require annual status reports updating the progress of the LEC toward completing the plan and describing such things as the number and percentage of access lines for which ISDN is then available and the number and percentage of customers then served via FX and FSO arrangements, respectively.

The Commission revises the section based upon the comments of AT&T and OPUC and TSTCI's comments that the section does not specify the details the Commission wants addressed in the plan. The Commission believes that the requirement of the plans is necessary to provide information about each LEC's proposal for its good faith effort toward making ISDN available or toward making available end-to-end digital connectivity that is equal to or superior to ISDN. In subsection (d)(6) the Commission sets forth specific details to be included in the plans. However, the

Commission does not believe that it is necessary to provide for an approval process of the plans as suggested by TSTCI, because the plans are informational filings.

TSTCI recommends that this section be amended to incorporate small company provisions anticipated through §23.94 and that it would be mid-year 1995 before this could be accomplished. The plans required under subsection (d)(4) and (5) as proposed are due January 1, 1996. TSTCI believes that six months is not enough time to develop a quality plan and that a due date of January 1, 1997 would better allow the small companies to respond properly. The Commission adopted §23.94 on December 1, 1994. The Commission adds subsections (f)(3) and (g)(3) to this section to incorporate pricing provisions for small LECs similar to those adopted by the Commission in §23.94.

Due to the addition of the pricing provisions for small LECs and the revision of the availability date required by subsection (d)(1) and (2) from January 1, 1996 to July 1, 1996, the Commission revises the due date of the plans required by subsection (d)(5) to January 1, 1997.

Due to the revision of the availability date required by subsection (d)(1) and (2) from January 1, 1996 to July 1, 1996, the Commission revises the due date of the plans required by subsection (d)(4) to July 1, 1996.

It is OPUC's understanding that "the LEC" in proposed subsection (d)(4) refers only to the smaller LECs not covered by subsections (d)(1) and (2). OPUC urges that this subsection be revised and strengthened to refer explicitly to all LECs in Texas. In addition, where subsection proposed (d)(4) requires a plan for a "good faith effort toward making ISDN available to all of the LEC's customers," OPUC interprets this to mean making ISDN available on a direct basis, as opposed to continuing to employ FX arrangements. The Commission has revised subsection (d)(4) and added subsections (d)(5) and (6) to clarify the Commission's intent with respect to the plans and to require more specificity in the plans. Subsection (d)(4) requires LECs subject to subsections (d)(1) and (2) to prepare a plan to make ISDN available on a direct basis. Subsection (d)(5) requires all other LECs to prepare a plan to make ISDN available and the plan may contain FSO and FX arrangements.

Subsections (e)(1) and (e)(2) require the LECs to offer ISDN according to National ISDN-1 and ISDN-2 standards. SWBT believes that there is no similar requirement currently existing as to what services LECs are required to offer from their switches. SWBT and Sugar Land comment that these standards include a number of services for which they believe there is no demand. SWBT believes that ISDN should be defined in terms of BRI access only, and any additional ISDN based services should be made available based upon demand. SWBT further suggests that subsection (e)(2)(A) be amended to require that LECs provide only the useful portions of BRI. Sugar Land believes that to the extent that these standards address additional services beyond BRI and PRI, the requirement to deploy such service

should be only upon demand. AT&T believes that SWBT's request should not be accepted because such a limitation could defeat the section's goal of mandated, statewide availability of ISDN capabilities by making the LEC the sole arbitrator of what is "useful." AT&T states that this section was made necessary because the LECs as monopoly providers of ISDN BRI and PRI services, have not deployed ISDN to the full extent necessary to meet customer needs.

The Commission agrees with AT&T's comments that SWBT's request should be rejected because allowing the LEC to determine which ISDN services are "useful" defeats the goal of mandated, statewide availability of ISDN capabilities. The Commission disagrees with SWBT that there is no similar requirement existing as to what standards and services LECs are required to offer from their switches. The Commission's current quality of service section, §23.61, requires certain services to be provided by the LECs. The Commission rejects the comments of SWBT and Sugar Land, and, therefore, the section is not revised in response to their comments.

SWBT notes in its comments to the initial recommendation that subsection (e) (2)(A) states that the LECs shall make available the ISDN services required by the National ISDN-1 and ISDN-2 Standards. According to SWBT, the standards do not require the provision of services, rather they have a list of services that could be offered. SWBT opines that this subsection contradicts the stated purpose of the section that it establishes the minimum criteria for the provision of ISDN. In order to meet customer needs, the Commission believes that the subsection appropriately requires, as the minimum standard for the provision of ISDN, the LECs to make available ISDN services in compliance with National ISDN-1 and ISDN-2 Standards. If the LECs want to offer fewer services, then they may request a waiver under subsection (e)(4). However, in response to SWBT's comment, the Commission revises the subsection to require the LEC to make available the ISDN services "listed in" the National ISDN-1 and National ISDN-2 Standards rather than "required by" the National ISDN-1 and National ISDN-2 Standards.

SWBT comments that there is no demand for the deployment of PRI services in the non-major metropolitan exchanges and that there would be substantial additional expenditures required to deploy PRI services in addition to BRI services in an exchange. In its response to the initial recommendation, SWBT estimates that the cost to SWBT to provide both BRI and PRI services in exchanges of 50,000 lines or more will be \$40 million to \$50 million while revenues from BRI and PRI services would only be \$30 million over a five year period. AT&T believes that the arguments regarding the need to ensure availability of BRI also apply to PRI. SWBT's comments do not demonstrate why PRI should be afforded different treatment. Also, AT&T believes that a failure to ensure statewide availability of PRI will create the opportunity for a competitive advantage for the LECs' central office-based PBX-type services relative to competing services provided by PBXs because

PBXs must use ISDN PRI services, while customers subscribing to the LECs' central office-based PBX-type services can purchase BRI services. The Commission rejects SWBT's suggestions for the reasons stated in AT&T's comments. The Commission believes that it is in the public interest for both BRI and PRI to be made available to customers. Further, because the section requires that rates for ISDN must be sufficient to recover LRIC and a contribution for joint and/or common costs, SWBT could not set rates below cost. The Commission believes that the costs and revenues are more appropriately addressed in the compliance filing to be made by SWBT. Therefore, the Commission does not revise the section in response to the comments of SWBT.

Sugar Land believes that subsection (e)(1) is unclear as to whether it requires Sugar Land to expand its existing ISDN tariff to provide every service addressed by the National ISDN-1 and ISDN-2 standards or to provide its ISDN services in a manner which is compatible with these standards. If the proposed section requires Sugar Land to provide all services addressed by the National ISDN-1 and ISDN-2 standards, it requires compliance as of the effective date of the section, even though, as proposed, a company not offering ISDN today would have until January 1, 1996 to offer these services. Subsection (e) requires LECs to provide ISDN in compliance with National ISDN-1 and ISDN-2 Standards and to provide the services listed in the National ISDN-1 and ISDN-2 Standards. The Commission revises subsection (h) to clarify that LECs with existing ISDN tariffs must file a compliance application within 270 days of the effective date of this section. The effective date for the tariffs and compliance under this section shall be no later than July 1, 1996.

AT&T believes the incremental benefits justify mandatory compliance with National ISDN-2 as required by subsection (e)(1). For BRI, National ISDN-2 provides additional service uniformity criteria, allowing LEC features to operate in the same manner regardless of vendor switching equipment and BRI installation is greatly simplified through a terminal downloading feature. For PRI, National ISDN-2 provides standards for non-facility associated signaling and D-Channel back-up. Bandwidth on demand is addressed by these standards, which allows the customer access to specific bandwidth requirements in 64 Kbps increments. AT&T notes that the goal of these standards is to improve interoperability and as such, compliance with the most recently adopted standard is desirable. The Commission agrees with AT&T's comments regarding mandatory compliance with National ISDN-2 standards.

SWBT and TSTCI state that regardless of what the Bellcore standards may be for the standardized ISDN-based services, the LECs are limited by what features the switch manufacturers choose to incorporate into their switches. Therefore, SWBT believes that subsection (e) should recognize that the LECs can offer only what is available for the switches that are used to provide the services. If the switch manufacturer does not provide the capabilities in question, AT&T submits that the LEC should be temporarily

excused from the obligation to make those capabilities available, but that the LEC should be required to install the necessary upgrades within a prescribed period, possibly six months, after the switch vendor makes such capabilities available. The Commission agrees with AT&T and points out that subsection (e)(4) sets forth a procedure for a LEC to seek a waiver to the provisions of subsection (e)(1) and (2). No change to the section is needed to accommodate the comments.

TSTCI states that the standards of any other entity or agency, such as Bellcore, should not be automatically adopted without a review to determine whether such standards are appropriate for Texas. TTUHSC asserts that the phrase "as soon as practicable" used in subsections (e)(1)(C) and (e)(2)(B) is too general. TTUHSC believes that the Commission should clearly define the terms and time frames within which such ISDN systems are to be in compliance with National ISDN standards promulgated by Bellcore.

In this case, the Commission agrees with TSTCI that the Bellcore standards should not be automatically adopted without a review. The National ISDN Standards 1 and 2 as promulgated by Bellcore have been reviewed by the Commission through this rulemaking process. The Commission determines that these standards are appropriate for Texas because the adoption of these standards will allow Texas customers to interconnect to customers of other states. The Commission does not believe that the section as proposed would have resulted in the automatic adoption of future standards without a review because the waiver and tariff processes would provide the review. However, the Commission revises the section by deleting subsections (e)(1)(C) and (e)(2)(B) because the phrase "as soon as practicable" is too general and in this case, the Commission declines to adopt Bellcore standards that may be promulgated in the future because these future standards could not be reviewed in this rulemaking process.

With respect to subsection (e)(1)(B), SWBT believes that ISDN services do not provide end-to-end digital connectivity but that ISDN services provide digital connectivity to the serving wire center. SWBT states that the service is carried on digital circuits between wire centers; however, the manner in which the call is terminated depends upon the type of connection the called party has to the terminating wire center. AT&T believes that this suggestion, if adopted, could be read to eliminate the requirement that the LEC provide the capability of service beyond the serving office. SWBT indicates that the language should be changed because the LEC may not have control over the terminating wire center, which may result in termination over analog facilities. AT&T does not read the section to require the LEC to be responsible for areas beyond its service area. The section merely requires the LEC to equip its network so as to ensure that the capability for end-to-end digital connectivity, where it exists outside the LEC's service area, is not impeded by the network of the LEC. For the reasons stated in AT&T's comments, the Commission believes that SWBT's proposed language should not be accepted.

OPUC notes that SWBT initially offered a non-standard ISDN service and upon its decision to upgrade to the national standard, SWBT filed a proposal with the Commission to allow the "option" of receiving the national standard service, but proposed an additional installation charge for this "option" of some \$173. OPUC submits that such a premium charge is wholly inappropriate where the telephone company unilaterally choose to pursue a non-standard technology and that there should be no separate rate element or additional charge simply for having access to the national standard ISDN service. The Commission declines to revise the section and believes that this issue is more appropriately addressed in the subsequent compliance filing required by this section.

GTE suggests modifications to subsection (e)(1)(C) to allow pre-National ISDN offerings as well as ISDN offerings that comply with National ISDN-1 and National ISDN-2. AT&T agrees that LECs should be allowed the ability to offer pre-National ISDN in order to meet customer needs, in addition to offering National ISDN. The Commission agrees with AT&T that the section as written does not impair these rights.

OPUC recommends that the wording in subsection (e)(3) be clarified to remove any uncertainty that this section grants to existing customers the full option of choosing which standard they prefer and to ensure that the LEC may not "impose" the newer standard unless a customer has discontinued his service for at least 30 days. (In other words, after a 30 day cessation of service, a prior ISDN customer seeking to revise his or her service may be considered the same as a new customer). The Commission agrees with OPUC's interpretation of subsection (e)(3) and believes that it is not necessary to modify the section to clarify the Commission's intent.

SWBT comments in its response to the initial recommendation that the waiver process of subsection (e)(4) places a tremendous burden on both the LECs and the Commission who will spend all their time in waiver proceedings. The Commission disagrees with SWBT because any waivers that the LECs request should be included in the compliance application filed by the LECs and these waivers would be considered in the compliance proceeding.

According to DIR, subsection (e) should include a provision for private line ISDN services through non-ISDN for LECs that choose to provide ISDN through FX arrangements. DIR believes that this will provide private network customers with ISDN capable networks the ability to service their users without the added FX charges for ISDN services. According to DIR, this will enable public and private customer networks to work out bypass arrangements with the LECs for alternative delivery of private line ISDN network services. The Commission is uncertain what revisions that DIR requests; therefore, no changes are made to the section.

Subsection (f) provides the Commission's policy for the costing and pricing of ISDN.

SWBT, GTE, and TSTCI comment that §23.91 and Project Number 12711, the pricing rule project, will establish general pricing

policies. SWBT suggests that the Commission postpone pricing decisions until completion of the pricing rule. AT&T notes that it is important to ensure that BRI services are priced so as to facilitate migration from POTS, while at the same time recovering associated costs. Therefore, AT&T supports the section as proposed. The Commission agrees with the comments of AT&T and notes that the completion date of the pricing rule project is uncertain; therefore, no revisions are made to the section.

GTE believes that a new LRIC study will justify significant increases to the rates for this service, which result would be contrary to the Commission's objective of stimulating ISDN. The Commission does not believe that it is clear that a new LRIC study will justify significant increases to the rates for this service. The new LRIC study will be reviewed in the subsequent compliance proceeding where the assumptions made in the study, such as demand, will be investigated. The assumptions made in the study will affect the costs and subsequently determine whether rate increases would be necessary. The Commission makes no changes to the section as a result of GTE's comment.

SWBT notes that in the event the cost studies revealed that any rates are under cost and should be increased, there will have to be rate case notice, including state-wide published notice for four weeks. SWBT estimates that the cost of rate case published notice will be between \$150,000 and \$200,000, which amount must also be recovered from SWBT's customers. AT&T believes that cost-based rates are appropriate and that SWBT's concerns about the costs of a case that might increase the rates of the existing ISDN services do not merit rejection of the portion of the section requiring cost-based rates. The Commission agrees with AT&T that the comments of the LECs that the section may result in increased rates for ISDN services or the cost of the proceeding itself do not justify revising the sections of the section requiring potential rate changes.

TSTCI suggests that the Commission incorporate pricing mechanisms for small telephone companies and cooperatives identical to those proposed under Project Number 11620 which may be adopted as Substantive Rule §23.94. The Commission adopted

23.94 on December, 1, 1994. The Commission adds subsections (f)(3) and (g) (3) to this section to incorporate pricing provisions for small LECs similar to those adopted by the Commission in §23.94. Subsection (f)(3) sets forth the pricing provisions available to small LECs as defined by §23.94. Subsection (g)(3) sets forth the requirements for the contents of the application of a small LEC electing to price ISDN according to the provisions of subsection (f)(3) of this section.

GSC, MCI, and AT&T believe that subsection (f)(1) should be modified to ensure that the appropriate cost standards for costing ISDN services are the standards specified in §23.91. GSC recommends that the section require the §23.91 standards immediately. According to MCI and AT&T, the section should require studies prepared in accordance with §23.91 when those studies are

available and allow for the use of LRIC studies prepared under existing methodologies when §23.91 studies are not available. OPUC believes that the studies must not await, for example, the outcome of Consolidated Docket Number 12481 and the pricing rule project, whose timelines are unpredictable at this point and are almost certainly longer than the time frames contemplated in this section. The section is not revised. Because the LRIC studies under §23.91 will not be completed for approximately two years, the Commission does not require the use of LRIC studies prepared in accordance with §23.91.

AT&T and TTUHSC note that subsection (f)(2) does not speak directly to the pricing levels for PRI. AT&T believes that the Commission's policy on PRI pricing is appropriately considered in the pricing rule and that this section should reference the pricing rule for pricing policy relating to PRI services. TTUHSC believes that PRI would be most practical for users if it were available based on a reasonable access charge plus "bandwidth on demand" or a reasonable usage charge per use and for fractions of bandwidth used. The Commission disagrees with AT&T and believes that it is inappropriate to reference the ongoing pricing rule project in this section, because that project is not completed. The Commission believes that issues raised in the comments of TTUHSC are appropriately addressed in the compliance filings.

The Commission agrees with the comments of GSC that the language in subsection (f)(2)(A)(ii) should be clarified to ensure that LECs who are already providing ISDN are given two full years after the adoption of the section for the service to recover costs. Therefore, the section has been revised accordingly.

In subsection (f)(2)(A)(ii), MCI suggests that the words "an appropriate" should be inserted between the words "and" and "contribution," and that the word "a" between those two words should be deleted. The Commission believes it is implicit that an appropriate contribution be recovered; therefore, no change is made in response to MCI's comment.

TSTCI submits that subsection (f)(2)(B) should be revised to allow each LEC the option to set rates for FSO service and that the only requirement for ISDN should be that it be offered at rates which recover the costs of providing the service. The Commission disagrees with the comments of TSTCI that the LECs should have the option to set rates for FSO service. Ratepayers cannot control whether ISDN availability is provided from his/her local serving office or is provided on an FSO basis. SWBT notes that, using FSO, approximately 60% of its access lines in Texas will have BRI by the end of 1994 and 80% will have BRI service by the middle of 1996. Because the majority of a LEC's customers will have ISDN available to them either from their serving central office or from an FSO arrangement, the Commission believes that it is appropriate that the FSO costs should be incorporated in the pricing of the service for all customers.

TSTCI believes that there is essentially no difference in provisioning FX for ISDN and FX

for other services; therefore, TSTCI believes the same rate structure and the same rates currently charged for FX should be charged for each ISDN voice equivalent FX service channel and that subsection (f)(2)(C) should be revised. The Commission agrees with the comments of AT&T that the customer cannot control whether ISDN availability is provided from his/her local serving office and that it is important that customers be assured that the rates charged for FX service are based on its costs. The Commission declines to revise the section. As discussed below, the Commission believes it is appropriate to allow a LEC to charge an FX rate.

AT&T suggests that subsection (f)(2)(C) be clarified to ensure that FX services are costed in accordance with the long run incremental cost obligations imposed on other ISDN services. AT&T notes that because FX provisioning will have the effect of dampening demand for ISDN, the Commission should encourage deployment without the use of FX wherever it is economically feasible to do so. AT&T believes the Commission should consider whether it would be appropriate for the same conditions which are applied to BRI pricing to be applied to FX pricing associated with the provision of ISDN. After reconsideration, in response to the comments of AT&T, the Commission revises the section to apply to FX rates the policy that there is a rebuttable presumption with respect to pricing at 105% of LRIC. The Commission declines to revise subsection (f)(2)(C) to clarify that FX services are to be costed in accordance with LRIC, because the Commission believes that subsection (f)(2)(A) requires costing in accordance with LRIC.

In SWBT's comments to the initial recommendation, SWBT objects to the provisions that require FX rates to be priced at not more than 105% of LRIC. The Commission notes that the 105% of LRIC rebuttable presumption policy is not a rate ceiling nor does it require that a LEC price at 105% of LRIC. The Commission believes that pricing of 100% to 105% of LRIC for BRI and FX arrangements supports the Commission's goal set forth in subsection (a). Therefore, if a LEC chooses to price BRI and/or FX at 105% of LRIC, the policy set forth in this section creates a rebuttable presumption that this pricing is appropriate.

TTUHSC states that in subsection (f)(2)(C)(i) the phrase "shall not be usage based" is used when referencing the FX rate. TTUHSC asks if the pricing of BRI is to be usage-based or flat-rate. The Commission notes that the section does not specify whether the pricing of BRI or PRI is to be usage-based or flat-rate. The Commission believes that this matter is more appropriately addressed in the subsequent compliance filings required by the section. However, the Commission expresses its preference for flat-rate pricing for BRI and PRI.

GSC, TTUHSC, and OPUC submit that permitting implementation of a separate FX charge in those instances where FX arrangements are necessary to provide ISDN service is inappropriate and discriminatory. GSC submits that the Commission should not assume that the LEC must assess FX charges and instead should only allow the LEC to over-

come a presumption that no FX charge is allowed with a showing that such a charge is necessary to prevent the ISDN service as a whole from going below its LRIC, as that term is used in the §23.91. According to TTUHSC, allowing FX rates would de facto create a higher cost "rural rate" for rural citizens of the State of Texas. TTUHSC observes that establishment of a higher rate for ISDN attendant to being a rural citizen of the State of Texas would conflict with the provisions of subsection (f)(2)(A)(i). To the extent there are additional costs associated with providing ISDN to certain areas or customer groups, whether related to FX connections or other incidental cost requirements, OPUC believes that these costs should properly be included in the statewide studies of the incremental costs of ISDN provision, and incorporated in the pricing of the service for all customers. The Commission agrees with SWBT and AT&T that elimination of FX charges merely means that the general body of ISDN customers will have to bear those costs through higher prices. SWBT states that rural Texans should be treated fairly, but believes that this does not mean rural areas should receive preferential treatment by getting ISDN-based services below cost. AT&T believes that the dampening effect on demand for ISDN in general could be substantial and could delay customer acceptance of ISDN if all customers are required to subsidize the FX costs caused by a small subset of the total ISDN customer base. For the reasons stated by SWBT and AT&T, the Commission declines to revise the section to eliminate the provision allowing LECs to charge an FX rate. The Commission notes that the section allows a LEC to charge an FX rate, but it does not require that the LEC charge an FX rate. The Commission believes that whether a LEC should charge an FX rate is an issue to be considered in the compliance filings. Further, the Commission disagrees with TTUHSC that allowing an FX rate conflicts with the provisions of subsection (f)(2)(A)(i). An FX charge would be reasonable where additional costs are necessary to provide the service using an FX arrangement.

GSC states that the language in subsection (f)(2)(C), setting forth a requirement that a new FX rate shall be established for ISDN, does not make it clear that such new rate will be treated as a new ISDN rate, and that the FX rate for BRI shall be considered a part of the BRI service. The Commission disagrees with GSC that subsection (f)(2)(C) is not clear that the new FX rate will be treated as a new ISDN rate. Therefore, no change is made to the section.

Fort Bend, TSTCI, and Sugar Land disagree with the provisions of subsection (f)(2)(D) setting forth the 105% of LRIC rebuttable presumption for pricing BRI. Fort Bend notes that the basic inaccuracies of forecasts make it difficult to predict costs accurately and that a 5.0% margin over LRIC does not cover this inaccuracy for studies in small central offices. TSTCI believes that there is no rationale, and certainly no demonstrated evidence, to justify a specific mark-up of five percent above incremental costs as a price ceiling. Sugar Land comments that this standard restricts the range of reasonableness for ISDN rates to a very narrow band and that this may

produce a rate which is inappropriate in comparison to other existing local exchange rates. GSC disagrees with the position that 105% of LRIC for BRI is too narrow an amount for a rate for BRI. GSC submits that this section is not intending to establish 5% as an appropriate amount for joint and common costs for the entire company but rather is establishing, consistent with the purpose section of the rule, a maximum amount which ISDN BRI should be contributing to joint and common costs. The Commission notes that the rebuttable presumption policy is not a rate ceiling nor does it require that a LEC price at 105% of LRIC. The Commission believes that pricing of 100% to 105% of LRIC for BRI and FX arrangements supports the Commission's goal set forth in subsection (a). Therefore, if a LEC chooses to price BRI and/or FX at 105% of LRIC, the policy set forth in this section creates a rebuttable presumption that this pricing is appropriate. A LEC may choose not to utilize the benefits of that policy. The Commission declines to revise the section.

GSC and OPUC believe that the language of subsection (f)(2)(D), establishing a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate, is both unnecessarily weak and in need of clarification. GSC and OPUC propose to substantively change the presumption to a mandatory requirement. OPUC further recommends that the Commission ensure that prices for ISDN-based services, as well as for optional features associated with those services, are set at no more than 105% of the properly identified incremental cost. SWBT believes that GSC's proposal to limit BRI rates to 105% of LRIC would effectively not allow the LECs or the Commission any flexibility in addressing extenuating circumstances that might arise. According to SWBT, the proposed section provides that there is a rebuttable presumption that rates priced not more than 105% of LRIC are appropriate, and it places the burden on the LEC to demonstrate that a proposed rate in excess of 105% would be reasonable. SWBT believes that it also allows the Commission the flexibility to address special situations with varying rate levels. The Commission disagrees with the comments of GSC and OPUC. The Commission believes that pricing of 100% to 105% of LRIC for BRI and FX arrangements supports the Commission's goal set forth in subsection (a). Therefore, if a LEC chooses to price BRI and/or FX at 105% of LRIC, the policy set forth in this section creates a rebuttable presumption that this pricing is appropriate. No change is made to the section.

Alternatively, GSC recommends clarifying the rebuttable presumption language to make it more meaningful by ensuring the rebuttable presumption does not "disappear" if a LEC proposes a rate in excess of 105% of LRIC. Under the current language, if a LEC proposes a rate of exactly 105% of LRIC, a presumption of validity applies. However, if the LEC proposes a rate in excess of 105% of LRIC, no presumption would apply, and the language would be of no force and effect. Also, under the current language, if the LEC happened to propose a rate of exactly 105% of LRIC, any party opposing that rate would have to overcome "a rebuttable presumption that the amount of joint and/or common costs

is appropriate." It would not seem to be consistent with a rule which focuses generally on a LEC's duties regarding the provision of ISDN for this language to have been intended to protect the LEC and impose a burden of proof on parties other than the LEC. The Commission disagrees with the comments of GSC. The Commission believes that pricing of 100% to 105% of LRIC for BRI and FX arrangements supports the Commission's goal set forth in subsection (a). Therefore, if a LEC chooses to price BRI and/or FX at 105% of LRIC, the policy set forth in this section creates a rebuttable presumption that this pricing is appropriate.

AT&T has no objection to the reference to residential and small business customers in subsection (f)(2)(D), as long as that reference is not interpreted to allow the LECs to impose arbitrary distinctions between large and small business customers in making BRI available or in imposing terms and conditions of service on the provision of BRI. GSC recommends that the phrase "to residential and small business customers" be deleted as being discriminatory against significant classes of customers who would also seek to use BRI ISDN. The Commission agrees and revises the section.

TSTCI suggests that subsection (f)(2)(D) may allow a LEC to price ISDN below 100% of LRIC. In its comments to the initial recommendation, AT&T recommends that subsection (f)(2)(D) be clarified to state that pricing below LRIC is not permitted. The Commission declines to make the requested change, because the Commission believes that subsection (f)(2)(A) clearly prohibits pricing below LRIC.

GTE believes that residential ratepayers will be harmed because the section will shift a greater share of the burden of paying for joint and common costs to those ratepayers. Currently, business service is priced higher than residential service and, therefore, provides a greater contribution to joint and common costs. If a business customer replaces its POTS service (with a high contribution) with ISDN service (with a low contribution), the total contribution is reduced. Because the ISDN contribution is capped, GTE believes that the loss of contribution must be recovered from POTS, which is not capped. GTE submits that having residential subscribers subsidize business subscribers is contrary to the policy followed by this Commission since its inception. Although the section will harm residential ratepayers even if a significant business demand materializes for ISDN, GTE submits that the consequences of a low demand are even greater. In this instance, the LECs will invest millions of dollars upgrading their offices to support a service only a small percentage of people desire. GTE believes that the mandated but unnecessary investment will have to be recovered through higher POTS rates.

The Commission disagrees with GTE. The section specifically requires that the LECs price ISDN to recover LRIC and a contribution to joint and/or common costs. The 105% of LRIC rebuttable presumption applies only to BRI and FX rates. Therefore, the Commission believes that any contribution lost because BRI and FX rates are set at 105% of

LRIC could be offset by the contribution earned on other ISDN rates. Also, the 105% of LRIC is not a rate ceiling or a requirement that a LEC price at 105% of LRIC. If a LEC chooses to price BRI and/or FX at 105% of LRIC, the policy set forth in this section creates a rebuttable presumption that this pricing is appropriate. Therefore, a LEC may choose not to utilize the benefits of that policy if it believes that it would require recovering lost contribution through higher POTS rates.

Subsection (g) establishes the procedure for compliance with this section.

Because SWBT has already had two proceedings setting rates for ISDN-based services within the last eighteen months and SWBT is involved with the Commission pricing rulemaking project, SWBT comments that there is no demonstrated reason to require another rate proceeding at this time. SWBT comments that LECs that have approved tariffs for ISDN-based services should not be required to go through another proceeding absent some showing that the current rates or rate structures for ISDN-based services are inadequate. In the comments to the initial recommendation, SWBT states that rates will be reviewed again as a result of the pricing rule and that the customers should be entitled to some type of rate stability rather than having the rates reviewed on an annual basis. With the adoption of this section, the Commission establishes new policies with respect to ISDN. Therefore, the Commission believes that it is in the public interest to have a proceeding in which the LECs comply with the new policies. Also, due to the uncertain nature of the completion date of the pricing rule project, the Commission believes that it is inappropriate to delay its ISDN policies to that project.

Subsection (h) sets forth the timing of LEC's compliance with this section. Regarding subsection (h)(2)(A), TSTCI respectfully requests that if the Commission requires a plan to be filed, that the due date be extended to January 1, 1997 to allow the local exchange carriers to better respond.

The Commission adopted §23.94 on December 1, 1994. The Commission adds subsections (f)(3) and (g)(3) to this section to incorporate pricing provisions for small LECs similar to those adopted by the Commission in §23.94.

Due to the addition of the pricing provisions for small LECs and the revision of the availability date required by subsection (d)(1) and (2) from January 1, 1996 to July 1, 1996, the Commission revises the due date of the plans required by subsection (d)(5) to January 1, 1997.

Due to the revision of the of the availability date required by subsection (d)(1) and (2) from January 1, 1996 to July 1, 1996, the Commission revises the due date of the plans required by subsection (d)(4) to July 1, 1996.

In its comments to the initial recommendation, SWBT states that the section is not clear as to whether SWBT falls under subsection (h)(1)(A) relating to LECs that must make ISDN available to exchanges having 50,000 or more access lines or subsection (h)(1)(B) relating to LECs having ISDN tariffs in effect

as of the date of this section. SWBT believes that the distinction is substantial as it affects the content of the application that it will be required to file. The Commission believes that the section clearly requires SWBT to comply with subsection (h)(1)(A). Because SWBT is subject to subsection (h)(1)(A), it cannot be subject to (h)(1)(B). Subsection (h)(1)(B) applies to LECs having ISDN tariffs in effect as of the effective date of the section and that are not subject to subsection (h)(1)(A).

Due to the revision of the of the availability date required by subsection (d)(1) and (2) from January 1, 1996 to July 1, 1996, the Commission revises (h) (1)(A) and (B) to require the compliance application within 270 days of the effective date of the rule rather than within 90 days of the effective date of the rule.

SWBT comments in response to the initial recommendation that the section is contradictory as to when cost studies are required. SWBT notes that subsection (f)(1) requires a LEC to provide a LRIC cost study when it proposes new or amended ISDN rates while subsection (h)(1)(A) and (B) require the filing of LRIC cost studies as part of the compliance filing even if there is no intent by the LEC to reprice existing ISDN services. The Commission believes, that because the LEC is required by subsection (h) to file a LRIC, there is no inconsistency. However, the Commission revises subsection (f)(1) to eliminate the reference to a LRIC study.

In its comments to the initial recommendation, Sugar Land states that subsection (h) establishing the timing provisions of the rule and subsection (d) establishing the availability provisions of the rule are in conflict. Sugar Land points out that the availability section does not require Sugar Land to make ISDN available, but that subsection (h) requires Sugar Land to file a compliance application. The Commission disagrees with the comment of Sugar Land that the rule is inconsistent. Subsection (d) sets forth the provisions for availability, subsection (e) sets forth the provisions for the standards and services, subsection (f) sets forth the provisions for costing and pricing ISDN, and subsection (h) sets forth the provisions for the timing of compliance applications. As a LEC with existing ISDN tariffs, Sugar Land is required by this section to file an application to provide ISDN service in compliance with this section. Although Sugar Land is not required to make ISDN available under subsection (d), it is required to comply with the policies set forth in subsections (e) and (i). Subsection (h) sets forth the timing for Sugar Land's compliance with these subsections. Also, Sugar Land is required by subsection (d) to prepare an ISDN plan. The Commission does not revise the section in response to Sugar Land's comments.

Subsection (i) establishes the Commission's procedures for processing the applications. The Commission agrees with AT&T's suggestion to change subsection (i)(1)(D) so that the comment period for interested persons would run from the date of the filing of the sufficient application, not from the date of the original application. The section is revised accordingly.

Sugar Land opines that the separate procedure set forth in the section is both inappropriate and unnecessary. The Commission disagrees. With the adoption of this section, the Commission establishes new policies with respect to ISDN. Therefore, the Commission believes that it is in the public interest to have a definite procedure by which the LECs comply with the new policies.

MCI suggests that language be added to subsection (i)(1)(C) requiring any information provided to Staff or OPUC to be provided to any interested party who requests such information. In response to MCI's comment, this subsection has been revised to require that answers to requests for information be filed in Central Records and provided to OPUC. Therefore, any interested party may obtain the information from Central Records.

All comments, including any not specifically referenced herein, were fully considered by the Commission. The late-filed comments of the Texas ISDN Users Group, while not summarized herein, were fully considered by the Commission.

The new section is adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rule reasonably required in the exercise of its powers and jurisdiction, and §18 which authorizes the Commission to adopt rules, policies and procedures to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace.

Cross Index to Statutes. Texas Civil Statutes Article 1446c.

§23.69. *Integrated Services Digital Network (ISDN).*

(a) Purpose. The Commission finds that Integrated Services Digital Network (ISDN) is an alternative to "plain old telephone service." At this time, ISDN is not a replacement for "plain old telephone service," but rather ISDN provides the public switched telephone network with end-to-end digital connectivity. As such, ISDN should be made available to customers at a reasonable price, should be as accessible as possible to customers who want ISDN, should meet minimum standards of quality and consistency, and should be provided in such a manner that permits the LEC a reasonable opportunity to earn a reasonable return on invested capital. The provisions of this section are intended to establish the minimum criteria for the provision of ISDN.

(b) Application.

(1) This section applies to local exchange companies (LECs) as that term is defined by §23.61 of this title (relating to Telephone Utilities).

(2) All LECs providing ISDN must do so in accordance with the requirements of this section.

(3) An application to make ISDN available under this section shall

comply with the requirements of §23.57 of this title (relating to Telecommunications Privacy).

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

(1) B-Channel-ISDN bearer service channel.

(2) Basic Rate Interface (BRI) ISDN—one of the access methods to ISDN, comprising two 64 Kbps B-channels and one 16 Kbps D-channel (2B+D).

(3) Bellcore-Bell Communications Research, Inc

(4) D-Channel—The ISDN out-of-band signalling channel.

(5) Exchange Area—has the same meaning as defined in §23.61(a) of this title.

(6) Foreign Exchange (FX)—exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.

(7) Foreign Serving Office (FSO)—Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.

(8) Integrated Services Digital Network (ISDN)—a digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).

(9) Line—has the same meaning as defined in §23.61(a) of this title

(10) LRIC—Long run incremental cost

(11) National ISDN—the standards and services promulgated for ISDN by Bellcore.

(12) Primary Rate Interface (PRI) ISDN—one of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signalling is provided by another PRI in the group.

(d) Availability of ISDN.

(1) No later than July 1, 1996, each LEC shall make ISDN available to all customers in exchange areas having 50,000 or more access lines as of the effective date of this section. For purposes of this section, making ISDN available means providing ISDN to a customer within 30 days of that customer's request. Nothing in this section

shall be construed as requiring a LEC to provide ISDN to any customer prior to that customer's request for ISDN. The requirements of this paragraph shall not be met by making ISDN available to the customers of these exchange areas using a foreign exchange (FX) arrangement.

(2) No later than July 1, 1996, each LEC subject to the requirements of paragraph (1) of this subsection shall make ISDN available to all customers in exchange areas having less than 50,000 access lines as of the effective date of this section. The requirements of this paragraph may be met by making ISDN available to the customers of these exchange areas using a foreign exchange (FX) arrangement, if that is the most economically efficient means for the LEC to make ISDN available.

(3) It is the goal of the Commission that ISDN should be made available to customers in all exchange areas not included in paragraphs (1) and (2) of this subsection. To this end, all telecommunications providers are encouraged to work together to make ISDN available to the customers of the LECs that do not have the facilities with which to make ISDN available to their customers. In the exchange areas not included in paragraph (1) of this section, the Commission recognizes that ISDN may be made available using a foreign exchange (FX) arrangement, if that is the most economically efficient means for the LEC to make ISDN available.

(4) No later than July 1, 1996, each LEC subject to paragraphs (1) and (2) of this subsection shall prepare a plan describing in detail the LEC's proposal for its good faith effort toward making ISDN available without FSO and FX arrangements to all of the LEC's customers no later than January 1, 2000, and/or the LEC's proposal for its good faith effort toward making available end-to-end digital connectivity that is equal to or superior to ISDN as offered pursuant to this section and that is compatible with such ISDN.

(5) No later than January 1, 1997, each LEC not subject to paragraphs (1) and (2) of this subsection shall prepare a plan describing in detail the LEC's proposal for its good faith effort toward making ISDN available to all of the LEC's customers no later than January 1, 2000, and/or the LEC's proposal for its good faith effort toward making available end-to-end digital connectivity that is equal to or superior to ISDN as offered pursuant to this section and that is compatible with such ISDN.

(6) The plans required by paragraphs (4) and (5) of this subsection shall include, but not be limited to, information as to the number and percentage of access lines in the LEC's service area for which ISDN would be available; the total number of customers that would be served via FX

and FSO arrangements, a specific timetable for the upgrading of each exchange, and the proposed steps and methods of each upgrade.

(e) ISDN Standards and Services

(1) ISDN standards.

(A) At a minimum, all ISDN shall comply with National ISDN-1 and National ISDN-2 Standards as promulgated by Bellcore as of the effective date of this section

(B) All ISDN shall be capable of providing end-to-end digital connectivity.

(2) ISDN services At a minimum, the LEC shall make available the ISDN services listed in the National ISDN-1 and National ISDN-2 Standards promulgated by Bellcore as of the effective date of this section

(3) Existing customers. Existing customers as of the effective date of this section may continue to receive ISDN irrespective of whether that ISDN complies with this subsection. Those customers may continue to receive such ISDN and shall be required to receive ISDN under the requirements of this subsection only if there is at least a 30 day customer-caused cessation of the ISDN service provided by the LEC.

(4) Waiver provision. A LEC may request, and the presiding officer may grant for good cause, modification or waiver of paragraphs (1) and/or (2) of this subsection. Such a request may be reviewed administratively. Any request for modification or waiver of the requirements of paragraphs (1) and/or (2) of this subsection shall include a complete statement of the LEC's arguments and factual support for that request.

(f) Costing and Pricing of ISDN.

(1) Costing of ISDN. The cost standard for ISDN shall be the long run incremental cost (LRIC) of providing ISDN

(2) Pricing of ISDN

(A) Rates and terms.

(i) The rates and terms of ISDN, including BRI, PRI and other ISDN services, shall be just and reasonable and shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive

(ii) The annual revenues for ISDN, including BRI, PRI, and other ISDN services, shall be sufficient to recover the annual long run incremental cost and a contribution for joint and/or common costs,

in the second year after it is first offered under the tariffs approved pursuant to this section.

(B) Foreign serving office (FSO) rate. Where the LEC makes ISDN available by designating a foreign serving office (FSO) arrangement, the LEC shall not charge an FSO rate.

(C) Foreign exchange (FX) rate.

(i) Except as provided in clause (ii) of this subparagraph, where the LEC is allowed to make ISDN available by designating a foreign exchange (FX) arrangement, the LEC may charge an FX rate. A new FX rate shall be developed specifically for ISDN and this rate shall not be usage based. If the FX rate is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.

(ii) Where the LEC can make ISDN available to a customer by designating an FSO arrangement, the LEC shall not charge a foreign exchange (FX) rate.

(D) Pricing of BRI. To further the Commission's policy that ISDN be made available at a reasonable price and that ISDN be as accessible as possible to those customers who want ISDN, BRI should be priced to recover its LRIC plus a minimal amount of joint and/or common costs. If BRI is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.

(E) Existing customers. Existing customers as of the effective date of this section shall be subject to the rates set in compliance with this subsection, notwithstanding their choice to continue receiving ISDN under subsection (e) of this section.

(3) Pricing of ISDN for Small LECs. After a Class A LEC is in compliance with this section, a Small Local Exchange Carrier (SLEC) as defined in §23.94 of this title (relating to Small Local Exchange Carrier Flexibility) may price ISDN services at plus or minus 25% of the rates approved by the Commission for that Class A local exchange carrier providing the service within the State of Texas or at the rates for ISDN services approved by the Commission for a similar SLEC. For the purpose of this section a similar SLEC is defined as a SLEC having a total number of access lines within 5,000 access lines of the applying SLEC.

(g) Requirements for notice and contents of application in compliance with this section.

(1) Notice of application. The presiding officer may require notice to the public as required by Subchapter D of the Commission's Procedural Rules and shall require direct notice to all existing ISDN customers. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the application is approved, the probable effect on the LEC's revenues if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or you may call the Public Utility Commission Public Information Office at (512) 458-0256 or (512) 458-0221 for text telephone."

(2) Contents of application for each LEC not electing the SLEC pricing provisions of subsection (f)(3) of this section. A LEC that makes ISDN available shall file with the Commission an application complying with the requirements of this section. In addition to copies required by other Commission rules, one copy of the application shall be delivered to the Telephone Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) the proposed tariff sheets to implement the requirements of subsection (d), (e), and (f) of this section as required by subsection (h) of this section;

(B) a statement by the LEC describing how it intends to comply with this section, including how it intends to comply with subsections (d), (e) and (f) of this section as required by subsection (h) of this section;

(C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an explanation of how the proposed rates and terms of the service(s) are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(D) a statement by the LEC of whether the application contains a rate change;

(E) the proposed effective date of the service;

(F) a statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the LEC's notice proposal is reasonable and that the LEC's notice proposal complies with applicable law;

(G) a copy of the text of the notice, if any;

(H) a long run incremental cost study (LRIC) supporting the proposed rates;

(I) projections of revenues, demand, and costs demonstrating that in the second year after the ISDN service is first offered under the tariffs approved pursuant to this section, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs;

(J) the information required by §23.57 of this title;

(K) a statement specifying the exchanges in which the LEC proposes to offer ISDN, the exchanges in which the LEC proposes to offer ISDN using an FSO arrangement, the exchanges in which the LEC proposes to offer ISDN using an FX arrangement, and the exchanges in which the LEC does not propose to offer ISDN; and

(L) any other information which the LEC wants considered in connection with the Commission's review of its application.

(3) Contents of application for a SLEC. A SLEC that makes ISDN available and elects to price ISDN services under subsection (f)(3) of this section shall file with the Commission an application complying with the requirements of this section. In addition to copies required by other Commission rules, one copy of the application shall be delivered to the Telephone Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) contents of application required by paragraph (2)(A), (B), (D), (E), (F), (G), (J), (K), and (L) of this subsection;

(B) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the SLEC approving the proposed ISDN service;

(C) a notarized affidavit from a representative of the SLEC:

(i) verifying the number of access lines, including the access lines of affiliates of such SLEC providing local exchange service within the state, the SLEC has in service in the State of Texas;

(ii) verifying that the rates have been determined by the SLEC independently;

(iii) including a statement affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(D) an explanation demonstrating that the rates for the proposed ISDN service are within the guidelines provided by subsection (f)(3) of this section; and

(E) projections of the amount of revenues that will be generated by the ISDN service.

(h) Timing of and requirements for each LEC's compliance with this section.

(1) Timing of and requirements for the compliance application.

(A) Each LEC that is required to make ISDN available under subsection (d)(1) and (2) of this section shall file with the Commission within 270 days of the effective date of this section an application (as described in subsection (g) of this section). The effective date for the tariffs and compliance under this paragraph shall be no later than July 1, 1996. Pursuant to subsection (g)(2)(A) and (B) of this section, the LEC shall show its compliance with the requirements of:

(i) subsection (d)(1) and (2) of this section;

(ii) subsections (e)(1)(A) and (B), (e)(2)(A), and (e)(3) of this section or request a waiver pursuant to subsection (e)(4) of this section and provide sufficient justification for the good cause exception; and

(iii) subsection (f)(2)(B), (C), and (D) of this section.

(B) Each LEC having ISDN tariffs in effect as of the effective date of this section and that is not subject to subparagraph (A) of this paragraph shall file with the Commission within 270 days of the effective date of this section, an application (as described in subsection (g) of this section). The effective date for the tariffs and compliance under this paragraph shall be no later than July 1, 1996. Pursuant to subsection (g)(2)(A) and (B) of this section, the LEC shall show its compliance with the requirements of

(i) subsections (e)(1)(A) and (B), (e)(2)(A), and (e)(3) of this section or request a waiver pursuant to subsection (e)(4) of this section and provide sufficient justification for the good cause exception; and

(ii) subsection (f)(2)(B), (C), and (D) of this section.

(C) Rates proposed for services pursuant to paragraphs (1)(A)(ii) and (1)(B)(i) of this subsection that are not tariffed as of the effective date of this section and rates proposed under paragraphs (1)(A)(iii) and (1)(B)(ii) of this subsection shall comply with the requirements of subsections (f)(1) and (2)(A) and (E) of this section.

(D) Each LEC offering ISDN after the effective date of this section shall file with the Commission an application (as described in subsection (g) of this section). Pursuant to subsection (g)(2)(A) and (B) of this section the LEC shall show its compliance with the requirements of:

(i) subsections (e)(1)(A) and (B) and (e)(2)(A) of this section or request a waiver pursuant to subsection (e)(4) of this section and provide sufficient justification for the good cause exception; and

(ii) subsection (f)(1) and (2) of this section for each LEC not electing the SLEC pricing provisions of subsection (f)(3) of this section or subsection (f)(3) of this section for a SLEC.

(2) Timing of each LEC's plan.

(A) Each LEC's plan required by subsection (d)(4) of this section shall be filed with the Commission no later than July 1, 1996 and each LEC's plan required by subsection (d)(5) of this section shall be filed with the Commission no later than January 1, 1997.

(B) After the due date of the plan, each LEC shall file a revised plan with the Commission as updates or modifications are made to the LEC's plan.

(i) Commission processing of application.

(1) Administrative review. An application considered under this section may be reviewed administratively unless the LEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the Commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the LEC. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided the Office of Public Utility Counsel within 10 days after receipt of the request by the LEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the Commission staff written comments or recommendations concerning the application. The Commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the LEC's application.

(2) Approval or denial of application. The application shall be approved by the presiding officer if the proposed ISDN offered by the LEC complies with each requirement of this section. If, based on the

administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) Standards for docketing. The application may be docketed pursuant to §22.33(b) of the Commission's Procedural Rules.

(4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the Commission's rules applicable to docketed cases.

(5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the LEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(j) Commission processing of waivers. Any request for modification or waiver of the requirements of this section shall include a complete statement of the LEC's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on February 1, 1995.

TRD-9501333 John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: February 22, 1995

Proposal publication date: August 26, 1994

For further information, please call: (512) 458-0100

Part IV. Texas Department of Licensing and Regulation

Chapter 72. Staff Leasing Services

• 16 TAC §72.80, 72.82

The Texas Department of Licensing and Regulation adopts amendments to §72.80 and §72.82, regarding staff leasing services, without changes to the proposed text as published in the October 25, 1994, issue of the *Texas Register* (19 TexReg 8521).

The amendments lower fees established by the Texas Commission of Licensing and Regulation for the licensing application and background check.

Comments supporting the proposal were received from the National Association for Alternative Staffing, Inc. and the Texas Chapter of the National Staff Leasing Association.

The amendments are adopted under Texas Civil Statutes, Article 9104, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take action necessary to assure compliance with the intent and purposes of the Act.

This agency hereby certifies that the rule as adopted 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 2, 1995.

TRD-9501377 Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: February 23, 1995

Proposal publication date: October 25, 1994

For further information, please call: (512) 463-7357

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 235. Licensing

Application for Licensure

• 22 TAC §235.9

The Board of Vocational Nurse Examiners adopts new §235.9, concerning the procedure for submitting applications for the national examination, with changes to the proposed text as published in the December 20, 1994, issue of the *Texas Register* (19 TexReg 10066).

Section 235.9 has been revised in subsection (b) to read: "The Application for Licensure by Examination and fee shall". The previous ter-

minology would have been confusing by addressing examination, licensure and fee. We feel this is a much clearer definition of the process

The adoption of §235.9 is due to the changes in the submission procedure.

Adoption of the new rule will allow for a clearer understanding of making application for exam.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

§235.9. Applications and Fees.

(a) The national testing service application and fee shall:

(1) be submitted directly to the testing service;

(2) be accompanied by the correct fee and made payable to the National Council of State Boards of Nursing; and

(3) be nonrefundable.

(b) The application for licensure by examination shall:

(1) be mailed directly to the Board office;

(2) be received in the Board office at least 30 days prior to the date set for the initial examination or the reexamination;

(3) be returned to the applicant if application or fee is incorrect;

(4) submit fee in the form of cash, cashier's check, money order, individual institutional check, or state warrant made payable to the Board of Vocational Nurse Examiners; and

(5) be nonrefundable.

(c) Personal checks are not acceptable. The Board assumes no responsibility for loss in transit of cash remittances. Each application for examination and licensure as a vocational nurse under Texas Civil Statutes, Article 4528(c), §6 and §7 shall be accompanied by the correct fee.

This agency hereby certifies that the rule as adopted 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 3, 1995.

TRD-9501450 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Texas Board of Vocational
Nurse Examiners

Effective date: February 24, 1995

Proposal publication date: December 20, 1994

For further information, please call: (512) 835-2071

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Parameter Vehicle Emission Inspection and Maintenance Program

• 37 TAC §23.91, §23.92

The Texas Department of Public Safety, adopts the repeal of §23.91 and §23.92, concerning Parameter Vehicle Emission Inspection and Maintenance Program, without changes to the proposed text as published in the December 6, 1994, issue of the *Texas Register* (19 TexReg 9593).

The justification for the repeal is to make the public aware that the parameter vehicle emission inspection and maintenance program will no longer be administered by the Texas Department of Public Safety.

The department adopts the repeal due to the Texas Natural Resource Conservation Commission (TNRCC) having assumed responsibility for administering vehicle emissions inspections.

No comments were received regarding adoption of the repeal.

The repeal is proposed pursuant to Texas Civil Statutes, Article 6701d, §142(c)(1) and (h) and Texas Government Code, §411.006(4) which provides the Texas Department of Public Safety with the authority to adopt rules necessary for the administration and enforcement of Article XV of this Act. The Director, subject to commission approval, shall adopt rules considered necessary for the control of the department.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on January 20, 1995.

TRD-9501342 James R. Wilson
Director
Texas Department of
Public Safety

Effective date: February 22, 1995

Proposal publication date: December 6, 1994

For further information, please call: (512) 465-2890

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.31

The Texas Youth Commission (TYC) adopts an amendment to §85.31, concerning home placement, without changes to the proposed text as published in the January 3, 1995, issue of the *Texas Register* (20 TexReg 15).

The justification for amending the section is for TYC to have a better system for completing home evaluations.

The amendment will remove from the requirement that parole officers complete home evaluations, the sections that refer to certain percentages of the caseload. All home evaluations are to be completed within 45 days.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions. The proposed rule implements the Human Resource Code, §61.034.

This agency hereby certifies that the rule as adopted 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 3, 1995.

TRD-9501412 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: February 24, 1995

Proposal publication date: January 3, 1995

For further information, please call: (512) 483-5244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XI. Texas Commission on Human Rights

Chapter 327. Administrative Review

• 40 TAC §327.11

The Texas Commission on Human Rights adopts an amendment to §327.11, concerning Disposal of Files and Related Documents, without changes to the proposed text as published in the November 25, 1994, issue of the *Texas Register* (19 TexReg 9341).

The amendment is justified due to a change in the statute regarding the statute of limitations.

The amendment rule will function the same as the original rule, except that records will be kept for two years rather than one year.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221k, §3.02(10), which provide the commission with the authority to promulgate rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on February 1, 1995.

TRD-9501363 William M. Hale
Executive Director
Texas Commission on
Human Rights

Effective date: February 22, 1995

Proposal publication date: November 25, 1994

For further information, please call: (512) 837-8534

◆ ◆ ◆
TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 22. Use of State Property

Subchapter B. Use of State Highway Right-of-Way

• 43 TAC §§22.10-22.15

The Texas Department of Transportation adopts new §§22.10-22.15, concerning use of state highway right-of-way. Section 22.13 is adopted with changes to the proposed text as published in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8952). Section 22.10-22.12, 22.14, and 22.15 are adopted without changes and will not be republished.

Texas Civil Statutes, Article 6665, require the Texas Transportation Commission to formulate plans and policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Texas Civil Statutes, Article 6674w-1, empower the commission to lay out, construct, maintain, and operate a modern state highway system. Government Code, Chapter 485, §485.004, requires state agencies to cooperate with the Office of the Governor's Music, Film, Television, and Multimedia Office to the greatest extent possible to promote the development of the music film, television, and multimedia industries in this state. Texas Civil Statutes, Article 6673h, require the commission to adopt rules concerning the use of highways for bicycle events. In accordance with these statutes, the commission adopts §§22.10-22.15 governing certain temporary non-department uses of state highway right-of-way which serve a public pur-

pose and are consistent with the safety and convenience of the traveling public.

On November 28, 1994, the department conducted a public hearing on the proposed new sections. The Texas Film Commission submitted comments on the proposed sections, requesting that written requests for approval of a film or video production on the state highway system be submitted by mail or facsimile, and that film companies be authorized to install signs or direct crew members or extras to film locations. Section 22.13, Film and Video Productions, has been revised to provide the submittal of requests under that section by mail or facsimile, and to authorize the installation of temporary signs, with specifications and limitations similar to those provided for in §22.15, Signs, for special event signs.

The new sections are adopted under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, Texas Civil Statutes, Article 6673h, which mandate that the Commission adopt rules for bicycle use on the state highway system; and Texas Civil Statutes, Article 6674w-1, which empower the commission to lay out, construct, maintain, and operate a modern state highway system.

§22.13. Film and Video Productions.

(a) Policy. In accordance with Government Code, Chapter 485, it is the policy of the department to cooperate with the Office of the Governor's Music, Film, Television, and Multimedia Office to the greatest extent possible to fully implement the state's goal of promoting the development of the music, film, television, and multimedia industries in Texas. This section is intended to encourage and facilitate access to department highway facilities and their adjacent right-of-way for the promotion of that goal while protecting the safety of the traveling public and the integrity of state highway facilities and right-of-way.

(b) Activities included. A person or entity desiring to produce a film, video, or other production on a segment of the state highway system must first obtain the approval of the department for any activity within state highway right-of-way that:

- (1) requires a closure of a segment of the state highway system;
- (2) will otherwise disrupt the normal flow of traffic;
- (3) could damage state highway right-of-way or other facilities of the department; or
- (4) in anyway affects the safety of the traveling public.

(c) Request.

(1) A person or entity desiring approval for an activity subject to this sec-

tion must first notify the Texas Film Commission. That office will provide general information, including instructions on how to submit a request for approval to the department.

(2) After contacting the Texas Film Commission, the person or entity must submit, as early as possible, preferably at least 30 days in advance of the proposed production, a written request by mail or facsimile to the department district or districts in which the production will occur. The request shall include the following information:

(A) the location of the production, including county name, highway number, and description of the physical location;

(B) the proposed schedule of start and stop times at each location (commonly known as preparation and wrap);

(C) a brief description of the proposed activities, including the proposed placement of production company personnel and equipment on state highway right-of-way; and

(D) a permit or appropriate documentation as may be required by applicable local ordinance of a municipality if the production is within the limits of an incorporated area.

(3) The district engineer may request additional information necessary to make his or her determination under subsection (d) of this section.

(d) Approval. The district engineer will approve the request if he or she determines that:

(1) the proposed production is consistent with the safety and convenience of the traveling public;

(2) the proposed production will not cause substantial negative impacts to the environment, including landscape features;

(3) the proposed production does not conflict with scheduled maintenance or construction activities;

(4) the convenience of abutting property owners and residents is adequately protected, and adequate access for such persons to their property is assured; and

(5) if a closure is proposed:

(A) the requestor has designed to the department's satisfaction a traffic control plan to protect both motorists and all participants and spectators, and that

will not substantially inconvenience the traveling public; and

(B) there will be appropriate passage allowance for emergency vehicle travel.

(e) Agreement. If the district engineer approves the proposed production, the requestor must execute a written agreement with the department prior to the production. The agreement will contain terms and conditions the department deems necessary to protect the public safety and the integrity of the facility and adjacent right-of-way including, but not limited to:

(1) the location of the production, including county name, highway number, and description of the physical location;

(2) the schedule of start and stop times at each location;

(3) a description of the activities, including the placement of people and equipment that the requestor will place on state highway right-of-way;

(4) the traffic control plan, if applicable;

(5) a statement that the requestor assumes all costs associated with the production;

(6) a statement that the requestor will avoid or minimize impacts, and will, at its own expense, restore or repair damage occurring outside the right-of-way and restore or repair the right-of-way, including roadway and drainage structures, signs, pavement, etc., to a condition equal to that existing before the production, and, to the extent practicable, restore the natural environment, including landscape features;

(7) a statement that the requestor shall indemnify and save harmless the state, its officers, employees, agents, and contractors from claims and liabilities due to the activities of the requestor;

(8) suitable documentation that the requestor has obtained adequate insurance naming the department as a coinsured by the requestor or responsible party in an amount and form acceptable to the department for the payment of any damages which may occur during the time period of encroachment and to save the state harmless;

(9) a statement that the requestor will abide by all state and federal environmental laws and any conditions required by the department to protect the environment;

(10) if the production requires a closure:

(A) a traffic enforcement plan, including a letter, by mail or facsimile, from the law enforcement agency that will be providing the traffic control for the event, or a contact name and telephone number for the responsible law enforcement agency; and

(B) assurance that there will be appropriate passage allowance for emergency vehicle travel; and

(11) such other terms and conditions determined by the district engineer to be essential for the protection of the public safety.

(f) Disapproval. If a district engineer disapproves a request for approval of a production, he or she will provide written notice, by mail or facsimile, describing the basis for the determination. The district engineer will also provide notice of disapproval by telephone if requested by the requestor.

(g) Appeal. A requestor may appeal a district engineer's disapproval to the department's assistant executive director, field operations, by submitting to that official by mail or facsimile the information provided to the district engineer.

(h) Signs.

(1) A production company may place two temporary signs, one for each direction of travel, at the point of departure from the state highway system, for the purpose of guiding production personnel to the site of an approved production, provided that each sign:

(A) does not contain red on the front or back of the sign, and does not appear to represent any official regulatory, warning, or guide sign;

(B) is no larger than 36 inches by 36 inches;

(C) is made of heavy cardboard or 1/4 inch thick plastic, or other material as approved by the district engineer;

(D) is mounted on wood supports no greater than two inches by two inches in thickness, and has no more than two supports;

(E) has a mounting height of no less than one foot and no more than three feet above ground level;

(F) is not located on the mainlanes of a controlled access highway (it may be located on the frontage road of a controlled access highway); and

(G) is not mounted on a traffic control device and is placed so as to not interfere with other traffic control devices.

(2) A sign may not be installed more than one day before filming starts and must be removed within one day after the filming is completed.

(3) If a sign becomes a hazard due to inclement weather, inadequate maintenance, accidental damage, or other cause, the department will remove the sign.

(4) A sign not removed in compliance with paragraph (2) of this subsection is subject to removal by the department and the applicant is liable for removal and disposal costs as provided by §25.10 of this title (relating to Signs on State Highway Right-of-Way).

This agency hereby certifies that the rule as adopted 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 2, 1995.

TRD-9501373

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Effective date: March 1, 1995

Proposal publication date: November 15, 1994

For further information, please call: (512) 463-8630

Chapter 25. Traffic Operations

Bicycle Road Use

• 43 TAC §§25.50-25.54

The Texas Department of Transportation adopts new §§25.50-25.54, concerning Bicycle Road Use, without changes to the proposed text as published in the August 26, 1994, issue of the *Texas Register* (19 TexReg 6755).

It is the policy of the department to enhance the use of the state highway system for bicyclists. In furtherance of this policy and to comply with Texas Civil Statutes, Article 6673h, which mandate that the commission adopt rules regarding bicycle road use on the state highway system, it is necessary to adopt new §§25.50-25.54.

On September 12, 1994, the department conducted a public hearing on the proposed new §§25.50-25.54 and one individual submitted oral comments on the proposed new sections, stating that she was in favor of the proposed new sections.

The new sections are adopted under Texas Civil Statutes, Articles 6666 and 6673h, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and specifically man-

date that the commission adopt rules regarding bicycle road use on the state highway system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on February 1, 1995.

TRD-9501365

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Effective date: February 22, 1995

Proposal publication date: August 26, 1994

For further information, please call: (512) 463-8630

• 43 TAC §25.55

The Texas Department of Transportation adopts new §25.55, concerning Comment Solicitation on Bicycle Road Use, without changes to the proposed text as published in the October 21, 1994, issue of the *Texas Register* (19 TexReg 8439).

It is the policy of the department to enhance the use of the state highway system for bicyclists. In furtherance of this policy and to comply with Texas Civil Statutes, Article 6673h, which mandate that the commission adopt rules regarding bicycle road use on the state highway system including obtaining comment from bicyclists on highway projects that might affect bicycle use and other matters, it is necessary to adopt new §25.55.

On November 1, 1994, the department conducted a public hearing on the proposed new §25.55. No written or oral comments were received concerning the adoption of the new section.

The new section is adopted under Texas Civil Statutes, Articles 6666 and 6673h, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and specifically mandate that the commission adopt rules for comment solicitation on bicycle use on the state highway system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on February 1, 1995.

TRD-9501364

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Effective date: February 22, 1995

Proposal publication date: October 21, 1994

For further information, please call: (512) 463-8630

Name: Erick Pina
Grade: 12
School: Harlandale High School, Harlandale ISD



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 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 an 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).

Texas Animal Health Commission

Tuesday, February 14, 1995, 2:00 p.m.

2105 Kramer Lane

Austin

Feedlot Subcommittee

AGENDA:

I. Approval of minutes from the meetings of June 22 and November 10, 1994.

II. Discussion of and possible recommendations regarding quarantine feedlots.

III. Public comment.

IV. Adjournment.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: February 6, 1995, 8:27 a.m.

TRD-9501484

Wednesday, February 15, 1995, 9:00 a.m.

2105 Kramer Lane

Austin

Commission Meeting

AGENDA:

Approve minutes of previous meeting; approve actions of the executive director; presentation of awards to employees; report of the Cervidae Advisory Committee and possible action regarding tuberculosis eradica-

tion in cervidae; discussion of tuberculosis in brushy-tail possums and possible action regarding entry into Texas; progress report on the Texas cattle and deer tuberculosis management plan; Feedlot subcommittee report and possible action on recommendations; consideration for proposing amendments to: Calfhood vaccination-requirements for heifers entering feedlots (\$35.2(f)); cattle from Montana, Idaho and Wyoming-entry restrictions (\$35.4); and commuter herds-establishment requirements (\$35.1); report of the brucellosis free planning project; discussion of purchasing agency vehicles; public comment; set date of next Commission meeting; executive session; reconvene for open session; and adjournment.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: February 6, 1995, 8:27 a.m.

TRD-9501483

Texas Bond Review Board

Tuesday, February 14, 1995, 9:00 a.m.

1400 North Congress Avenue, Capitol Extension, Room E2.010

Austin

Board Meeting

AGENDA:

I. Call to order

II. Approval of minutes

III. Consideration of proposed issues

A. Texas Department of Mental Health and Mental Retardation-lease purchase of telephone equipment for five locations

B. The University of Texas System-Commercial Paper Notes, Series A

C. University of Houston System-Consolidated Revenue Bonds, Series 1995

D. Texas Tech University-Revenue Financing System Bonds

E. Texas Veterans Land Board-Veterans' Land Bonds, Taxable Series 1995

IV. Other business

Discussion of proposed legislation

a. Private activity bond allocation program

b. Public school finance program

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: February 6, 1995, 2:26 p.m.

TRD-9501528

East Texas State University

Friday, February 10, 1995, 9:00 a.m.

McDowell Administration Building, 1600 South Neal Street

Commerce

Revised Agenda

Board of Regents

AGENDA:

Add to the agenda already posted:

19. Award of asset management contract to Smith, Graham and Company

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: February 3, 1995, 3:18 p.m.

TRD-9501533

Texas Employment Commission

Tuesday, February 14, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; consideration and possible approval of bid for interior and exterior renovation at the Conroe agency-owned building; consideration and possible approval of bid for interior and exterior renovation at the Waco agency-owned building; staff reports; internal procedures of Commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 7; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: February 6, 1995, 4:00 p.m.

TRD-9501538

Office of the Governor

Tuesday, February 28, 1995, 8:30 a.m.

1100 West 49th Street, Texas Department of Health, Moreton Building, M-739

Austin

Texas Governor's Committee on People with Disabilities

AGENDA:

Regular Quarterly Meeting

1. Full committee meeting, call to order, introductions, and approval of minutes.

2. Chair's comments, members' reports, and executive director's report.

3. Governor's representative report.

4. Subcommittee meetings.

5. Organization reports.

6. Subcommittee action items.

7. Public comment.

8. Adjournment.

Contact: Virginia Roberts, 201 East 14th Street, Austin, Texas 78711, (512) 463-5739.

Filed: February 3, 1995, 4:51 p.m.

TRD-9501475

Texas Department of Health

Tuesday, February 21, 1995, 11:00 a.m.

Room N-218, The Exchange Building, 8407 Wall Street

Austin

Texas Radiation Advisory Board, Nominations Committee

AGENDA:

The committee will discuss and possibly act on nominees for board officers; and other items not requiring committee action.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: February 3, 1995, 1:29 p.m.

TRD-9501434

Texas Juvenile Probation Commission

Thursday, February 16, 1995, 2:00 p.m.

2223 Singleton Boulevard

Dallas

TJPC/TYC Joint Juvenile Justice Committee

AGENDA:

I. Call to order; II. Approval of minutes; III. Introduction of TCADA liaison(s); IV. Yarborough Group proposal: A. Fiscal impact, B. Amendments; V. Update on community corrections/TYC commitments; VI. Mentally retarded offenders: A. House Bill 327, B. Fiscal impact; VII. TJPC/TYC joint position statement "gaining ground" Comptroller Sharp; VIII. Legislative update; IX. Report on TJPC/TYC/TCADA Dallas Pro-

gram; X. Adjourn and schedule next meeting.

Contact: Vicki L. Wright, 2015 South IH-35, Austin, Texas 78741, (512) 443-2001.

Filed: February 6, 1995, 10:27 a.m.

TRD-9501512

Board of Law Examiners

Friday-Sunday, February 17-19, 1995, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

AGENDA:

The Board will: call to order/determine quorum/consider requests for excused absences; hold public hearings and conduct deliberations on character and fitness of the following applicants/declarants: Kristine Arlitt; Kerry Lee; and Collen Clark (deliberations may be conducted in executive session pursuant to §82.003(c), Texas Government Code); meet with legal counsel (in executive session pursuant to §2(e), Open Meetings Act) to discuss pending litigation; consider approval of minutes, financial reports, and investment reports; review exam questions (in executive session pursuant to §82.003(b), Texas Government Code); hear and act on various reports from staff, board members, and Supreme Court Liaison; consider rule amendment recommendation; study/consider lawful practice policy; consider long-range planning meeting; amend resolution; consider details concerning upcoming exam administration; hear communications from the public; adjourn.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: February 3, 1995, 4:22 p.m.

TRD-9501467

Monday, February 20, 1995, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Hearings Panel

AGENDA:

The hearing panel will hold public hearings and conduct deliberations on character and fitness of the following applicants and/or declarants: Stephanie Powers; Patrick Keating; and Allison Mullings. (Character and fitness deliberations may be conducted in executive session pursuant to §82.003(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: February 3, 1995, 4:22 p.m.

TRD-9501466

◆ ◆ ◆
Texas State Library and Archives Commission

Friday, February 17, 1995, 2:00 p.m.

1201 Brazos, Room 314, State Archives and Library Building

Austin

AGENDA:

1. Approve minutes of the January 17, 1995 meeting.
2. Meet with the Selection Advisory Committee to discuss procedures to be followed for the director and librarian interview process.
3. Committee reports.

Contact: William D. Gooch, Box 12927, Austin, Texas 78711-2927, (512) 463-5460.

Filed: February 3, 1995, 11:25 a.m.

TRD-9501426

◆ ◆ ◆
Midwestern State University

Thursday, February 9, 1995, 2:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Executive Committee

AGENDA:

The Executive Committee will tour the new television studio in the Fowler Building. They will then review and approve November 10, 1994 committee minutes, receive recommendations concerning the appointment of the MSU President 1995-1996, National Policy Board on Higher Education Institutional Accreditation, 1993-1994 updates for master plans, Information Resources Strategic Plan for the 1995-1999 Period, resolution regarding equal opportunity, architectural services contract, thermal storage agreement/TU Electric, and Bridwell Courts renovation. The Board will receive information regarding the Bolin Science Building renovation and Southwest Parkway land sale. This committee reserves the right to discuss any items in Executive Session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: February 3, 1995, 4:29 p.m.

TRD-9501468

Thursday, February 9, 1995, 3:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Finance and Audit Committee

AGENDA:

The Finance Committee will review minutes of the committee meeting November 10, 1994 and will consider a study and recommendations regarding university investments, summer school budget 1995, transfer of funds for telecourse production studio, non-resident and foreign student undergraduate tuition rates for 1995-1996 and ratification of items \$15,000 and under approved by President per Board authorization. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah M. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: February 3, 1995, 4:29 p.m.

TRD-9501469

Thursday, February 9, 1995, 4:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Personnel and Curriculum Committee

AGENDA:

The Personnel and Curriculum Committee will review minutes of the committee meeting November 10, 1994 and will receive the enrollment reports and small class reports for the spring 1995 semester and the last day enrollment reports for the fall 1994 term. They will consider the position changes in the fiscal year 1994-1995 budget, a new position in social work, and testing office position changes in 1995-1996. The Board will also review and discuss the MSU admissions policy. Policy Manual revisions will be presented including Policy 1.3 (university purpose/mission statement), Policy 2.37 (Competitive Scholarship and International Program Scholarship Committees), Policy 3.119-3.121 and 3.125 (university promotion and tenure policies), Policy 4.183 (university investment policy), Policy 4.184 (new policy regarding student records policies and procedures). Information will also be presented concerning the review of the university's ethics policy. This committee reserves the right to discuss any items in executive session

whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: February 3, 1995, 4:29 p.m.

TRD-9501470

Thursday, February 9, 1995, 4:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Student Services Committee

AGENDA:

The Student Services Committee will review minutes of the committee meeting November 10, 1994 and will consider recommendations regarding board rates for summer 1995, fall 1995 and spring 1996, and 1995 summer camps, and room rates for the fall 1995 and spring 1996. Information will be presented concerning the Clark Student Center renovation and Residence hall summer reservations. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: February 3, 1995, 4:29 p.m.

TRD-9501471

Thursday, February 9, 1995, 4:45 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents University Development Committee

AGENDA:

The University Development Committee will review minutes of the committee meeting November 10, 1994. Summaries of gifts, grants and pledges September 1, 1994-January 13, 1995 will be presented for review of the Board. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: February 3, 1995, 4:29 p.m.

TRD-9501472

Thursday, February 9, 1995, 5:00 p.m.
3410 Taft Boulevard, Hardin Board Room
Wichita Falls

Board of Regents Athletics Committee
AGENDA:

The Athletics Committee will review minutes of the committee meeting November 10, 1994 and will receive information concerning the NCAA Convention, the Lone Star Conference meeting, athletics honors, women's soccer, men's soccer and the 1995 football schedule. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: February 3, 1995, 4:29 p.m.

TRD-9501473

Friday, February 10, 1995, 9:00 a.m.
3410 Taft Boulevard, Hardin Board Room
Wichita Falls

Board of Regents
AGENDA:

The Board of Regents will consider the minutes of the November 11, 1994 Board of Regents meeting and review the financial reports for the months of October, November, and December 1994. The Board will consider recommendations and receive information from the Executive, Finance, Personnel and Curriculum, Student Services, University Development and Athletics committees. Information will additionally be presented concerning scholarships at MSU as well as an overall update by the president of the university. The Board of Regents of Midwestern State University reserves the right to discuss any items in executive session whenever legally justified and property posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: February 6, 1995, 4:14 p.m.

TRD-9501540

Texas National Guard Armory Board

Friday, February 10, 1995, 4:00 p.m.
2200 West 35th, Building 64

Austin
AGENDA:

Administrative matters
Executive director's update

Construction/renovation/maintenance update

Property leases

Establish date of next meeting

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763, (512) 406-6907.

Filed: February 2, 1995, 2:19 p.m.

TRD-9501380

Texas Natural Resource Conservation Commission

Wednesday, February 8, 1995, 9:30 a.m.

6121 North Interstate 35 at U.S. 290, Red Lion Hotel

Austin

Emergency Revised Agenda

AGENDA:

The Commission will consider a temporary order; proposal for decisions; and executive sessions. This item has been posted but is being reposted as an emergency addendum to correct the location of meeting.

Reason for emergency: This agenda is being moved and posted as an emergency due to the TNRCC not having a facility to accommodate the large crowd anticipated to show for this agenda.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: February 3, 1995, 1:30 p.m.

TRD-9501437

Wednesday, February 15, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 2013

Austin

AGENDA:

The Commission will consider approving the following matters: Water quality enforcements; industrial solid waste; municipal solid waste; petroleum storage tank enforcement; air enforcement; water right matters; rules; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: February 6, 1995, 1:35 p.m.

TRD-9501525

Tuesday, February 28, 1995, 9:00 a.m.

Texas Air National Guard, Headquarters Building, Auditorium, 171 Airport

Office of Hearings Examiners

AGENDA:

For a hearing before a hearing examiner on an appeal by ratepayers concerning a water rate increase by West Jefferson County Municipal Water District in Jefferson County, Texas. TNRCC Docket Number 95-0083-UCR.

Contact: Elizabeth Todd, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: February 6, 1995, 1:25 p.m.

TRD-9501521

Board of Nurse Examiners

Tuesday, February 14, 1995, 9:00 a.m.

9101 Burnet Road, Suite 104

Austin

Eligibility and Disciplinary Committee

AGENDA:

The Disciplinary and Eligibility Committee will meet to review and take action on six declaratory orders; two ALJ proposals for decision; 11 agreed orders; and five eligibility matters.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: February 3, 1995, 3:20 p.m.

TRD-9501459

Tuesday, February 14, 1995, 9:00 a.m.

9101 Burnet Road, Suite 104

Austin

Revised Agenda

Eligibility and Disciplinary Committee

AGENDA:

The Eligibility and Disciplinary Committee will consider Joy Ellen Kottwitz' agreed order.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: February 6, 1995, 3:18 p.m.

TRD-9501534

Texas Board of Occupational Therapy Examiners

Friday, February 10, 1995, 9:30 a.m.
Stouffer Hotel, 9721 Arboretum Boulevard
Austin
Rules Committee

AGENDA:

- I. Call to order
 - II. Consideration and possible recommendations relating to rules for illegal renumeration of licensees
 - III. Consideration and possible recommendations relating to rules for licensing renewal
 - IV. Consideration and possible recommendations relating to rules for the complaint review process
 - V. Consideration and possible recommendations relating to rules for continuing education requirements
 - VI. Consideration and possible recommendations relating to rules for enforcement powers of the board
 - VII. Consideration and possible recommendations relating to rules for provision of direct treatment
 - VIII. Consideration and possible recommendations relating to rules for COTA and OTA supervision
 - IX. Consideration and possible recommendations relating to rules for disciplinary actions
 - X. Consideration and possible recommendations relating to rules for occupational therapy facility registration and exemptions for registration of occupational therapy facilities
 - XI. Consideration and possible recommendations relating to rules for restorative care
 - XII. Consideration and possible recommendations relating to rules for fees
 - XIII. Joint meeting with the Physical Therapy Board Rules Committee to consider and make recommendations relating to registration requirements of physical therapy and occupational therapy facilities
 - XIV. Adjourn
- Contact: Josephine Sanchez, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: February 2, 1995, 4:21 p.m.

TRD-9501390

State Pension Review Board

Wednesday, February 14, 1995, 9:00 a.m.
State Capitol Building, Third Floor, Room 3S.5
Austin
Legislative Advisory Committee

AGENDA:

Preparation of actuarial impact statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: February 2, 1995, 2:47 p.m.

TRD-9501381

Texas Board of Physical Therapy Examiners

Friday, February 10, 1995, 9:30 a.m.
Stouffer Hotel, 9721 Arboretum Boulevard
Austin
Rules Committee

AGENDA:

- I. Call to order
 - II. Consideration and possible recommendations relating to physical therapy referrals
 - III. Consideration and possible recommendations about rules relating to physical therapy facilities
 - IV. Consideration and possible recommendations relating to supervision of students working in physical therapy facilities
 - V. Consideration and possible recommendations relating to inactive status
 - VI. Consideration and possible recommendations relating to physical therapy evaluations and plans of care
 - VII. Joint meeting with the Occupational Therapy Board Rules Committee to consider and possibly make recommendations relating to registration requirements of physical therapy and occupational therapy facilities
 - VIII. Consideration and possible recommendations relating to the physical therapy examination scores
 - IX. Consideration and possible recommendations relating to Rule 346.1, Educational Settings
 - X. Adjourn
- Contact: Gerard Swain, 3001 South Lamar Boulevard #101, Austin, Texas 78704, (512) 443-8202.

Filed: February 2, 1995, 3:16 p.m.

TRD-9501384

Texas Public Finance Authority

Wednesday, February 15, 1995, 10:00 a.m.

300 West 15th Street, Committee Room Five, Fifth Floor

Austin

Board Meeting

AGENDA:

1. Call to order
2. Approval of minutes of December 21, 1994 Board meeting.
3. Consider a resolution authorizing the issuance of general obligation bonds to refinance projects for the Texas Department of Criminal Justice through refunding certain obligations of the TPFPA, the execution and delivery of documents in connection therewith, and the taking of action to effect the sale and delivery of the bonds and resolving related matters including amending the General Obligation Commercial Paper Note Resolution of September 1, 1993.
4. Consider request for financing from Texas Department of Criminal Justice for \$236,400,000 to finance prison construction projects, and select method of sale.
5. Other business
6. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Patricia Logan at (512) 463-5544. Request should be made as far in advance as possible.

Contact: Jeanine Barron, P.O. Box 12906, Austin, Texas 78711-2047, (512) 463-5544.

Filed: February 7, 1995, 9:14 a.m.

TRD-9501541

Texas Department of Public Safety

Monday, February 13, 1995, 1:30 p.m.
DPS Headquarters, Building E, 5805 North Lamar Boulevard

Austin

Public Safety Commission

AGENDA:

- Approval of minutes
- Budget matters

Internal audit report
Personnel matters
Pending and contemplated litigation
Real estate matters
Public comment
Miscellaneous and other unfinished business
Contact: James Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, Ext. 3700.

Filed: February 2, 1995, 3:16 p.m.

TRD-9501385

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Public Utility Commission of Texas

Tuesday, March 28, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

The hearing on the merits has been scheduled for the above date and time in Docket Number 13579—petition for expanded local calling service from the Putnam Exchange to the exchanges of Abilene and Cisco.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 6, 1995, 10:27 a.m.

TRD-9501514

Tuesday, March 28, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

The hearing on the merits has been scheduled for the above date and time in Docket Number 13728—petition for expanded local calling service from the City of Gunter exchange to the exchanges of Allen, Anna, Aubrey, Bells-Savoy, Blue Ridge, Celina, Collinsville, Denison, Denton, Frisco, Gainesville, Gordonville, McKinney, Pilot Point, Pottsboro, Princeton, Prosper, Sanger, Tioga, Tom Bean, Trenton, Whitesboro and Whitewright.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 6, 1995, 10:27 a.m.

TRD-9501513

Thursday, June 1, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been scheduled in Docket Number 13666—application of Sam Houston Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a proposed transmission line within Walker County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 6, 1995, 4:13 p.m.

TRD-9501539

Monday, July 24, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in Docket Number 12879: application of Southwestern Bell Telephone Company for expanded interconnection and unbundling of special access DS1 and DS3 services.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1995, 1:30 p.m.

TRD-9501435

◆ ◆ ◆
Texas Racing Commission

Monday, February 13, 1995, 10:00 a.m.

Capitol Extension, Room E1.012, 1400 Congress Avenue

Austin

AGENDA:

Call to order; roll call; executive session to consult with attorneys regarding pending litigation with Texas Greyhound Association pursuant to Government Code, §551.071; executive session to review concession contracts for Retama Park and Bandera Downs pursuant to Texas Civil Statutes, Article 179e, §6.03(b), presentation by Robert Baehr regarding Texas Race-track Adult Continuing Education Program; update by staff regarding pending administrative matters; action on the following rules: §§305.35, 305.49, 305.263, 309.65,

311.11, 305.42, 305.44, 321.32, 321.272, 321.277, 311.171, 311.152, 311.158, 313.422, 313.447, 313.450, 319.111, 313.103; petition by Gulf Greyhound Park for amendment to §309.355; petition by Retama Park for amendments to the following rules: §§309.184, 311.159, 313.132, 319.102, 321.204, 321.207, 321.208, 321.235, 321.276; consideration of and action on the following contested cases: PFD in SOAH Number 476-94-1096 (appeal by John Edgar Hamilton from Stewards' Ruling Sam Houston 19), PFD in SOAH Number 476-94-515 (appeal by James C. Hudson from Stewards' Ruling Trinity 1183), PFD in SOAH Number 476-94-1499 (appeal by Arleen E. Cooper from Stewards' Ruling Bandera 1151), PFD in SOAH Number 476-94-1103 (appeal by Michael L. Hefner from Stewards' Ruling Manor 1086); consideration of and action on the following matters relating to racetracks: Bandera Downs contract with Texas Horsemen's Benevolent and Protective Association, Bandera Downs proposed change of ownership, Manor Downs contract with Texas Horsemen's Benevolent and Protective Association, Retama Park contract with Texas Horsemen's Benevolent and Protective Association, Trinity Meadows amendment to contract with Texas Horsemen's Benevolent and Protective Association; old and new business; adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461.

Filed: February 3, 1995, 4:22 p.m.

TRD-9501465

◆ ◆ ◆
Railroad Commission of Texas

Monday, February 13, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions and personnel matters. The Commission will consider and act on the Information Resource Manager's report on information resource planning documents.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: February 3, 1995, 10:51 a.m.

TRD-9501419

Monday, February 13, 1995, 9:30 a.m.
1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: February 3, 1995, 10:52 a.m.

TRD-9501420

Monday, February 13, 1995, 9:30 a.m.
1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: February 3, 1995, 10:52 a.m.

TRD-9501421

Monday, February 13, 1995, 9:30 a.m.
1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on agency administration, budget, policy and procedures, and personnel matters for all divisions. The Commission may meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: February 3, 1995, 10:52 a.m.

TRD-9501422

Monday, February 13, 1995, 9:30 a.m.
1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

1. Division director's report and Commission action on AFRED administration, procedures, budget, personnel and policy matters, and contract awards relating to alternative fuels research, marketing and public education programs.

2. Technical training. The Commission will consider an interagency contract with Texas State Technical College to train alternative fuels technicians.

3. Risk analysis. The Commission will consider whether to conduct a risk analysis study of propane storage tanks.

4. Local propane ordinances. The Commission will consider how best to offer technical assistance to local jurisdictions that propose to restrict propane use beyond Railroad Commission safety standards.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: February 3, 1995, 10:52 a.m.

TRD-9501423

Monday, February 13, 1995, 9:30 a.m.
1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: February 3, 1995, 10:53 a.m.

TRD-9501424

Monday, February 13, 1995, 9:30 a.m.
1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: February 3, 1995, 10:53 a.m.

TRD-9501425

Thursday, February 23, 1995, 2:00 p.m.
1701 North Congress Avenue, 12th Floor
Conference Room 12-126

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: February 3, 1995, 10:51 a.m.

TRD-9501418

**Texas Real Estate Research
Center**

Monday, February 6, 1995, 1:00 p.m.

208 Barton Springs Road, Hyatt Regency,
Section V, Texas Ballroom

Austin

Advisory Committee

AGENDA:

- 1) Opening remarks
- 2) Approval of minutes
- 3) Status report
- 4) Current budget report
- 5) Date of next meeting
- 6) Delegation of authority
- 7) Update on legislation affecting Center
- 8) Other business
- 9) Adjourn

Contact: R. Malcolm Richards, Real Estate Center, Texas A&M University, College Station, Texas 77843-2115, (409) 845-9691.

Filed: February 6, 1995, 1:40 p.m.

TRD-9501526

**Boards for Lease of State-
Owned Lands**

**Wednesday, February 15, 1995, 10:00
a.m.**

General Land Office, Stephen F. Austin
Building, 1700 North Congress Avenue,
Room 833

Austin

Board for Lease of Texas Department of
Criminal Justice

AGENDA:

Approval of previous board meeting minutes; consideration of tracts, terms, conditions and procedures for the April 4, 1995, oil, gas and other minerals lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: February 6, 1995, 3:27 p.m.

TRD-9501535

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University of Houston System, Board of Regents

Thursday, February 9, 1995, 2:00 p.m.

Conference Room One, 1600 Smith, Suite 3400, UH System Offices

Houston

Facilities Planning and Building Committee

AGENDA:

To discuss and/or approve the following: Executive session; schematic design of academic/student service building-UH Downtown; campus plan-UH-Downtown.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: February 3, 1995, 9:20 a.m.

TRD-9501406

Thursday, February 9, 1995, 2:00 p.m.

Conference Room One, 1600 Smith, Suite 3400, UH System Offices

Houston

Revised Agenda

Facilities Planning and Building Committee

AGENDA:

To discuss and/or approve the following: executive session; schematic design of Academic/Student Service Building-UH-Downtown; campus plan-UH-Downtown.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: February 3, 1995, 11:44 a.m.

TRD-9501430

◆ ◆ ◆
University of North Texas/University of North Texas Health Science Center

Thursday, February 9, 1995, 1:30 p.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents, Role and Scope Committee

AGENDA:

UNT: Routine academic reports; ethics policy for faculty and staff; chancellor's appointment to Air University Board of Visitors; presentation on competition for National Biomedical Tracer Facility; progress of the Texas Academy of Mathematics and Science

UNTHSC: Ethics policy for faculty and staff; award of honorary degree; quality assurance; clinical faculty peer review policy; Physician Assistant Program

UNT/UNTHSC: Ethics policy for members of the Board of Regents

Contact: Jana K. Dean, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: February 3, 1995, 2:48 p.m.

TRD-9501453

Thursday, February 9, 1995, 1:30 p.m.

Avenue C at Chestnut, Administration Building, Board Room, University of North Texas

Denton

Board of Regents, Advancement Committee

AGENDA:

UNT: Gift report, year to date; capital campaign update; special events-Kimbell Critique, Austin Dinner for Key Alumnus, Pre-game with UTA on February 11, Chancellor's Advisory Committee: Houston; public affairs report; athletic marketing initiatives

UNTHSC: Review of first quarter departmental goals and objectives; gift income report for foundation; funding opportunities; UNTHSC/TCOM foundation update; Silver Anniversary update

Contact: Jana K. Dean, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: February 3, 1995, 2:48 p.m.

TRD-9501454

Thursday, February 9, 1995, 3:00 p.m.

Avenue C at Chestnut, Administration Building, Board Room, University of North Texas

Denton

Board of Regents, Budget and Finance Committee

AGENDA:

UNT: Gift report; Dallas Education Center Administrative fee; investment policy; investment report; internal audit update

UNTHSC: Gift report; investment policy; investment report; internal audit update

Contact: Jana K. Dean, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: February 3, 1995, 2:49 p.m.

TRD-9501455

Thursday, February 9, 1995, 4:00 p.m.

Avenue C at Chestnut, Administration Building, Suite 201, University of North Texas

Denton

Board of Regents, Facilities Committee

AGENDA:

UNT: Award of construction projects; renovation of Physics building; library annex roof; Music and Fine Arts Education building; project status report

UNTHSC: Addition of two floors to Health Science Education building

Contact: Jana K. Dean, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: February 3, 1995, 2:49 p.m.

TRD-9501456

Friday, February 10, 1995, 8:00 a.m.

Avenue C at Chestnut, Diamond Eagle Suite, University Union, University of North Texas

Denton

Board of Regents

AGENDA:

UNT: Approval of minutes; executive session (UNT/UNTHSC: Legislative update. UNT: Relationship between TWU and UNT; University Store; budget planning for fiscal years 1996-1997; athletics update; update on current lawsuits; Chemistry staff termination issue; Physics staff termination issue. UNTHSC: Affiliations; update on current lawsuits, investments litigation, internal medicine faculty issue. UNT/UNTHSC: Evaluation of Chancellor.); routine academic reports; ethics policy for faculty and staff; chancellor's appointment to Air University Board of Visitors; information item; progress of the Texas Academy of Mathematics and Science; gift report; Dallas Education Center administrative fee; investment policy; award of construction projects; renovation of Physics building; library annex roof; Music and Fine Arts Education building; project status report; chancellor's update on materials Science degrees.

UNTHSC: Approval of minutes; ethics policy for faculty and staff; award of honorary degree; quality assurance; clinical faculty peer review policy; Physician Assistant Program; gift report; investment policy; addition of two floors to Health Science Education building; UNT/UNTHSC: ethics policy for members of the Board of Regents of UNT/UNTHSC. UNTHSC: President's update on federal prison contracts; student issues and other noteworthy items.

Contact: Jana K. Dean, P.O. Box 13737,
Denton, Texas 76203, (817) 369-8515.

Filed: February 3, 1995, 2:48 p.m.

TRD-9501452

Texas Board of Veterinary Medical Examiners

Wednesday-Thursday, February 8-9,
1995, 8:30 a.m.

Galveston Room, J. W. Marriott Hotel,
5150 Westheimer

Houston

Emergency Revised Agenda

Board

AGENDA:

The Board will be considering negotiated settlements in disciplinary cases, petitions to waive portions of the examinations for licensure. The Board will also consider Rules 571.04-Special Licenses; 573.27-Observance of Confidentiality; 573.44-Compounding Drugs; 573.69-Reporting Criminal Activity; and 577.15-Fee Schedule for final adoption. Proposed rules to be considered include: Rule 573.10-Direct Supervision of Lay Personnel; and 573.65-Definitions. The Board will also conduct other general business. The Board will go into executive session to discuss pending litigation and responsibilities of the executive director.

The agenda is being revised to move rules 573.10-Direct Supervision of Lay Personnel and 573.65-Definitions from rules to be considered for adoption to rules to be considered for proposal in the *Texas Register*. In addition a petition to waive a portion of the examinations for licensure from Joe Kornegay, D.V.M. will be considered.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183 or TDD 1-800-735-2989 within 72 hours of the meeting to make appropriate arrangements.

Reason for emergency: The rule amendments to the agenda are necessary in view of advice just received from the Board's legal counsel. Dr. Kornegay's last minute application will be considered in order that he can participate in the April, 1995 examinations since the Board will not meet again until June, 1995.

Contact: Ron Allen, 1946 South IH-35,
#306, Austin, Texas 78704, (512)
447-1183.

Filed: February 3, 1995, 10:04 a.m.

TRD-9501410

Tuesday, February 21, 1995, 9:00 a.m.

1946 South IH-35, #306

Austin

Examination Preparation Committee

AGENDA:

The Committee will meet to prepare the April, 1995 State Board of Examination for licensure. The Committee will convene in open session and then go into executive session in accordance with Attorney General Opinions H-484, 1974 and JM 640, 1987.

Contact: Ron Allen, 1946 South IH-35,
#306, Austin, Texas 78704, (512)
447-1183.

Filed: February 3, 1995, 9:17 a.m.

TRD-9501404

Texas Workers' Compensation Commission

Thursday, February 9, 1995, 9:00 a.m.

4000 South IH-35, Room 910-911, South-
field Building

Austin

AGENDA:

1. Call to order
2. Approval of minutes for the public meeting of January 12, 1995
3. Discussion and possible action on applications for certificate to self-insure
4. Discussion and possible action on requests for renewal of certificate to self-insure
5. Report and possible action on Medical Advisory Committee issues
6. Discussion and possible action regarding policy and procedures on commissioners' role and responsibilities
7. Discussion of wrongful discharge of an employee filing a Workers' Compensation claim
8. Discussion and possible action on adoption of new and amended rules: 108. 1, 102.5, 102.6, 102.8, 124.1, 124.2, 124.4, 134.1001, 164.1-164.12, 164.14
9. Discussion and possible action of repeal of rules: 164.1, 164.13, 164.14
10. Executive session
11. Action on matters considered in executive session
12. General reports, discussion and possible action on issues relating to commission activities

13. Confirmation of future public meetings and hearings

14. Discussion and possible action on future agenda items

15. Adjournment

Contact: Todd K. Brown, 4000 South IH-35,
Austin, Texas 78704, (512) 440-5690.

Filed: February 3, 1995, 4:30 p.m.

TRD-9501474

Texas Workers' Compensation Insurance Facility

Tuesday, February 14, 1995, 9:45 a.m.

Guest Quarters Hotel, 303 West 15th Street
Austin

Governing Committee Meeting

AGENDA:

Approval of minutes of December 13, 1994, Governing Committee meeting; consideration and possible action on servicing company request for reimbursement of legal fees and expenses; consideration and possible action on recommendations from the Appeals Committee; executive director's report; and executive session(s) regarding personnel matters and pending legal matters. Following the closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements of potential or existing litigation, possible approval of Facility transition plans and personnel policies.

Contact: Peter E. Poternkin, 8303 MoPac
Expressway North, Suite 310, Austin, Texas
78759, (512) 345-1222.

Filed: February 2, 1995, 4:22 p.m.

TRD-9501391

Regional Meetings

Meetings Filed February 2,
1995

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, February 23, 1995, at 8:30 a.m. Information may be obtained from Curtis Koehler, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9501389.

The Education Service Center, Region V Board met at 2295 Delaware Street, Beaumont, February 8, 1995, at 1:00 p.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont,

Texas 77703-4299, (409) 838-5555. TRD-9501379.

The Guadalupe-Blanco River Authority Ad Hoc Committee will meet at 933 East Court Street, Seguin, February 13, 1995, at 3:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9501375.

The Hays County Appraisal District Board of Directors met at 21001 North IH-35, Kyle, February 9, 1995, at 2:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9501387.

The Hays County Appraisal District Board of Directors met at 21001 North IH-35, Kyle, February 9, 1995, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9501988.

The Local Government Investment Cooperative Board of Directors will meet at 7001 Preston Road, Suite 300, Dallas, February 16, 1995, at 3:00 p.m. Information may be obtained from Richard E. Scott, 7001 Preston Road, Suite 300, Dallas, Texas 75205, (214) 522-8830, Fax: (214) 522-7667. TRD-9501392.

The Lower Rio Grande Valley Tech Prep Associate Degree Consortium (also known as **Tech Prep of the Rio Grande Valley, Inc.**) Board of Directors met in the Board Room, Conference Center, Texas State Technical College, Corner of Loop 499 and Oak Street, Harlingen, February 8, 1995, at Noon. Information may be obtained from Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD-9501382.

The Nortex Regional Planning Commission Executive Committee will meet at 4309 Jacksboro Highway, The Galaxy Center, Suite 200, Wichita Falls, February 16, 1995, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281. TRD-9501376.

The West Central Texas Council of Governments Criminal Justice Advisory Committee will meet at 1125 East North Tenth Street, Abilene, February 17, 1995, at 10:00 a.m. Information may be obtained from Les Wilkerson, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9501378.

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**Meetings Filed February 3,
1995**

The Angelina and Neches River Authority (Regular Meeting) Board of Directors met at the Crown Colony Country Club, Azalea Room, 900 Crown Colony, Lufkin, February 7, 1995, at 9:30 a.m. Information

may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795, Fax: (409) 632-2564. TRD-9501408.

The Barton Springs/Edwards Aquifer Conservation District (Call Meeting) Board of Directors met at 1124A Regal Row, Austin, February 8, 1995, at 3:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: (512) 282-7016. TRD-9501415.

The Central Texas Economic Development Executive Committee met at Southbound Service Road, Elm Mett, February 9, 1995, at 11:00 a.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, (817) 799-0258. TRD-9501461.

The Coastal Bend Quality Work Force Planning Association met at the Bulcher Institute, Texas A&M University, Corpus Christi, February 15, 1995, at 8:30 a.m. Information may be obtained from Raquel Moreno, 1616 Martin Luther King Drive, Corpus Christi, Texas 78401, (512) 889-5300, Ext. 225. TRD-9501460.

The Coleman County Water Supply Corporation Board of Directors met at 214 Santa Anna Avenue, Coleman, February 8, 1995, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9501411.

The DeWitt County Appraisal District Appraisal Review Board met at 103 Bailey, Cuero, February 8, 1995, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9501442.

The Education Service Center, Region XIV Board of Directors met at 1850 Highway 351, Abilene, February 9, 1995, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8608. TRD-9501441.

The Erath County Appraisal District Board of Directors will meet at 1390 Harbin Drive, Stephenville, February 14, 1995, at 7:00 a.m. Information may be obtained from Vicky Greenough, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434, Fax: (817) 965-5633. TRD-9501451.

The Hale County Appraisal District Appraisal Review Board will meet at 3314 Olton Road, Plainview, February 15, 1995, at Noon. Information may be obtained from Linda Jaynes, 302 West Eighth Street, Plainview, Texas 79072, (806) 293-4226. TRD-9501463.

The Hale County Appraisal District Board of Directors will meet at 3314 Olton Road, Plainview, February 16, 1995, at 7:00

p.m. Information may be obtained from Linda Jaynes, 302 West Eighth Street, Plainview, Texas 79072, (806) 293-4226. TRD-9501464.

The Harris County Appraisal District Appraisal Review Board will meet at 2800 North Loop West, Eighth Floor, Houston, February 10, 1995, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9501407.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, February 9, 1995, at 6:30 p.m. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9501457.

The Jones County, Central Appraisal District Board of Directors will meet at 109 North Main, Suite 201, Room 202, Cleburne, February 16, 1995, at 4:30 p.m. Information may be obtained from Priscilla A. Bunch, 109 North Main, Cleburne, Texas 76031, (817) 558-8100. TRD-9501438.

The Leon Country Central Appraisal District Board of Directors met at 103 North Commerce, Corner of Highway 7 and 75, Leon County Central Appraisal District Office, Gresham Building, Centerville, February 6, 1995, at 7:30 p.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833-0536. TRD-9501416.

The Manville Water Supply Corporation Board met at Spur 277, Board Room, Coupland, February 9, 1995, at 7:00 p.m. Information may be obtained from Tony Graf, Spur 277, Coupland, Texas 78615, (512) 272-4044. TRD-9501431.

The Middle Rio Grande Development Council Area Agency on Aging Area Advisory Council on Aging met at 200 East Nopal Street, First State Bank, McNelly Room, Uvalde, February 8, 1995, at 10:00 a.m. Information may be obtained from Berta R. Macat, P.O. Box 1199, Carrizo Springs, Texas 78834, (800) 224-4262. TRD-9501417.

The Sabine Valley Center Care and Treatment Committee met at 107 Woodbine Place, Judson Road, Longview, February 9, 1995, at 6:00 p.m. Information may be obtained from Mack Blackwell, P.O. Box 6800, Longview, Texas 75606, (903) 237-2362. TRD-9501427.

The Sabine Valley Center Finance Committee met at 107 Woodbine Place, Judson Road, Longview, February 9, 1995, at 6:00 p.m. Information may be obtained from Mack Blackwell, P.O. Box 6800, Longview, Texas 75606, (903) 237-2362. TRD-9501429.

The Sabine Valley Center Board of Trustees met at 107 Woodbine Place, Judson Road, Longview, February 9, 1995, at 7:00 p.m. Information may be obtained from Mack Blackwell, P.O. Box 6800, Longview, Texas 75606, (903) 237-2362. TRD-9501428.

The Sulphur-Cypress Soil and Water Conservation District #419 met at 1809 West Ferguson Suite D., Mt. Pleasant, February 9, 1995, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite D., Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9501409.

The Taylor County Central Appraisal District Board of Directors met at 1534 South Treadaway, Abilene, February 8, 1995, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381 or Fax: (915) 676-7877. TRD-9501394.

The Trinity River Authority of Texas Legal Committee will meet at 5300 South Collins Street, Arlington, February 10, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9501443.

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**Meetings Filed February 6,
1995**

The Canyon Regional Water Authority (Regular Meeting.) Board will meet at the Guadalupe Fire Training Facility, 850 Lakeside Pass Drive, New Braunfels, February 13, 1995, at 7:00 p.m. Information may be obtained from Gloria Kaufman, Route 2, Box 654 W, New Braunfels, Texas 78130-9579. TRD-9501522.

The Colorado County Appraisal District Board of Directors will meet at 400 Spring Street, County Courtroom, Columbus, February 14, 1995, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-951537.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, February 15, 1995, at 9:00 a.m. Information may be obtained from Kathy Pierson, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9501520.

The Education Service Center, Region III Board of Directors will meet at 3901 Houston Highway, Victoria, February 13, 1995, at 11:30 a.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9501523.

The Education Service Center, Region III Board of Directors will meet at 1905 Leary Lane, Victoria, February 13, 1995, at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9501524.

The Houston-Galveston Area Council Transportation Policy Council will meet at the Harvey Hotel, 2712 Southwest Freeway, Houston, February 17, 1995, at 9:30 a.m. Information may be obtained from Alan C. Clark, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. TRD-9501518.

The Nolan County Central Appraisal District Board of Directors will meet at Betty's Breakfast, Sweetwater, February 14, 1995, at 7:00 p.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9501536.

The North Texas Municipal Water District Board of Directors (Annual Retreat) will meet at the Sheraton Park Central Hotel, Dallas, February 17, 1995, at 7:00 p.m. and February 18-19, 1995, at 8:00 a.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9501510.

The Palo Pinto Appraisal District Appraisal Review Board will meet at the Court House, Highway 180, Palo Pinto, February 15, 1995, at 1:30 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD-9501505.

The San Antonio River Authority Edwards Aquifer Position Committee will meet at 100 East Guenther Street, Boardroom, San Antonio, February 15, 1995, at 1:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9501497.

The San Antonio River Authority Board of Directors will meet at 100 East Guenther Street, Boardroom, San Antonio, February 15, 1995, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9501496.

The Trinity River Authority of Texas Resources Development Committee will meet at 5300 South Collins Street, Arlington, February 13, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9501527.

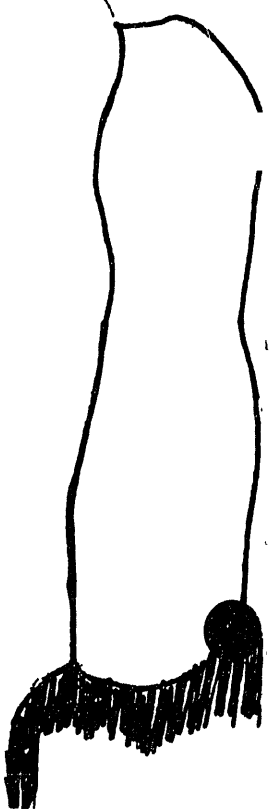
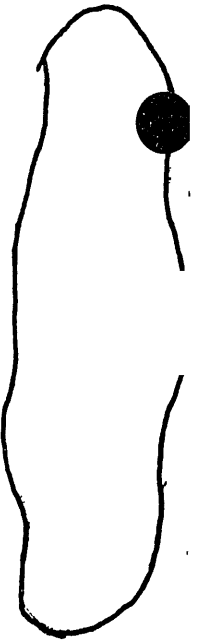
The Wichita Falls Metropolitan Planning Organization Policy Advisory Committee met at 1300 Seventh Street, Council Conference Room, Memorial Auditorium, February 9, 1995, at 8:30 a.m. Information may be obtained from Richard E. Luedke, P.O. Box 1431, Wichita Falls, Texas 76307, (817) 761-7447. TRD-9501485.

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**Meetings Filed February 7,
1995**

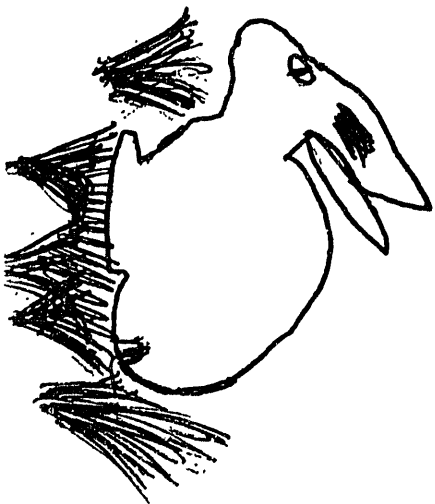
The Callahan County Appraisal District Board of Directors will meet at 130-A West Fourth Street, Baird, February 13, 1995, at 7:30 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9501542.

The Hamilton County Appraisal District Board will meet at 119 East Henry, Hamilton, February 13, 1995, at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (817) 386-8945. TRD-9501547.

The Texas Municipal Asset Pool Board of Directors will meet at the Riverway Bank, Five Riverway, Board Room, Second Floor, February 15, 1995, at 8:00 a.m. Information may be obtained from Debra J. Hall, P.O. Box 56572, Houston, Texas 77256, (713) 552-2618. TRD-9501543.



Name: Magali Garcia
Grade: 9
School: Harlandale High School, Harlandale ISD



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 Commission on Alcohol and Drug Abuse

Notice of Public Hearings

The Texas Commission on Alcohol and Drug Abuse (TCADA) is holding five public hearings in February, scheduled as follows: February 6, 1995, Amarillo, 1:00-3:00 p.m., Panhandle Regional Planning Commission, 415 West Eighth Avenue; February 7, 1995, Arlington, 9:00-11:00 a.m., City Hall Council Chambers, 101 West Abram Street; February 8, 1995, El Paso, 9:00-11:00 a.m., Rio Grande Council of Government, 1100 North Stanton, Suite 610; February 9, 1995, Victoria, 1:00-3:00 p.m., The Meeting Place at Victoria Mall, Navarro Street at Loop 463; February 10, 1995, Austin, 1:00-3:00 p.m., Texas Department of Health, Board of Health Room M-739, Robert D. Moreton Building, 1100 West 49th.

In addition to soliciting comments on the Substance Abuse Prevention and Treatment Block Grant, the commission will also be accepting comments on the development of the State Plan for the expenditure of Safe and Drug-Free School and Communities funds administered by the commission. The Improving Americans Schools Act of 1994 (Public Law 103-382) requires that the State Plan be developed in consultation and coordination with parents, students and community-based organizations. Consistent with this mandate, we will accept comments on the funds administered by the commission through this federal grant.

Safe and Drug Free Schools and Communities funds are made available through a state grant through the United States Department of Education. Authorized activities for the expenditure of these funds include drug and violence prevention, activities to protect students traveling to and from school, and other activities that promote the awareness of and sensitivity to alternatives to violence. A copy of the federal legislation enacting this program will be available at the public hearing. All authorized activities are clearly delineated in this legislation.

In addition to public comment taken at the hearings, the commission will accept written comments through March 10, 1995. Comments can be mailed to the Texas Commission on Alcohol and Drug Abuse, J. Ben Bynum, Executive Director, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8700, contact person: Reagan Faulkner.

TCADA complies with the Americans with Disabilities Act. Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Reagan Faulkner at (512) 867-8140 to request these services. If you are an individual with other disability and need a reasonable accommodation, please notify the commission so that accommodations can be made.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501403

J Ben Bynum
Executive Director
Texas Commission on Drug and Alcohol
Abuse

Filed: February 3, 1995

Comptroller of Public Accounts Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the December 13, 1994, issue in the *Texas Register* (19 TexReg 9923).

The consultant will perform a management and performance review of the Office of the Texas Comptroller of Public Accounts. From this review, findings and recommendations will be developed for containing costs, improving management strategies and ultimately promoting and improving services to Texas taxpayers and the public through Agency administration efficiency. The successful proposer will be expected to begin performance of the contract on or about February 6, 1995.

The contract is awarded to MGT of America, Inc., doing business as MGT Consultants, 100 Congress Avenue, Suite 2018, Austin, Texas 78701. The total dollar value of the contract is not to exceed \$194,000 in the aggregate. The contract was executed February 1, 1995, and extends through August 31, 1995. MGT of America, Inc., is to present a final report on or about July 26, 1995, on conclusions reached from the services performed under said contract.

Issued in Austin, Texas, on February 3, 1995.

TRD-9501458

Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed: February 3, 1995

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Stat-

utes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1. 04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	02/06/95-02/12/95	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	02/01/95-02/28/95	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on January 30, 1995.

TRD-8501446 Leslie L. Pettijohn
Acting Commissioner
Office of Consumer Credit Commissioner

Filed: February 3, 1995

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**Texas Education Agency
Correction of Error**

The Texas Education Agency proposed the repeal of §§ 33.1, 33.10, 33.15, 33.20, 33.25, 33.30, 33.35, 33.40, 33.45, 33.50, 33.60, 33.65, 33.70, 33.75, 33.85, 33.90, 33.95, 33.100, and 33.105, concerning the Texas Permanent School Fund (PSF). The rules appeared in the January 31, 1995, issue of the *Texas Register* (20 TexReg 533).

An error as published appeared in the proposed repeal of 19 TAC Chapter 33. The word "Diversification" is misspelled in the title of §33.20.

The Texas Education Agency proposed new §§33.1, 33.5, 33.10, 33.15, 33. 20, 33.25, 33.30, 33.35, 33.40, 33.45, 33.50, 33.55, 33.60, and 33.65, concerning the Texas Permanent School Fund (PSF). The rules appeared in the January 31, 1995, issue of the *Texas Register* (20 TexReg 533).

An error as submitted appeared in the proposed new 19 TAC §33.15(g). In the second sentence of the subsection, the word "be" in the phrase "...invest PSF assets as directed be the SBOE..." should read "by."

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Notice of Results-Based Monitoring (RBM) Workshop for Vendors

The Texas Education Agency (TEA) will conduct an RBM workshop for vendors on Monday, February 27, in the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. Registration begins at 8:00 a.m., and the workshop begins at 8:30 a.m.

Agency staff will conduct training to provide vendors with an overview of the RBM system for its benchmark year. Results-Based Monitoring is a monitoring system for assessing student performance and compliance in special programs. School district staff assess how well students are performing and whether the special program is operating according to program requirements. The local assessment helps identify program strengths, priorities for improvement, and needed corrective actions. The results of the RBM review are reported to TEA and incorporated into local improvement plans. The primary purpose of RBM is to improve student performance.

Vendors interested in receiving training must respond in writing by Monday, February 20, and indicate the names of persons who will attend the training. The cost of materials is \$10 per person. Checks may be written to the Texas Education Agency, P.O. Box 13717-Conference, Austin, Texas 78711-3717, and must be submitted on or before February 27.

Additional information may be obtained from: Madeleine Draeger Manigold, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9370.

Issued in Austin, Texas, on February 6, 1995.

TRD-9501476
Criss Cloudf
Executive Associate Commissioner for
Policy Planning and Information
Management
Texas Education Agency

Filed: February 6, 1995

State Employee Charitable Campaign Policy Committee

Notice of Application

The State Employee Charitable Campaign Policy Committee is currently accepting applications from statewide federations/funds for participation in the 1995 State Employee Charitable Campaign.

Statewide Federation/Funds desiring to participate should contact the State Employee Charitable Campaign Policy Committee, Attention: Becky Prince/Anne Murphy at (512) 472-6267.

All applications must be postmarked no later than February 24, 1995. Applications received after that date will not be considered.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501393
Anne Murphy
Vice President, Resource Development
State Employee Charitable Campaign
Policy Committee

Filed: February 2, 1995

Texas Employment Commission Announcement of Available Funds and Request for Proposals

Summary: The Texas Employment Commission is pleased to announce the availability of One-Stop Career Center System funds from the U.S. Department of Labor (DOL). The purpose of the funds is to assist local areas in establishing a system that organizes DOL and other employment and training programs into settings that provide universal access, integrate program functions, offer choices to job seekers as well as employers and use outcome-based performance measures. The minimum services that must be available through the system include labor market information, common intake and eligibility determination, independent assessment, case management and counseling, referral for services, supportive services and extensive services for employers. At the end of the first year of operation, the following programs must be included within the one-stop system: Employment Service, Veterans Employment Service, Job Training Partnership Act (JTPA), Senior Community Service Employment Program, Unemployment Insurance Program, Food Stamp Employment and Training, JOBS, Adult Education, Literacy, Perkins Act post-secondary programs, Trade Adjustment Assistance and School-to-Work.

Funds will be awarded on a competitive basis to public or private agencies which can demonstrate the capability to administer federal funds and perform services and which meet the criteria established by the Texas Council on Workforce and Economic Competitiveness (TCWEC). Minimum criteria include developing a three year plan for the workforce development area, demonstrating community support, separating the role of administrative entity and/or center operator from the role of education and training provider, securing partnership agreements between the Texas Employment Commission and the Service Delivery Area of the JTPA, demonstrating support of the chief elected officials, submitting plans that reflect integration of service and information that goes beyond collocation, being reviewed at the local level by local workforce advisory bodies, having a direct or in-kind funding base for multiple sources, include employer services and being submitted from a designated workforce development area or, if the area is undesignated, being submitted by a JTPA Service Delivery Area or a consortium of Service Delivery Areas.

Application Deadline: Proposals must be received by March 29, 1995 at 5:00 p.m. or postmarked not later than March 27, 1995. Request for Proposals may be mailed to One-Stop Systems, Room 458-T, Texas Employment Commission, 101 East 15th Street, Austin, Texas 78778-0001, (512) 463-7750.

Proposal Funding Awards: It is anticipated that awards will be in the range of \$150,000 to \$250,000 and that up to seven areas of the state will be funded. Complete applications from eligible entities will be evaluated by a team of inter-agency state staff members utilizing criteria established by TCWEC. A bidders conference will be held from 1:30-3:30 p.m. on February 17, 1995 in Room 302T, 1117 Trinity, Austin, Texas, but attendance is not mandated in order to submit an application. Additional funding may be provided for two subsequent years contingent upon satisfactory performance and availability of funds from the federal level.

Issued in Austin, Texas on February 3, 1995.

Filed: February 3, 1995

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General Services Commission

Request for Proposals

Notice is hereby given to all interested parties that the State of Texas, by and through the Council on Competitive Government (Council), is soliciting a Request for Proposals from: qualified fuel and management vendors to provide retail fuel, and electronic fuel dispensing systems and services for State of Texas agencies in and around Bexar county. The Council will evaluate the proposals, in accordance with the criteria outlined in a Request for Proposals, to determine if outsourcing is a financially advantageous means of meeting future fueling needs of the State. The Request for Proposals containing all the requirements necessary for an appropriate response may be obtained on or after February 6, 1995, from Charlie Bertero at (512) 463-3387.

All inquiries concerning the requirements of the Request for Proposals must be received no later than 3:00 p.m. (CST), March 10, 1995, at the address and phone number listed as follows.

Council on Competitive Government General Services Commission, 1711 San Jacinto Street, Austin, Texas 78701, Attn: Charlie Bertero, (512) 463-3387.

All proposals must be submitted in a sealed envelope or container no later than 11:00 a.m. (CST), on or before March 20, 1995 addressed to:

Physical Address: Council on Competitive Government General Services Commission, 1711 San Jacinto Street, Bid Room 180, Austin, Texas 78701, Attn: Charlie Bertero;

OR Post Office Box: Council on Competitive Government General Services Commission, P.O. Box 13047, Bid Room 180, Austin, Texas 78711-3047, Attn: Charlie Bertero.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501383 Judith Monaco Porras
General Counsel
General Services Commission

Filed: February 2, 1995

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Texas Department of Insurance

Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for a name change by The Travelers Indemnity Company of Rhode Island, a foreign fire and casualty company. The proposed new name is The Travelers Indemnity Company of Connecticut. The home office is in Hartford, Connecticut.
2. Application for a name reservation in Texas for Health Plus of Texas, Inc., a foreign health maintenance organization. The home office is in Shreveport, Louisiana.

3. Application for a name reservation in Texas for Dorsey Dental Plans of America, Inc., a domestic health maintenance organization. The home office is in Tomball, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on February 6, 1995.

TRD-9501508 Mary Keller
Senior Associate Commissioner
Texas Department of Insurance

Filed: February 6, 1995

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Third Party Administrator Applications

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

1. Application for incorporation in Texas for Medical Control Administrators, Inc., (doing business under the assumed name of Group Administrators), a domestic third party administrator. The home office is in Dallas, Texas.
2. Application for incorporation in Texas for Seton Health Plans, Inc., domestic third party administrator. The home office is in Austin, Texas.
3. Application for admission to Texas for The Kempton Company, a foreign third party administrator. The home office is in Oklahoma City, Oklahoma.
4. Application for admission to Texas for Continental Plan Services, Inc., a foreign third party administrator. The home office is in Green Bay, Wisconsin.
5. Application for admission to Texas for NME Hospitals, Inc., (doing business under the assumed name of Sierra Health Network), a foreign third party administrator. The home office is in El Paso, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on February 6, 1995.

TRD-9501509 Mary Keller
Senior Associate Commissioner
Texas Department of Insurance

Filed: February 6, 1995

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Texas State Library and Archives

Commission

Contract Award

In compliance with Government Code, Chapter 2254, the Texas State Library and Archives Commission published a request for proposal in the December 16, 1994, issue of the *Texas Register* (19 TexReg 10042) to obtain consultant services. Services will include analyzing and summarizing major issues, problems and recommendations regarding the historical records environment in Texas as put forth in various documents since 1978; identifying additional data gathering needs and groups or institutions to survey; com-

piling and mailing the necessary surveys and analyzing the data gathered; and, preparing a written report of findings to be delivered to the Texas Historical Records Advisory Board on July 31, 1995. In addition to the written report, an oral summary of the proposed plan of work will be provided to the board during the course of the project.

The Library engaged David B. Gracy and Associates, 2313 Tower Drive, Austin, Texas 78703-2321. The effective dates for the engagement are February 1, 1995 through August 31, 1995. The cost of the services is estimated to be \$13,500.

Issued in Austin, Texas, on February 3, 1995.

TRD-9501440
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives
Commission

Filed: February 3, 1995

Texas Natural Resource Conservation Commission

Provisionally-Issued Temporary Permits to Appropriate State Water during the period of January 30-February 3, 1995

Application Number 7390 by Water Line Systems for diversion of ten acre-feet of water in a one-year period. Water will be diverted from the Rio Grande near the stream crossing of Highway 83, approximately 29 miles north of Zapata, Zapata County, Texas, Rio Grande Basin.

Provisionally-Issued Temporary permits to appropriate state water are issued for a period of not more than one year and authorize the use of not more than ten acre-feet of water. The Executive Director of the TNRCC has reviewed the application for the permit listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permit listed previously and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in 30 TAC Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning this application may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Enforcement Order

An agreed enforcement order was entered regarding Orange County Water Control and Improvement District

Number 2, Docket Number 94-0337-MSW-E (Permit Number 10240-01), on January 31, 1995, assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

Issued in Austin, Texas, on February 3, 1995.

TRD-9501436
Gloria A. Vasquez
Chief Clerk
Texas Natural Conservation Commission

Filed: February 3, 1995

Public Notice—Second Request for Nominations to Consider Appointments to the Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Natural Resource Conservation Commission, at its agenda meeting on February 22, 1995, will consider appointments to fill three existing vacancies on the Municipal Solid Waste Management and Resource Recovery Advisory Council. The agenda meeting will be held at 9:30 a.m. on February 22, 1995, at the TNRCC Park 35 Complex, Building E, Room 201S, 12118 North Interstate 35, Austin. Each member will be appointed to fill an unexpired term.

The Advisory Council was mandated by the 69th Legislature (1983) and is composed of 18 members representing various segments of the regulated community; i.e., city and county solid waste agencies, commercial solid waste operators, solid waste districts/authorities, environmental groups, city and county officials, tire processors, financial community, and the general public.

The Advisory Council meets a minimum of four times per year but will meet each month as needed. The meetings usually last two full days and are held in Austin, Texas. One day is scheduled for committee meetings and the other day is for a general business session with reports from committee chairpersons, TNRCC staff, and special guests.

The TNRCC Commissioners invite the general public to submit nominations for each of the three vacant positions. Before nominating an individual, please confirm that the person meets the qualifications set forth elsewhere in this notice. Nominations should include a biographical summary of each nominee's education, experience, and qualifications, and a letter from the nominee stating his or her agreement to serve if appointed.

The TNRCC Commissioners will appoint one individual for each vacant position. Nominations will be accepted from business groups, trade associations, organizations, agencies, individuals, etc.

Council members are allowed reimbursements for travel and per diem expenses according to State guidelines. Per diem reimbursements are set by the Texas Legislature at a maximum of \$25 per day for meals and \$55 per day for hotel expenses. Council members are reimbursed for airfares and mileage on personal vehicles. In addition, each member is allowed a stipend payment of \$30 per Council meeting attended. Stipends are paid for attending

regularly scheduled meetings of the entire Advisory Council. Travel and per diem expenses will be paid for attending committee meetings and other Advisory Council business trips. In some cases, by their own choice, members cover their own travel expenses or their expenses are paid by the interest group they represent.

The council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations to the TNRCC commissioners on matters relating to municipal solid waste management; recommends legislation to the commissioners to encourage the efficient management of municipal solid waste; recommends policies to the Commissioners for the use, allocation, or distribution of the Municipal Solid Waste Division's planning funds; and recommends to the Commissioners special studies and projects to further the effectiveness of municipal solid waste management and resource recovery for the state of Texas.

The following positions on the council will be filled: an elected official representing solid waste planning regions, for a term to expire December 1, 1995; an elected city official of a municipality with a population between 100,000 and 750,000, for a term to expire December 1, 1997; and an elected official of any county, for a term to expire December 1, 1997.

Written nominations must be postmarked by February 17, 1995. Nominations should be directed to Gary W. Trim, Special Programs Director, Texas Natural Resource Conservation Commission, MC 124, Municipal Solid Waste Division, P.O. Box 13087, Austin, Texas 78711-3087.

Questions regarding the MSW Advisory Council can be directed to Mr. Trim at (512) 239-6708.

Issued in Austin, Texas, on February 6, 1995.

TRD-9501506 Kevin McCalla
Acting Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: February 6, 1995

Public Utility Commission

Notice 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 Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Nations Bank, El Paso, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone for New PLEXAR-Custom Service for Nations Bank-El Paso pursuant to Public Utility Substantive Rule 23.27. Docket Number 13893.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Nations Bank-El Paso. The geographic service market for this specific service is the El Paso, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call

the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 2, 1995.

TRD-9501386 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: February 2, 1995

Texas Rehabilitation Commission Request For Information

Reference is made to the Texas Rehabilitation Commission (TRC) Request for Information published on December 23, 1994

Texas Rehabilitation Commission requested letters of interest in a client and claimant contract to be submitted by January 10, 1995. Interested parties were also offered participation in an information forum to take place on January 20, 1995.

Only one letter of interest was submitted timely on January 10, 1995. The same organization was also the only party to attend a comprehensive information forum lasting nearly three hours on January 20, 1995.

In light of the fact that only one letter of interest was received, and to insure an opportunity for other parties to participate in a contract with TRC for a Statewide Network of Medical Providers for expedited service to clients and claimants, TRC requests that any additional interested parties submit a letter of interest as provided for in TRC Request for Information published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10279), no later than 5:00 p.m. on February 21, 1995. Submission of a letter of interest is mandatory, and failure to submit a letter of interest will bar any party from further consideration under this client and claimant contract. If additional letters of interest are not received, TRC will enter into negotiations with the only interested party pursuant to its statutory authority to contract found at Texas Human Resources Code, §111.052(b)(3)&(6).

Issued in Austin, Texas, on February 2, 1995

TRD-9501374 Charles W. Schiesser
General Counsel
Texas Rehabilitation Commission

Filed: February 2, 1995

Texas Department of Transportation Public Notice

The executive director of the Texas Department of Transportation files this notice of suspension of §17.80, Vehicle Emissions Verification System, pursuant to that section. On January 26, 1995, the Texas Transportation Commission adopted by emergency action, published in the February 3, 1995, edition of the *Texas Register*, (20 TexReg 610), amendments to §17.80 to temporarily suspend en-

forcement of \$17.80 if directed to do so by act of the legislature or by order of the governor. Senate Bill Number 19 was passed by the legislature and signed by the governor on January 31, 1995. A copy of the order signed by the executive director may be obtained from Jerry Dike, Director of the Vehicle Titles and Registration Division, Texas Department of Transportation, 4000 Jackson Avenue, Austin, Texas 78731.

Issued in Austin, Texas, on February 1, 1995.

TRD-9501366 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: February 1, 1995

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University of North Texas
UNT's Consulting Contract Amendment

Pursuant to Texas Government Code, Chapter 2254, the University of North Texas announces that a consultant contract was awarded in amounts of less than \$10,000, but later amended to exceed \$10,000. This consultant assisted the University of North Texas with different aspects to perform a project definition study related to the potential use of the linear accelerator at the Superconducting Supercollider. This study, funded by the United States Department of Energy under federal and state legislation relating to the shutdown of the Superconducting Supercollider, was conducted in two phases. This project was activated at the request of the governor's office. On April 15, 1994, the University of North Texas, with the help of the consultant, began to prepare responses to Phase

I that were due by May 6, 1994. The costs of the initial consulting contract for Phase I resulted in a consulting contract less than \$10,000, and did not require competitive bids. After the review and evaluation of Phase I, Phase II was authorized. Phase II required considerably more consultant time than Phase I to perform the study adequately, and now requires an additional payment to the consultant beyond the \$10,000 limit. In addition, Part B of Phase II was contingent on Part A of Phase II, but Phase IIB was never guaranteed, so there was no firm start date, only a preferred completion date by September 1, 1994. It was not possible to advertise for bids in the middle of Phase II when it was clear that the contract exceeded \$10,000. Consequently, the University of North Texas amended the consulting contract it has with: Hal O'Brien, Dr., 107 La Senda Road, Los Alamos, Mexico 87544. The original contract was entered into April 15, 1994. The original contract amount was amended to increase the amount payable to \$32,933.97 as published in the December 20, 1994, issue of the *Texas Register* (19 TexReg 10130). This subsequent notice is to increase the maximum amount payable to \$35,945.49.

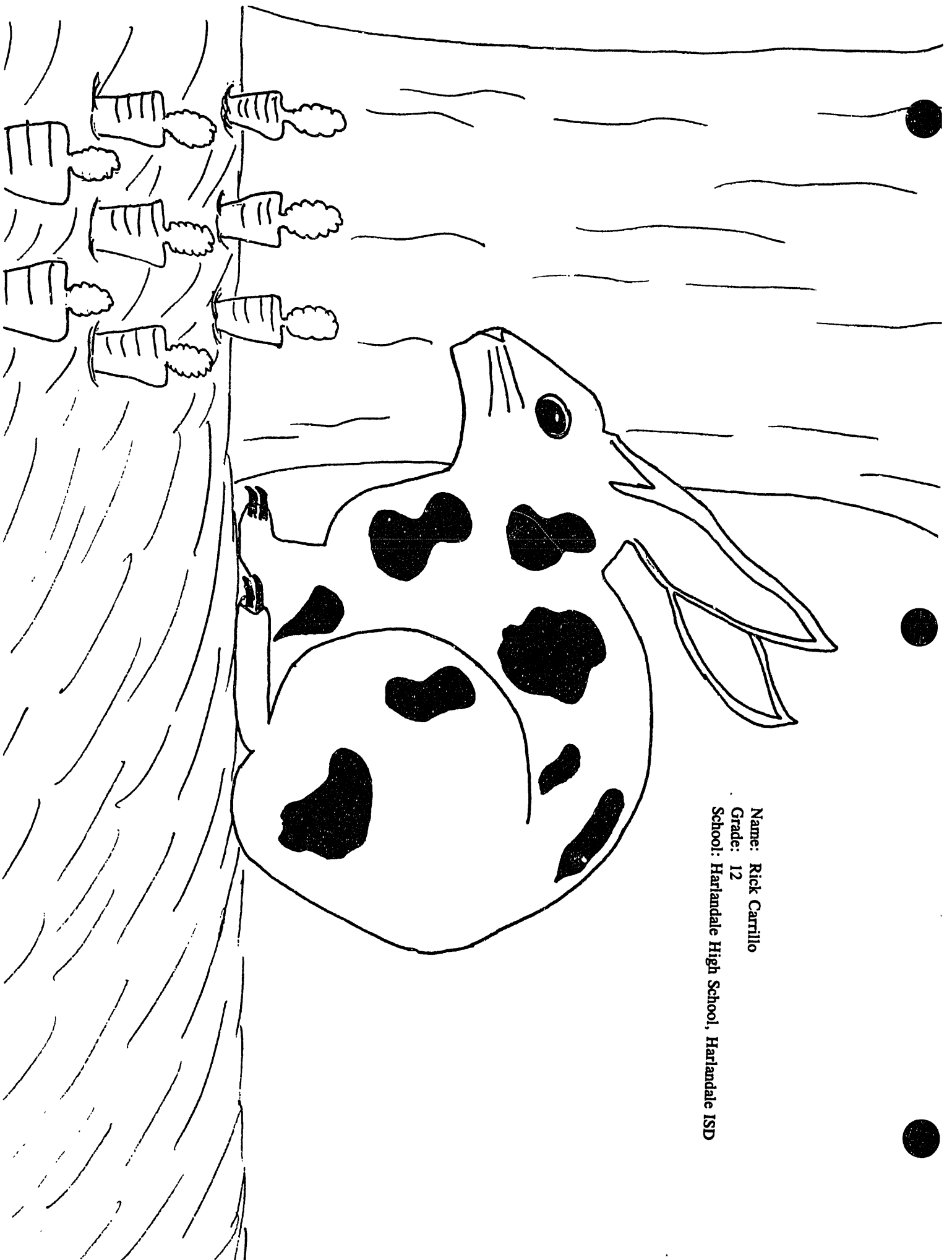
For further information contact Pat Fine, Purchasing Department, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76201, (817) 565-2687.

Issued in Austin, Texas, on February 1, 1995.

TRD-9501495 Pat Fine
Senior Buyer, UNT Purchasing
University of North Texas

Filed: February 6, 1995

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Name: Rick Carrillo
Grade: 12
School: Harlandale High School, Harlandale ISD

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