

Texas Register

Volume 18, Number 24, March 26, 1993

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Texas Register



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

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 30, November 30, December 28, 1993. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

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POSTMASTER: Please send form 3579 changes to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 10 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 Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Sections - sections adopted following a 30-day public comment period.

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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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, releases cumulative supplements to each printed volume of the TAC twice each year.

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
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 22, April 16, July 13, and October 12, 1993). 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
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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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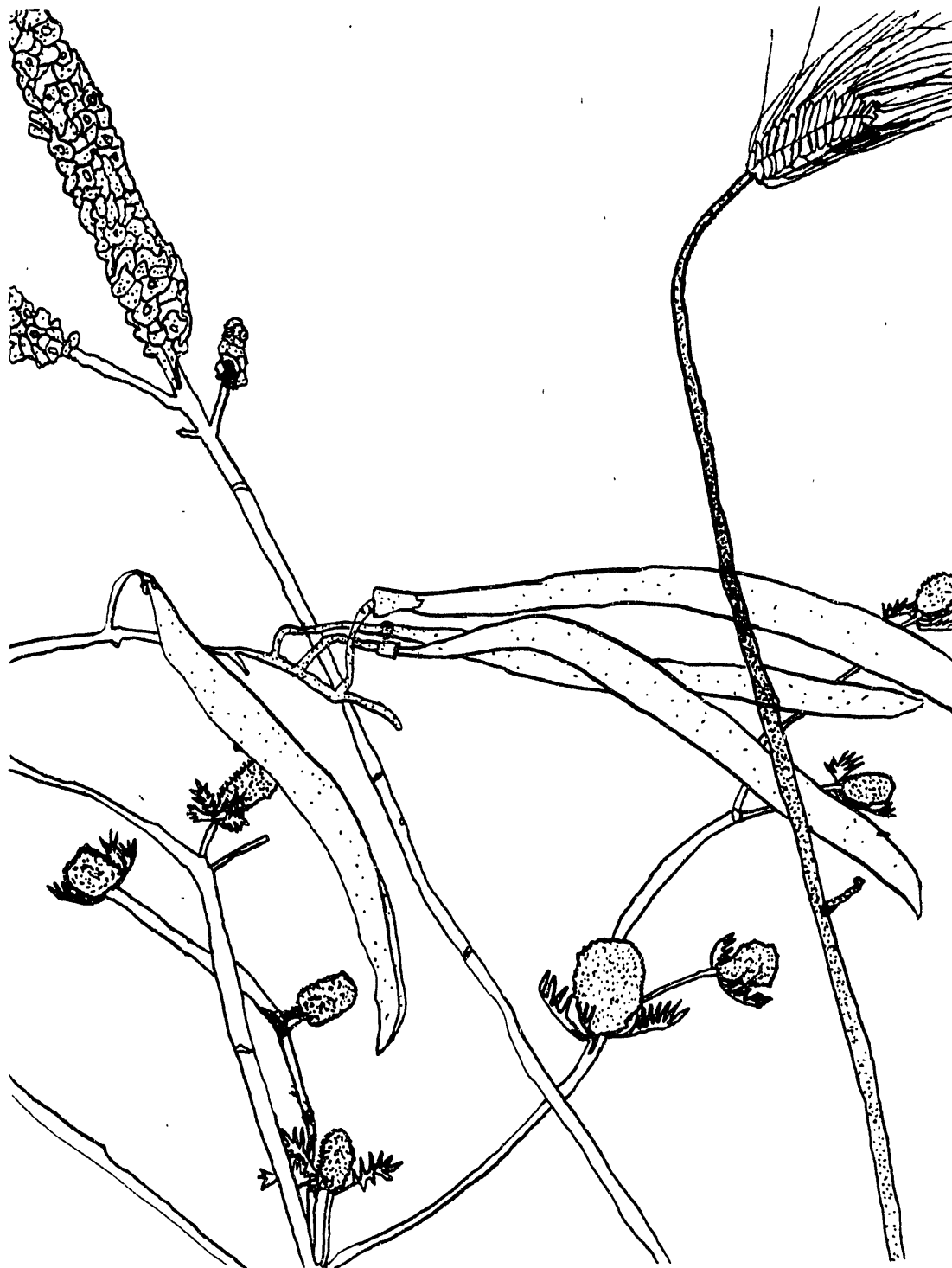
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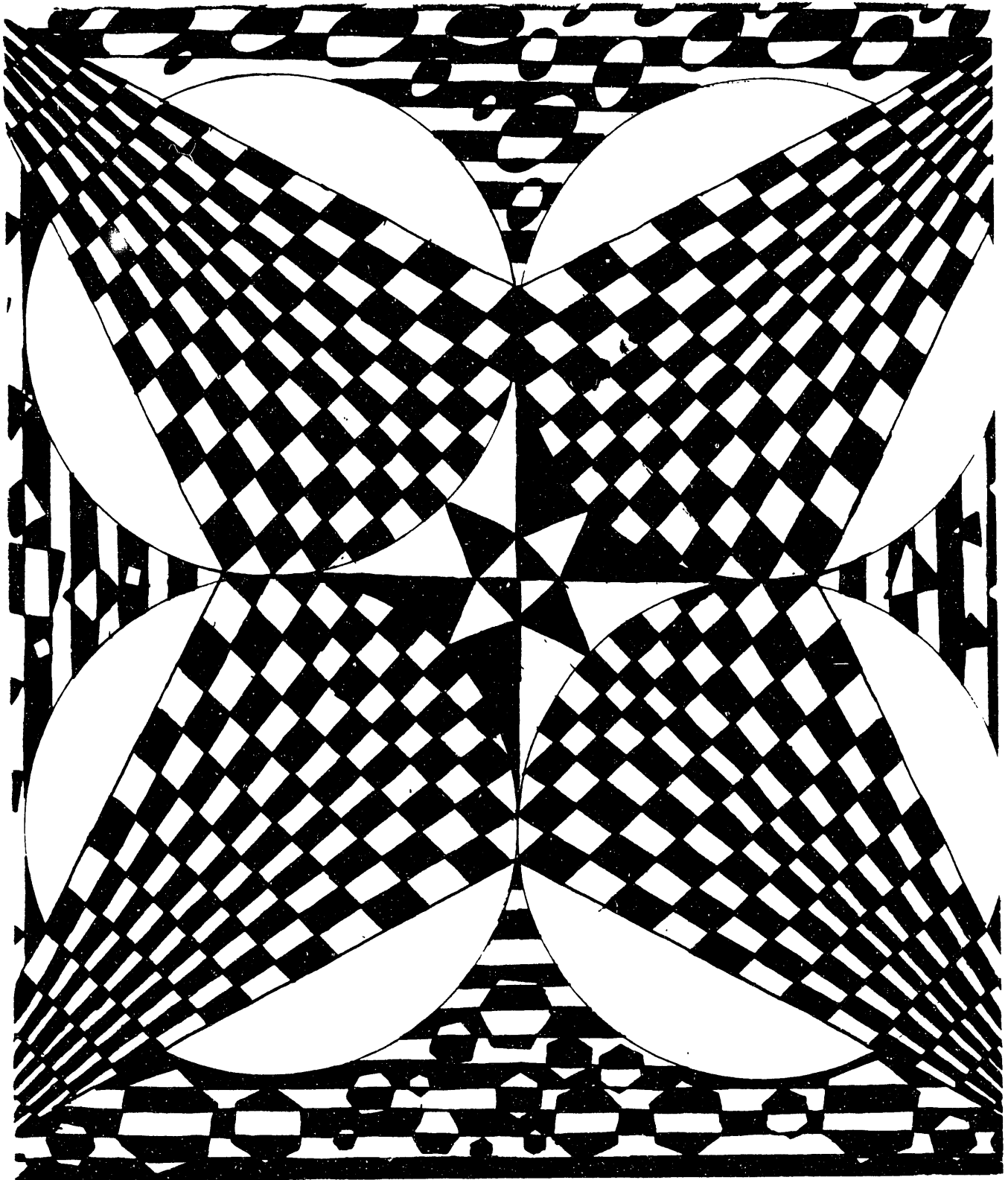


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Grade: 12
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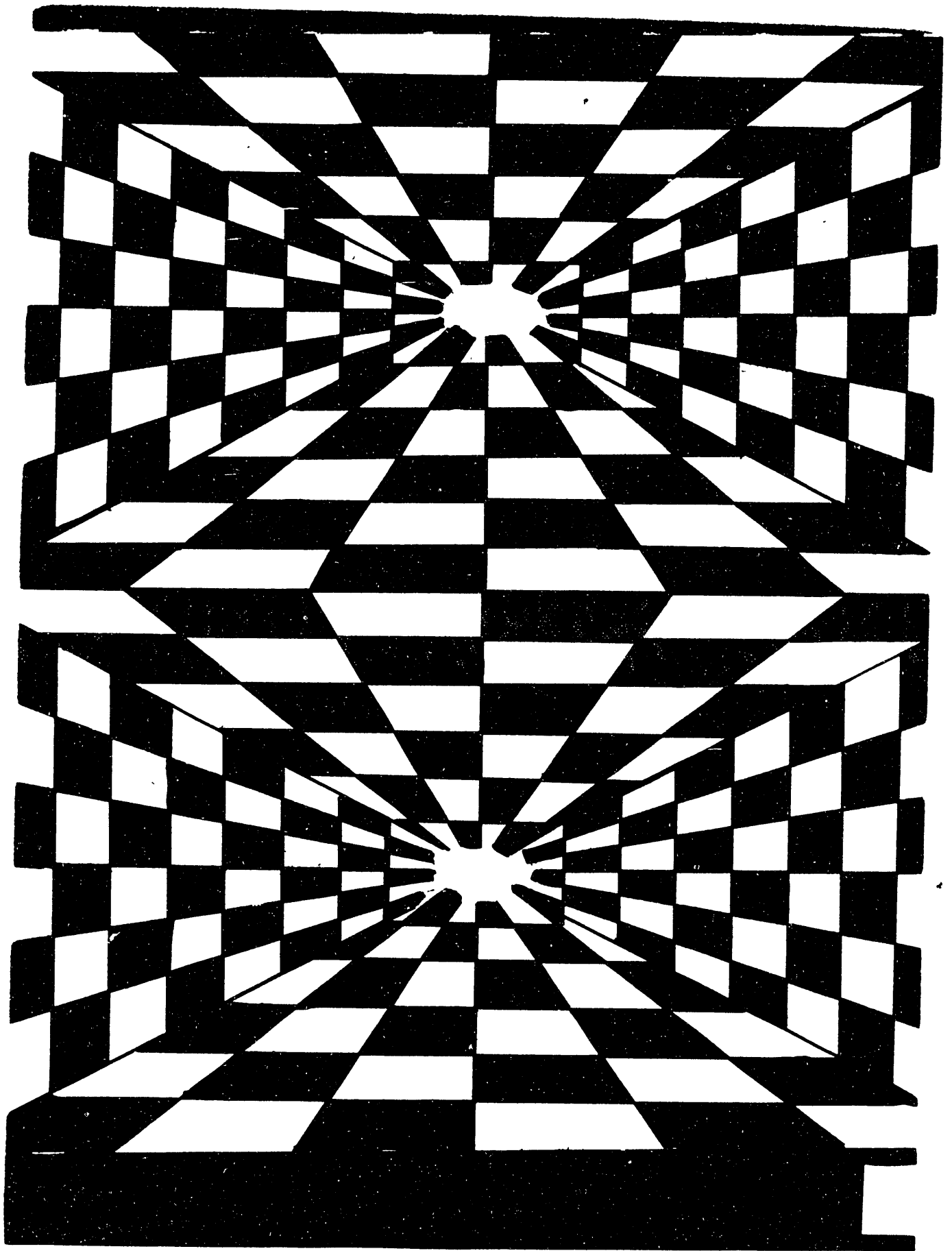


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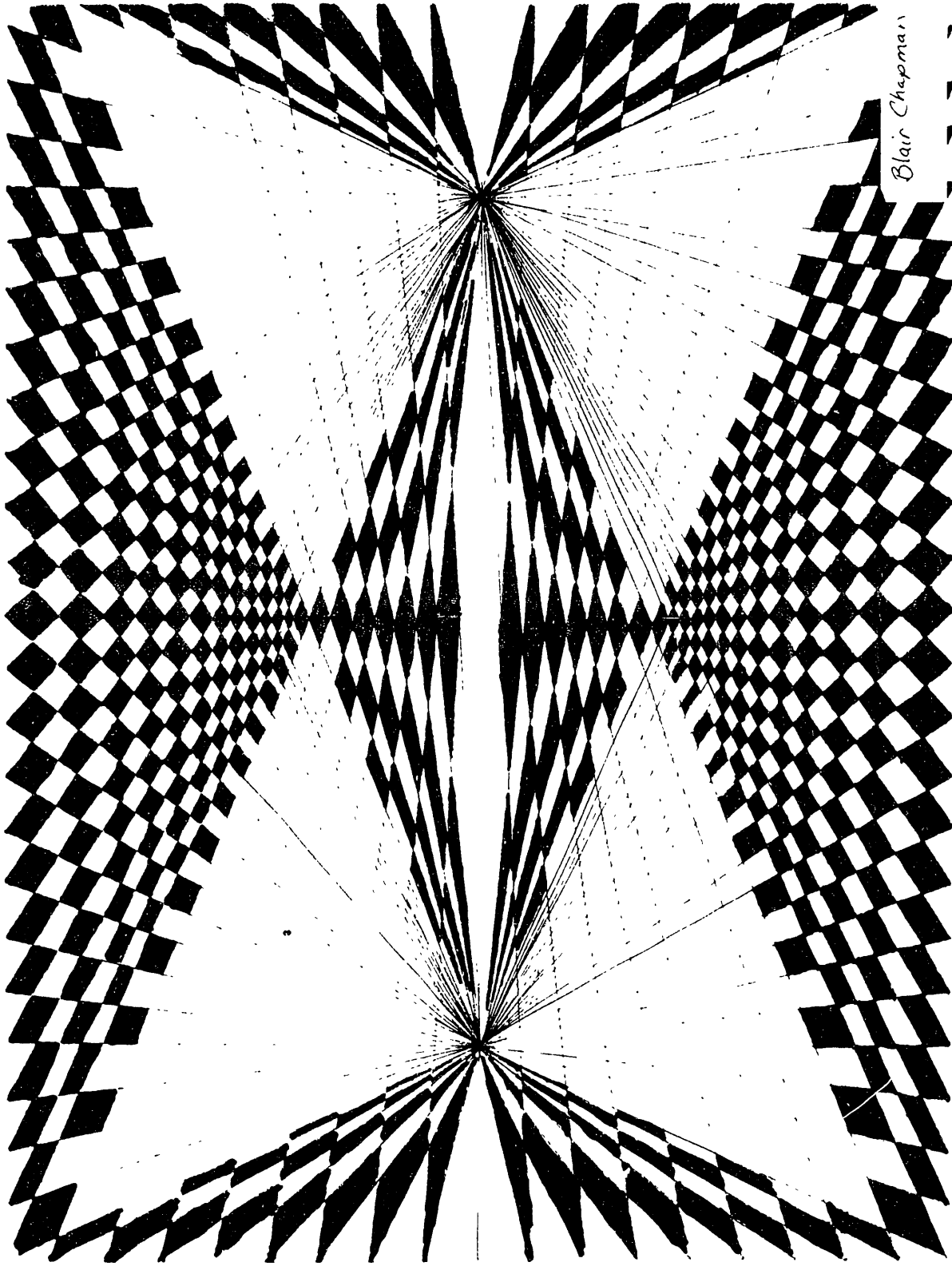
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Name: Kari Martin
Grade: 8
School: Hendrick Middle School, Plano ISD



Brandon Bear - 7th
Hendrick M.S. Plano, TX.



Blair Chapman

Name: Blair Chapman
Grade: 8
School: Hendrick Middle School, Plano ISD

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made March 17, 1993

To be Official Representatives to the Interstate Oil and Gas Compact Commission for terms at the pleasure of the Governor: The Honorable Robert Earley, State Representative, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910 and the Honorable Mary Scott Nabers, Commissioner, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Representative Earley is replacing Bob Armstrong now of Washington, D.C., and Commissioner Nabers is replacing Lena Guerrero of Austin.

Appointments Made March 18, 1993

To be a member of the On-Site Wastewater Treatment Advisory Council for a term to expire September 1, 1994: James Neilson Brookes, 830 South Kentucky, Amarillo, Texas 79106. Mr. Brookes will be replacing Richard Thomas Fraser of Austin, whose term expired.

To be a member of the On-Site Wastewater Treatment Research Council for a term to expire September 1, 1994: Rick Goldberg, P.O. Box 5814, Austin, Texas 78763. Mr. Goldberg will be replacing Samuel B. Vaughn, Jr. of Longview, whose term expired.

To be a member of the On-Site Wastewater Treatment Advisory Council for a term to expire September 1, 1994: Nancy K. Hanson, 4760 Caples Circle, El Paso, Texas 79903. Ms. Hanson will be replacing William W. Tenison of Dallas, whose term expired.

To be a member of the On-Site Wastewater Treatment Advisory Council for a term to expire September 1, 1993: B. L. Harris, Ph.D., 3710 Windridge, Bryan, Texas 77802. Dr. Harris will be replacing Dr. Bobby Carlile of College Station, whose term expired.

To be a member of the On-Site Wastewater Treatment Advisory Council for a term to expire September 1, 1994: Chester Vaughn, 5646 Elm Valley Lane, Dallas, Texas 75232. Mr. Vaughn will be replacing Willis Leo Wood of Austin, whose term expired.

To be a member of the Commission on Uniform State Laws for a term to expire September 30, 1998: Marilyn E. Phelan, 17 Brentwood Circle, Lubbock, Texas 79407. Ms. Phelan will be replacing Edmund R. Wood of Dallas, whose term expired.

To be a member of the Commission on Uniform State Laws for a term to expire September 30, 1998: Justice David Peeples, 335 Rockhill, San Antonio, Texas 78209. Justice Peeples is being reappointed.

To be a member of the Texas Juvenile Probation Commission for a term to expire August 31, 1997: Victoria Hunter Baldwin, 5617 Bayton Loop, Austin, Texas 78745. Ms. Baldwin is being reappointed.

To be a member of the Board for Lease-Texas Department of Criminal Justice for a term to expire September 1, 1993: Ellen J. Halbert, 1407 Meadownear, Austin, Texas 78753. Ms. Halbert will be replacing Allan Polunsky of San Antonio, whose term expired.

To be a member of the Central Colorado River Authority Board of Directors for a term to expire February 1, 1997: Jimmie S. Hobbs, 901 High Road, Coleman, Texas 76834. Mr. Hobbs will be replacing O. R. Lawlis of Coleman, whose term expired.

To be a member of the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 1994: Roy E. Byerly, 5306 Summer Place, League City, Texas 77573. Mr. Byerly will be replacing Phillip Allen Werner of Galveston, whose term expired.

To be a member of the Texas Board of Mental Health and Mental Retardation for a term to expire January 31, 1999: Janelle Smith Jordan, 10710 Archmont, Houston, Texas 77070. Ms. Jordan will be replacing Charles Cooper of Dallas, who resigned.

To be a member of the Texas Board of Mental Health and Mental Retardation for a term to expire January 31, 1999: Rosemary Vivero Neill, 901 Mesita, El Paso, Texas 79902. Ms. Neill will be replacing Pattilou Dawkins of Amarillo, who resigned.

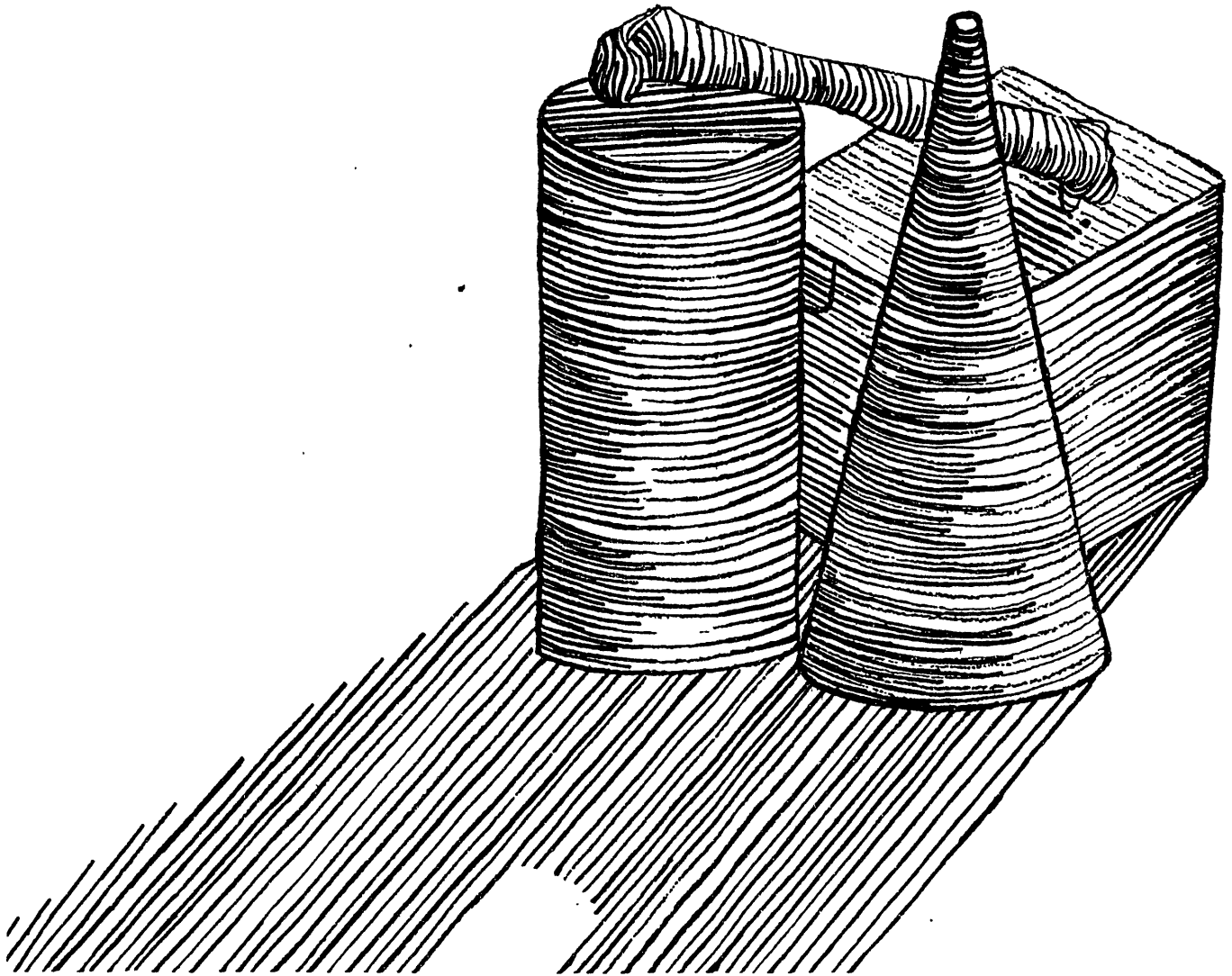
To be a member of the Texas Board of Mental Health and Mental Retardation for a term to expire January 31, 1999: Edward Brunson Weyman, #27 Saddle Club Drive, Midland, Texas 78705. Mr. Weyman is being reappointed.

Issued in Austin, Texas, on March 18, 1993.

TRD-8320530

Ann W. Richards
Governor of Texas





Name: Amy Wormald
Grade: 11
School: Plano East Senior High, Plano ISD

Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Letter Opinions

LO-92-87 (RQ-241). Request from Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, concerning whether a district clerk may charge a fee for making certified copies of papers in a cause of action transferred to another court pursuant to Rule 89 of the Texas Rules of Civil Procedure and related questions.

Summary of Opinion. A district clerk may charge a "reasonable" fee for making certified copies pursuant to Rule 89 of the Texas Rules of Civil Procedure. The costs for such services are taxed against the plaintiff. The clerk has no discretion to delay the transfer of a case under Rule 89 by refusing to transfer the case file, even where the plaintiff fails to pay the fee for the clerk's services in making certified copies.

TRD-9320535

LO-93-3 (ID#-17346). Request from Robert Earley, Chairman, Committee on Energy, Texas House of Representatives, Austin, concerning whether Article 42.131, §6, the Code of Criminal Procedure, extends the benefits of attorney general legal representation to community supervision and corrections departments.

Summary of Opinion. The Code of Criminal Procedure, Article 42.131, extends legal representation by the attorney general to employees of community supervision and corrections departments but does not extend such legal representation to community supervision and corrections departments themselves.

TRD-9320536

LO-93-4 (RQ-113). Request from Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, Austin, concerning whether a state agency may contract with a private vendor to solicit advertisements for an agency newsletter.

Summary of Opinion. The Board of Nurse Examiners does not possess sufficient authority to contract with a private vendor to solicit and secure advertising for a newsletter to be produced by the board.

TRD-9320537

LO-93-5 (ID#-18353). Request from Bill Turner, District Attorney, Brazos County, Bryan, concerning whether a county commissioner or other members on the county commissioners court may vote to approve the sheriff's decision to hire the commissioner's nephew as a deputy sheriff.

Summary of Opinion. Since members of the commissioners court have no authority over the hiring and firing of employees of the sheriff and are specifically prohibited from acting in any way to influence the employment of such persons, a sheriff is not precluded from hiring for the position of deputy sheriff the nephew of a county commissioner.

TRD-9320538

LO-93-7 (RQ-350). Request from Craig D. Pedersen, Executive Administrator, Texas Water Development Board, Austin, concerning whether the Texas Water Development Board may accept monetary and in-kind donations from private businesses to offset the cost of issuing and agency newsletter, and related question.

Summary of Opinion. The Water Code, §6.192, authorizes the executive administrator of the Water Development Board to solicit and accept donations from a private business, either monetary or in-kind, for the purpose of offsetting the costs of producing an employee newsletter. The Water Development Board is not authorized to print in its newsletter advertisements or discount coupons promoting the donor business.

TRD-9320539

LO-93-8 (ID#-17955). Request from Travis J. Koehn, Criminal District Attorney, Austin County, Bellville, concerning whether there would be any illegality involved in a married couple's concurrent service in office as county commissioner and county auditor in Austin County.

Summary of Opinion. A district judge's appointment of the spouse of one of the county commissioners to serve as county auditor does not violate the nepotism law, Texas Civil Statutes, Articles 5996a-5996h. A county commissioner does not violate his oath of office under the Local Government

Code, §81.002, by virtue of having a community-property interest in a salary claim against the county held by his wife as county auditor. Chapter 171 of the Local Government Code does not prohibit a district judge's appointment of a county commissioner's spouse to serve as county auditor, nor does it prohibit the commissioner's and auditor's concurrent service merely because they are married to each other. Such concurrent service has serious ethical ramifications, however, because even the appearance of a conflict of interest can undermine the public's confidence in its elected and appointed officials. This situation may violate the requirement of Title 22, §501.11, of the Texas Administrative Code, that a certified or registered public accountant "be independent with respect to the client in fact and in appearance." If the county auditor is certified or registered as provided in the Texas Administrative Code, the Texas State Board of Public Accountancy is empowered to issue an opinion upon written request concerning whether the public accountancy regulations of Title 22, Chapter 526, of the Texas Administrative Code apply to this situation.

TRD-9320540

LO-93-9 (ID#-18585). Request from Terry Beals, D.V.M., Executive Director, Texas Animal Health Commission, Austin, concerning whether the General Appropriations Act authorizes the Texas Animal Health Commission to purchase pickup trucks and related question.

Summary of Opinion. Article V, §19(2) of the General Appropriations Act, Acts 1991, 72nd Legislature, First Civil Statutes, Chapter 19, authorizes the commission to purchase pickup trucks and trucks for the conveyance of special equipment. The commission is not prohibited from using pickup trucks to transport employees.

TRD-9320541

LO-93-10 (RQ-453). Request from William M. Hale, Executive Director, Texas Commission on Human Rights, Austin, concerning whether the Commission on Human Rights Act, Texas Civil Statutes, Article 5221k, authorizes local commissions to file civil actions in state district court.

Summary of Opinion. The Commission on Human Rights Act, Texas Civil Statutes, Article 5221k, authorizes a local commission to file a civil action in state district court "to effectuate the purposes of [the act] if the federal government or state commission has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission."

TRD-9320542

◆ ◆ ◆
Opinions

DM-196 (RQ-436). Request from Lionel R. Meno, Commissioner, Texas Education Agency, Austin, concerning whether the prekindergarten program established by the Education Code, §21.136, is part of elementary education under Texas law, and related questions.

Summary of Opinion. The prekindergarten program created by the Education Code, §21.136, must be a part of the "public free schools" under Texas law because prekindergarten students are entitled to the benefits of the available school fund; under Article VII, §5, of the Texas Constitution, the available school fund can be used only for the support of the public free schools.

The state bases the funding it provides to local school districts on the district's weighted average daily attendance and its tax base; we can find nothing in Texas law that permits the state to make distinctions between federally-connected children and other children with regards to funding for the prekindergarten program.

Texas school districts are permitted to enroll any four year old in prekindergarten classes. However, the statute requires the districts to establish a prekindergarten program when they identify 15 or more children who meet the criteria in the Education Code, §21.136(b).

TRD-9320543

DM-197 (RQ-53). Request from Marvin J. Titzman, Executive Director, Texas Surplus Property Agency, San Antonio, concerning whether the Texas Surplus Property Agency is authorized to obtain fire and casualty insurance to protect agency buildings, and related questions.

Summary of Opinion. State agencies may not purchase property insurance without legislative authorization. The Texas Surplus Property Agency does not have authority to spend appropriated funds to purchase property insurance to cover its warehouses.

TRD-9320544

DM-198 (RQ-125). Request from Lawrence R. Jacobi, Jr., P.E., General Manager, Texas Low-Level Radioactive Waste Dis-

posal Authority, Austin, concerning whether §§402.272(a), 402.2721, or 402.273(b) of the Health and Safety Code requires the Texas Low-Level Radioactive Waste Disposal Authority to impose waste disposal fees or planning and implementation fees sufficient to reimburse the general revenue fund for interest on amounts received from the fund for interest on amounts received from the fund to finance the pre-operation expenses of the low-level radioactive waste disposal site.

Summary of Opinion. The Health and Safety Code, §§402.272(a), 402.273(b), and 402.2721, require the Texas Low-Level Radioactive Waste Disposal Authority to recover as part of the planning and implementation fee or waste disposal fee the interest expense associated with amounts received from the general revenue fund to finance the pre-operation expenses of the low-level radioactive waste disposal site.

TRD-9320545

DM-199 (RQ-214). Request from Eddie Cavazos, Chairman, Committee on Insurance, Texas House of Representatives, Austin, concerning whether the additional money generated from the increase in the motor vehicle registration fee authorized by Texas Civil Statutes, Article 6702.1, §4.202(a), as amended by House Bill 2 of the 72nd Legislature, must be distributed to the Cameron County Tax Assessor-Collector or to the Cameron County general fund.

Summary of Opinion. Fees collected by the county tax assessor-collector pursuant to Texas Civil Statutes, Article 6702-1, §4.202(a), must be deposited in the general fund of the county. The fees so deposited are dedicated to the office of the county tax assessor-collector to compensate that office for expenses relating to the administration of the motor vehicle registration laws. The commissioners court may not divert such fees to other purposes. The commissioners court must appropriate as much of these funds as it determines are reasonably necessary to compensate the office of county tax assessor-collector for that office's administration of motor vehicle registration laws.

TRD-9320546

DM-200 (RQ-424). Request from John B. Holmes, Jr., Harris County District Attorney, Houston, concerning whether a juvenile court is required to hold a hearing prior to waiving its exclusive original jurisdiction in a truancy case and transferring the case to a justice of the peace pursuant to the Family Code, §54.021, and related questions.

Summary of Opinion. The Family Code, §54.021, does not require a juvenile court to hold a hearing prior to waiving its exclusive original jurisdiction in a case under §51.03(b)(2) of the Family Code and trans-

ferring the case to a justice of the peace. A child brought into court under §51.03(b)(2) of the Family Code is entitled to representation by an attorney at all stages of the proceedings. If the child or the child's parents are unable to afford counsel, the court must appoint an attorney to represent the child. In general, tardiness to class does not invoke proceedings under either §51.03(b)(2) of the Family Code or §4.25 of the Education Code.

TRD-9320547

DM-201 (RQ-465). Request from Bob Bullock, Lieutenant Governor of Texas, Austin, concerning whether authority of the Texas Department of Health to enact rules regarding nursing facilities.

Summary of Opinion. The Texas Board of Health is authorized to enact regulations requiring an applicant for a license to operate a nursing facility to disclose certain information regarding the applicant's prior involvement in the operation of nursing facilities. Additionally, the board is authorized to enact regulations that will empower the Texas Department of Health to deny a license based on information the department has received regarding the applicant's prior involvement in the operation of nursing facilities.

TRD-9320548

DM-202 (RQ-334). Request from Jim Tallas, Chairman, Committee on Financial Institutions, Texas House of Representatives, Austin, concerning whether the Public Funds Investment Act, Texas Civil Statutes, Article 842a-2, authorizes cities, counties, and certain other public entities to invest public funds in mutual funds holding only adjustable rate mortgages that United States agencies have issued.

Summary of Opinion. The Public Funds Investment Act, Texas Civil Statutes, Article 842a-2, authorizes cities, counties, and certain other public and nonprofit entities to invest their funds and funds under their control in mutual funds holding only adjustable rate mortgages that obligate United States agencies provided that the mutual fund complies with §2(d) of the act, and provided that the entity invests no more of its money in the mutual fund than §2(d) permits.

TRD-9320549

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Requests for Opinions

(RQ-492). Request from James E. "Pete" Laney, Speaker, Texas House of Representatives, Austin, concerning authority of the Board of Licensure for Nursing Home Administrators to impose a \$10 fee for continuing education courses, and related questions.

(RQ-493). Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether a hospital district is required to release information confidential under the Health and Safety Code, §161.032, to the county medical examiner.

(RQ-494). Request from Jim Mapel, Criminal District Attorney, Brazoria County, Angleton, concerning whether Chapter 143 of the Local Government Code applies to a municipality that has a paid police department and a volunteer fire department.

(RQ-495). Request from Warren Chisum, Chair, Committee on Environmental Regulation, Texas House of Representatives, Austin, concerning procedure for the consolidation of two counties.

(RQ-496). Request from Michael H. Corley, Office of the General Counsel, The University of Texas System, Austin, concerning whether the Texas Open Records Act, §3(a)(11), exempts from public disclosure correspondence from university professors to the chancellor and the department chair regarding the evaluation of a certain professor and the method and criteria used for such evaluation.

(RQ-497). Request from Ben Campbell, Chairman, Committee on County Affairs, Texas House of Representatives, Austin, concerning whether a school district may avoid payment of the motor fuels tax imposed by Chapter 153, Tax Code, if it purchases gasoline for use by a contractor who is providing student transportation for the district.

(RQ-498). Request from John W. Segrest, Criminal District Attorney, McLennan County, Texas, Waco, concerning whether a county may accord favored treatment to "socially responsible" bidders, and related questions.

(RQ-499). Request from David J. Freeman, Executive Secretary, Texas Racing Commission, Austin, concerning whether the

Texas Racing Commission has the authority to adopt rules requiring its licensees to provide workers' compensation insurance for the licensees' employees.

(RQ-500). Request from Merri Schneider-Vogel, Bracewell & Patterson, Houston, concerning whether information related to certain bills for legal services provided to a school district is subject to public disclosure under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-501). Request from Hugo Berlanga, Chairman, Committee on Public Health, Texas House of Representatives, Austin, concerning whether a county education district is barred from the capture of incremental tax revenues by a preexisting reinvestment zone created under the Texas Tax Increment Financing Act, Article 1066e, and related questions and whether the Lubbock County Hospital District may contribute funds to the construction of the Lubbock International Cultural Center.

(RQ-502). Request from Delwin Jones, Chairman, Committee on Redistricting, Texas House of Representatives, Austin, concerning whether the Lubbock County Hospital District may contribute funds to the construction of the Lubbock International Cultural Center.

(RQ-503). Request from Mark W. Stiles, Chairman, House Committee on Calendars, Texas House of Representatives, Austin, concerning whether an authorized lender may require a borrower to give a check as "collateral" prior to the "payment due" date, and related questions.

(RQ-504). Request from Honorable Jack Herrington, District and County Attorney, Red River County, Texas, Clarksville, concerning authority of the Texas Department of Criminal Justice to operate a work program facility that produces good and services that are marketed for profit or exempted under the Federal Private Industry Enhancement Program.

(RQ-505). Request from Charles S. Brack, County Attorney, Chambers County, Anahuac, concerning authority of a commissioners court to establish a civil process department that is not under the control of the sheriff.

(RQ-506). Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether a commissioners court is authorized to require a county purchasing agent to make purchases by and for a county-wide hospital district.

(RQ-507). Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether a member of an appraisal review board may represent taxpayers before that board under various circumstances.

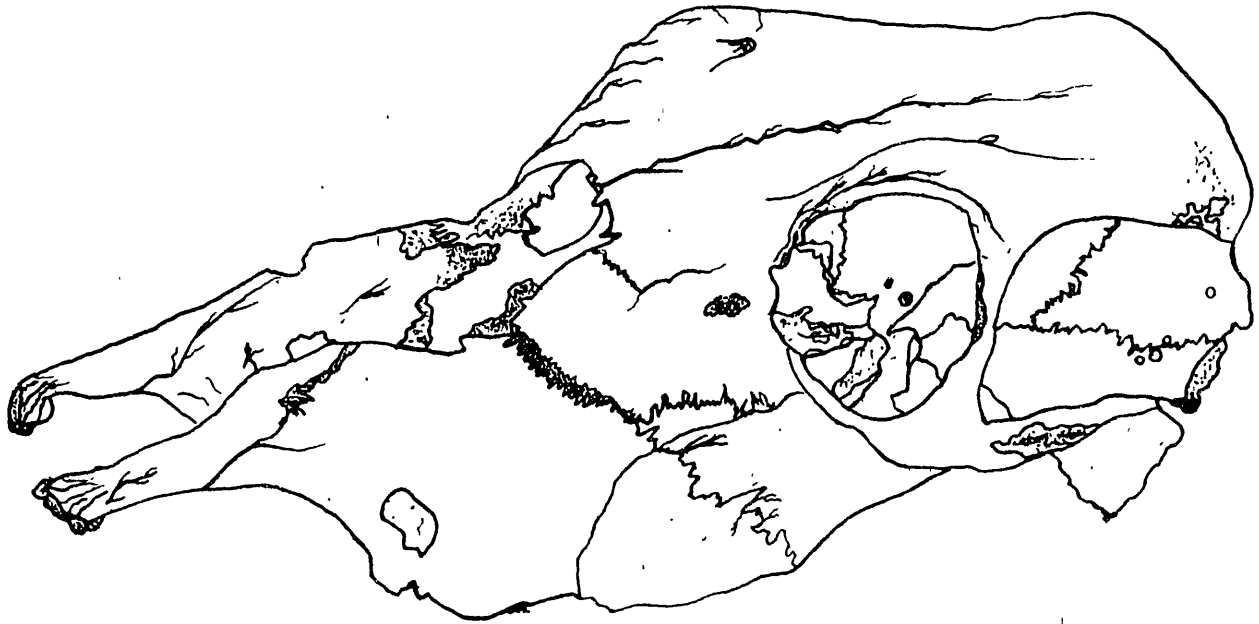
(RQ-508). Request from David Flores, Williamson County Auditor, Georgetown, concerning whether a county's single-employer, self-funded medical benefit plan is subject to Articles 1.24C, 3.51-9, or 21.53 of the Insurance Code, or to the federal Employee Retirement Income Security Act, 29 United States Code, §1002(40) (A), and related questions.

(RQ-509). Request from Homer R. Goehrs, M.D., Executive Director, Texas State Board of Medical Examiners, Austin, concerning circumstances under which the Board of Medical Examiners may invoke Texas Civil Statutes, Article 6252-17, §2(e) the Texas Open Meetings Act, to convene in executive session.

(RQ-510). Request from Carl Parker, Chairman, Committee on Economic Development, Texas State Senate, Austin, concerning constitutionality of the Tax Code, §11.29, which authorizes a tax exemption for land dedicated by easement as a disposal site for material dredged from the Intercoastal Waterway by or under the direction of the state or federal government.

TRD-9320550

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Name: Tom Herlihy
Grade: 11
School: Plano East Senior High, Plano ISD

Proposed Sections

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 any action may be 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 sections, 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 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 5. Quarantines

The Pine Shoot Beetle Quarantine

• 4 TAC §5.51

The Texas Department of Agriculture (the department) proposes new §5.51, concerning Pine Shoot Beetle Quarantine. The department proposes to adopt the Federal Pine Shoot Beetle Quarantine in its entirety. The purpose of this quarantine is to prevent the introduction of the common pine shoot beetle, *Tomicus piniperda* (L.), into the State of Texas. The common pine shoot beetle is a major economic pest of pines and other conifers and has been detected in the northern United States. The pine shoot beetle has not been trapped, surveyed, or detected within the interior of Texas. If permitted to enter the state, the common pine shoot beetle could become an established pest and cause serious economic losses to Texas' nursery, Christmas tree and forest industries.

David Davis, director, plant quality program, 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. Davis 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 preventing loss to the Texas nursery, Christmas tree and forest industries which would result in less availability of Christmas trees for the public consumption. There will be no effect on small businesses. There is no anticipated economic cost to persons or firms who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Chief Administrative Law Judge, P.O. Box 12847, Austin, Texas 78711.

The new section is proposed under the Texas Agriculture Code, §71.001, which provides the Texas Department of Agriculture with the authority to establish a quarantine against out of state diseases and pests; and §71.007 which provides the department with the authority to adopt rules necessary for the protection of agricultural and horticultural interests, including rules that prevent the selling, moving, or transporting of any plant, plant product, or substance found to be from the quarantined area.

§5.51. Adoption of Federal Quarantine.

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 March 18, 1993.

TRD-9320517

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-7583

TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Examinations

• 22 TAC §131.101

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.101, concerning examinations. The section is amended to clarify that individuals who have been approved to take an examination for registration purposes must start the examination schedule on the first examination date for which they are eligible.

Charles E. Nemir, P.E., executive director, 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. Nemir 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 clarification of the examination schedule. 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 Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Profes-

sional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.101. Engineering Examinations Required for Registration as a Professional Engineer.

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

(g) Applicants must either pass or be exempt from the fundamentals of engineering examination in order to be eligible to take the principles and practice of engineering examination.

(1) (No change.)

(2) Individuals who have approved to take the examination for registration purposes will be advised of the first examination date for which they are eligible. Applicants must [elect to] start the examination schedule on the first examination date for which they are eligible. Once started, the schedule shall consist of consecutive examination dates, not to exceed three, required to pass the principles and practice of engineering examination with the exception of those persons applying under the Act, §21 (those who are registered in another state or jurisdiction). Those persons must pass the principles and practice of engineering examination on the first attempt.

(3)-(4) (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 March 17, 1993.

TRD-9320402

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 440-7723

Registration

• 22 TAC §131.140

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.140, concerning registration. The section is amended to stipulate that a registrant must comply with the final decisions and orders of the board and that failure to do so will result in a separate offense of misconduct.

Charles E. Nemir, P.E., executive director, 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. Nemir 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 clarification of a registrant's responsibility to the board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.140. Registrant's Responsibility to the Board. A registrant whose license is current or renewable under the Act, §16, is responsible to the board and subject to all rules governing the acts of registrants. The registrant shall answer promptly all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with these matters [do so] will constitute a separate offense of [be considered] misconduct subject to any of the penalties provided under the Act, §22.

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 March 17, 1993.

TRD-9320403

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 440-7723

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 293. Water Districts

The Texas Water Commission (Commission) proposes the repeal of §§293.41, 293.61, 293.62, 293.82, and 293.95 concerning bond related document filings, and changes in construction work plans effective upon final adoption of amendments to §§293.6, 293.14, 293.18, 293.32-293.34, 293.43-293.48, 293.50, 293.51, 293.56, 293.57, 293.59, 293.70, 293.81, 293.83-293.86, 293.91, 293.92, 293.94-293.96, and 293.131, concerning district creations, director qualifications, review and approval of engineering projects, issuance of bonds, change orders, use of surplus funds and escrowed funds, changes in approved bond interest rate, financial and other reporting requirements, and district dissolutions, and new §§293.41, 293.61, 293.62, 293.82, 293.95, 293.97, and 293.171-293.177, concerning bond related document filings, construction related document filings, changes in project scope or plans, extensions of time to sell bonds and the processing of impact fee applications.

The amendment to §293.6 states that except as otherwise provided in this Chapter, all applications for commission actions authorized by the Texas Water Code and this Chapter are subject to and governed by Chapter 281 of this title, "Application Processing."

Amended §293.14 and §293.18 set forth the availability of an evidentiary hearing for persons interested in the creation of a water district. The sample notice form is revised to reflect this revision, deletes the reference to a hearing before a hearings examiner and is reorganized for clarity.

The proposed amendments to §§293.32, 293.33, and 293.34 concern the appointment of directors. The amendment to §293.32 incorporate statutory changes and specify the section under the Water Code in which each district was created, and add an age requirement for a director of a regional district.

The amendment to §293.33 will require that all requests for the appointment of a director be accompanied by specific application documents and a filing fee.

The amendment to §293.34 provides that the form of Affidavit for Appointment is no longer limited to Temporary Directors and must be completed, executed and filed with the Chief Clerk of the commission at least 10 working days prior to the commission hearing on the appointment of such directors.

Proposed new §293.41 incorporates statutory changes, defines bonds, and is reformatted for clarity. The sections expand commission approval to engineering projects relating to issuance and sale of bonds for regional districts, drainage districts, levee improvement districts, water sewage or drainage projects of Municipal Management Districts, any bond

issues of districts created under the Texas Constitution, Article XVI, §59, with certain specified exceptions, and any other district where specifically required by law.

The amendment to §293.43 incorporates statutory changes regarding additional application requirements for the approval of engineering projects and issuance of bonds.

Section 293.44 has been amended to clarify staff policy concerning district financing of oversized water, sewer, or drainage facilities, facilities considered developer amenities and bridge and culvert crossings.

The amendment to §293.44 further limit the amount of bond issue proceeds to pay or reimburse consultant fees and limit when the district shall program bond funds to finance operation and administrative costs.

The amendment to §293.44 provide that the Executive Director may request invoices and canceled checks when creation costs paid from bond proceeds are excessive. They also prohibit the District from paying for the cost of facilities for which it has not and will not receive a benefit, from entering into binding contracts with a developer for costs above those approved by the Commission, and from purchasing excess water supply or wastewater treatment capacity.

The amendment to §293.45 will require the bids to be received and accepted for sale of the bonds within one year of the effective date of the commission's order unless the executive director approves an extension. The time requirements for the commission's approval of a bond issue before and after September 4, 1986 have been deleted. Section 293.45 is also amended to allow payment of the bond proceeds fee by regular check instead of by certified check, and provides the Commission the discretion a lesser bond proceeds fee in unique circumstances.

The amendment to §293.46 primarily deny the developer interest costs if the district does not ratify and approve contracts entered into by the developer within 60 days after the confirmation of the district and provide that the contract cannot bind the district to costs above those approved by the commission. Section 293.46 also states that if substantial compliance with statutory requirements of contract advertising, award, construction, and installation of facilities is not achieved, the reimbursement to the developer could be limited to less than the final construction amount, if it is more reflective of the actual value of the facilities. The numbering of this section has been corrected.

The amendment to §293.47 no longer gives the commission the discretion to exempt a developer from contributing 30% of construction costs based on the feasibility of a district's dependence upon the developer's contribution, add stormwater pump stations associated with levee systems as an exemption to the developer's contribution to the districts construction program, and require a letter of credit or a deferral of reimbursement of bond funds from the developer prior to advertisement for sale of the district's bonds and specify when these may be called by the district. The amendments to §293.47 also de-

fine a deferral of reimbursement as an agreement with the district whereby the developer agrees to defer receipt of payment until the facilities for which guarantees are required have been completed. An irrevocable loan commitment or other acceptable guarantee is no longer allowed. The section has been renumbered to reflect these amendments.

The amendment to §293.48 will require a letter of credit from financial institutions meeting specific requirements rather than an irrevocable development loan commitment, other acceptable guarantee, or a developer's financial commitment if street and road construction is incomplete prior to the proposed bond issue. The forms for a letter of credit, and street and road construction agreements have been deleted, as well as the provision concerning change order approvals found in this section. The numbering of this section has been corrected.

The amendment to §293.50 replaces the term engineering with professional for interest accrued on fees that qualifies for developer reimbursement. The amendment to §293.50 set forth additional time frames during which accrued interest may be requested. The amendment to §293.50 also apply time limitations to advances made for organizational costs, repair costs, and lease payments for central plant capacity associated with lease/purchase payments.

The amendment to §293.51 provides clarification as it relates to dedication of easements and property valuation criteria and reflect the section's applicability to levee improvement districts. The amendments set forth criteria concerning real property acquisition for plants, lift or pump stations, detention ponds and levee sites; provide for the purchase of easements or land outside of the districts boundaries, and modify the provisions related to land acquisition for regional facilities.

The amendment to §293.56 sets forth the requirements for a letter of credit and have separated the requirements of each letter of credit by the amount of the letter of credit. The amendments render all letters of credit subject to Executive Director approval.

The amendment to §293.57 identifies the forms to be used for letters of credit and street and road construction agreements.

The amendment to §293.59 limits the written agreement waiving the right to claim special exemptions for bonds supported by taxes and have revised the agreement from being permanent to being binding for 30 years, provide a method to be used in determining economic feasibility of bond issues supported by benefit assessments, require that bond issues from a defined area be analyzed to ensure that the defined area meets the requirements of the section, and also prohibits granting a variance to the maximum combined projected debt service tax rate or the maximum combined no growth debt service tax rate, if the district is also requesting 100% reimbursement to the developer.

Proposed new §293.61 provides that every district seeking commission approval of its engineering projects relating to the issuance and sale of bonds will file with the executive

director the applicable executed escrow agreement, a final official statement and debt service schedule within the specified timelines.

Proposed new §293.62 details which construction related documents must be filed by districts to obtain commission approval of its engineering projects related to the issuance and sale of bonds.

The amendment to §293.70 requires that a copy of the reimbursement report from the auditor be filed with the executive director rather than the commission.

The amendment to §293.81 has revised the dollar amount of change orders requiring commission approval, and have deleted the time requirement for the executive director and the commission to act on a change order. The amendment to §293.81 also places additional requirements on change order applications.

Proposed new §293.82 defines project scope and a change in plans and sets forth specific application requirements for each request. Approval of the executive director is required when the total deletions or additions exceed \$25,000 even though the net change in contract price will be less than \$25,000.

The amendment to §293.83 deletes the requirement of commission approval for district use of surplus funds and now require executive director approval. A detailed explanation for the project, an engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities, and a filing fee of \$100 have been added to the requirements of an application for district use of surplus funds.

The amendment to §293.83 enables districts to use surplus funds for improvements within the district without further approval provided the qualifying criteria is satisfied.

The amendment to §293.84 allows a district to submit a letter from the board president in lieu of a board resolution as the filing document submitted to the executive director by districts seeking approval to use escrowed funds. The amendment to §293.84 also requires that a district receive approval from the executive director for the use of the escrow funds for purposes other than as approved by the commission in the bond application.

The amendment to §293.85 deletes the requirement for commission approval for increases in a commission approved interest rate or a change in maturity schedule which requires no increase in bond amount or change in the commission approved tax rate. However, if there is an increase in bond amount, approval of the commission is required. The amendment to §293.85 further provides that a change in a commission approved interest rate or maturity schedule which requires a change in the commission approved tax rate will be subject to executive director approval. The amendment to §293.85 has deleted the \$100 filing fee.

The amendment to §293.86 further defines a bond amendment and modify the application requirements.

Section 293.91 is amended to reflect statutory changes and to clarify the filing require-

ments applicable to audit reports, financial reports, financial dormancy affidavits and the annual filing affidavit.

The amendment to §293.92 sets forth additional reporting requirements for districts that provide drainage, flood control or protection facilities or services that have been financed or are proposed to be financed with bonds of the district and districts which include less than all the territory in at least one county to the district.

The amendment to §293.92 also describes other related information to be included in the additional reports and require the information form to be filed with the County Clerk within 48 hours after the district is officially created, and a copy of all information forms, maps, plats, and amendments thereto filed with the executive director within five days of its filing with the County Clerk.

The amendment to §293.94 describes the qualifying criteria for the audit report exemption and for the financial dormancy affidavit filings have been amended. The provisions concerning authorization for the periodic audits by the executive director have been renumbered. The provisions regarding access to and maintenance of records have been renumbered.

Section 293.95 is amended to include the provisions regarding access to and maintenance of records. The provisions pertaining to required reports related to bond issues have been deleted from this section.

The amendment to §293.96 requires a certified copy of order canvassing results of any maintenance tax elections and a certified copy of water and sewer rate order be filed 30 days after adoption. The requirement that districts annually file a list with the names and addresses of the district's directors and that districts dissolved by procedures other than those provided in the Texas Water Code have been deleted.

Proposed new §293.97 is a reorganization of several existing sections. New §293.97 sets forth provisions which require a district to adopt a fiscal year and report it to the executive director within 30 days after adoption. An operating budget of an active district shall be adopted by the governing board of the district prior to the start of a fiscal year, or as soon thereafter as possible. New §293.97 also provides that budget amendments may be made from time to time.

The amendment to §293.131 requires that applications for dissolution of a district include a list of assets and liabilities of the district.

Provisions concerning statutory changes on impact fees are set forth in new §§293.171-293.177. Section 293.171 sets forth definitions, §293.172 lists information required to accompany impact fee applications, §293.173 describes notice actions and requirements, §293.174 outlines post-hearing commission action, §293.175 describes instances in which changes to capital improvement plans will be deemed material and require commission approval, and §293.176 addresses overlapping impact fee circumstances. An impact fee hearing notice form is provided in §293.177.

Stephen Minick, Budget and Planning Division, has determined that for the first five years these sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. There are no additional costs to state government. Minimal increases in revenue may result from the expanded application of certain filing fees. Generally, these sections will formally adopt both statutory requirements and existing agency policies into regulations. Certain costs to local governments may increase but these increases are not considered to be significant. Application fees for certain filings, generally \$100, will be applied, but requirements for fees for other instruments will be deleted. Cost savings to districts will result from reducing the number and types of actions which will require Commission approval.

Mr. Minick has also determined that for the first five years these sections will be in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the regulation of water districts, the management of the financial resources of water districts and delivery of cost effective services to water utility customers. There will be no effect on small businesses. There are no known costs anticipated to persons required to comply with these sections as proposed.

Written comments on the proposal may be submitted to Samuel W. Jones, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. In order to be considered, written comments must be received by the Water Utilities division no later than 5 p.m., 30 days after the date of publication of this proposal.

General Provisions

• 31 TAC §293.6

The amendment is proposed under the Texas Water Code (Vernon 1992), §§5. 103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.6. Applications Processing Requirements. Except as otherwise provided in this Chapter, all applications for commission actions authorized by the Texas Water Code and this chapter are subject to and governed by Chapter 281 of this title (relating to Applications Processing), which provides procedures and schedules for processing all applications by the commission.

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 March 19, 1993.

TRD-9320613

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Proposed date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

Creation of Water Districts

• 31 TAC §293.14, §293.18

The amendments are proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.14. Creation Hearing Notice Actions and Requirements.

(a) The chief clerk of the commission shall set the petition for hearing and issue notice thereof.

(b) The notice shall contain a statement of the nature and purpose of the petition, the date, time, and place of hearing, a vicinity map showing the location of the proposed district in relation to roads and other major landmarks, the form of the petition, and the necessity and feasibility of the district's projects and the benefits to accrue, and shall inform all persons of their right to request an evidentiary hearing and appear and present evidence and testify for or against the allegations in the petition. An affidavit verifying publication of the notice must be filed with the commission on or prior to the date of hearing.

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

§293.18. Form of Notice of a Public Hearing on the Creation of a Water District. The following form should be used to provide notice of the public hearing on the creation of a water district.

TO: ALL PERSONS INTERESTED IN THE
PETITION FOR CREATION OF
_____ DISTRICT, OF
_____ COUNTY, TEXAS

Notice is hereby given that a public hearing will be held at ____ o'clock, __m., on _____, 19__[90], before [a Hearings Examiner of] the Texas Water Commission (the "Commission"), in room _____ of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Travis County, Texas, upon a Petition for the Organization of _____ District (the "Petition") relating to the _____ District of _____ County, Texas (the "District"). The Petition is filed and the hearing is held under the authority of Chapter

_____, Subchapter _____, Texas Water Code, 31 Texas Administrative Code §§293.11-293.14 and under the [procedural] Rules of Procedure of the Commission. The Petition reflects that it has been signed by landowners within the proposed District who collectively represent a majority in value of the owners of land therein, as required by §_____, Texas Water Code.

The nature and purpose of the Petition is for the organization, creation and establishment of the District as a _____ district under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter _____, Texas Water Code, as amended, which District shall have the purposes provided for in Section _____, Texas Water Code, and the powers provided for in Section _____, Texas Water Code. The general nature of the work to be done is the purchase, construction, acquisition, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for domestic and commercial purposes, and a drainage system to control, abate and amend harmful excesses of waters and to reclaim and drain overflowed lands within said District, all as more particularly described in an engineer's report filed simultaneously with the filing of the Petition, to which report reference is hereby made for a more detailed description of the District's proposed facilities. Such report estimates that the cost of all such improvements will be \$_____.

The territory to be included within the proposed District is set forth in the following metes and bounds description designated as Exhibit "A" hereto, and is depicted in the following vicinity map designated as Exhibit "B" hereto.

[Written comment or testimony to be offered into evidence by anyone at the hearing on the Petition shall be filed with the Chief Clerk of the Commission with copies furnished to the petitioner, the Executive Director and the Public Interest Counsel of the Texas Water Commission, and to any person who files a written protest to the Petition.] Any affected person may [appear at the] request an evidentiary hearing. [and] Affected persons appearing at the hearing may request to be granted party status and thereby have the opportunity to present evidence [and testify for or against the allegations in] and cross-examine witnesses of the other parties concerning the petition, the necessity and feasibility of the proposed District's project, and the benefits to accrue. All parties will be given an opportunity to negotiate a settlement prior to the hearing on the merits. No person or entity will be admitted as a party to the proceeding unless the person or entity complies with the Commission's Rules of Procedure which require a justiciable interest and atten-

dance at the hearing either in person or by a qualified representative.

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 March 19, 1993.

TRD-9320614

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

Appointment of Directors

• 31 TAC §§293.32-293.34

The amendments are proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.32. Qualifications of Directors.

(a) Unless otherwise provided, for an applicant for appointment as a director to receive consideration, the following qualifications shall apply.

(1) A person shall be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(2) A director of a regional district created for the purposes defined under the Texas Water Code, §50.454 [for water, sanitary sewer, and wastewater drainage] must be at least 21 years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(3) A director of a special utility district created for the purposes defined under the Texas Water Code, §65.012, must be a resident citizen of this state and either own land subject to taxation in the district, or be a user of the facilities of the district or be a qualified voter in the district.

(4) A director of a stormwater control district created for the purposes defined under the Texas Water Code, §66.012, must reside within the boundaries of the proposed district but need not be a landowner or qualified voter within the district.

(5) (No change.)

(b) (No change.)

§293.33. Commission Appointment of Di-

rectors. Requests for Appointment shall be accompanied by the following: [Request for Appointment. A person desiring consideration for appointment as director shall file his or her own application stating his qualifications with the executive director at least five days prior to consideration for the appointment. The application will be sufficient by fully completing an affidavit in the form shown in §293.34 of this title (relating to Appendix A-Form of Affidavit for Appointment as Temporary Director), together with any other information that may be required by the executive director or the commission.]

(1) petition signed by a landowner within the district requesting appointment of temporary directors or directors to fill one or more vacancies on the board;

(2) evidence of each former director's failure or refusal to qualify or serve for each vacancy on the board to be filled;

(3) requests for consideration of appointment as director in the form shown in §293.34 of this title (relating to Appendix A-Form of Affidavit for Appointment as Directors) for those persons desiring consideration as director for vacant positions;

(4) a filing fee of \$100; and

(5) any other information as the executive director may require.

§293.34. [Appendix A] Form of Affidavit for Appointment as [Temporary] Director. The following form of affidavit must be completed, executed and filed with the chief clerk of the commission at least 10 working days prior to the [creation] commission hearing on the appointment of such directors.

Request for Consideration of Appointment as Director Instructions

The following form must be filed with the chief clerk of the commission prior to the creation hearing. Answer each question or request in complete detail and in writing. Sign your answers to the questions or requests and swear to the truth of your responses before a Notary Public.

Name _____

Address _____

City _____ Zip _____

Name _____ of _____ District _____

State of Texas:

County of _____:

[Request for Consideration of Appointment as Temporary Director]

Before me, the undersigned authority of the State and County aforesaid, on this day personally appeared _____ who desires to be appointed as [temporary] director of _____ to serve until his successor is elected or appointed.

(1) State whether you are 18 or 21 years old (as applicable to the type of district), a resident citizen of Texas, and either own land subject to taxation in the district or are a qualified voter within the district. If applying for director of a Regional District for Water, Sanitary Sewer, and Wastewater Drainage, you are not required to state whether you own land or are a qualified voter within the district. If applying for director of a Special Utility District, state whether you are a resident citizen of this state and whether you either own land subject to taxation in the district, are a user of the facilities of the district, or are a qualified voter of the district. If applying for director of a Stormwater Control District, state whether you reside within the boundaries of the proposed district, but you are not required to state whether you own land or are a qualified voter within the district.

(2) State whether you are a developer of property in the district, related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or are or were within the two years immediately preceding this proposed appointment as employee of any developer of property in the district or any director, manager, engineer, or attorney for the district.

(3) State your present occupation and employment. Is this your main source of income? If not, please explain.

(4) State whether you plan to live in the district. If you do not plan to live in the district, what are your plans for the use and disposition of the land? Not applicable if applying for director of a Regional District for Water, Sanitary Sewer, and Wastewater Drainage.

(5) Do you, or your employer, have any business or other connections with [the] any developer of the proposed district, the attorney representing the proposed district, or the consulting engineer for the proposed district or developer? If so, please explain.

(6) Are you aware that the district is a public entity and that by law notice of its meetings must be given and the meeting must be open to the public and its records shall be available for public inspection at all reasonable times?

(7) Are you aware that the district is subject to the continuing supervision

of the commission and will you fully cooperate with the commission?

(8) Do you affirm that you will faithfully execute the duties of the office of director of the district of the State of Texas, and will to the best of your ability preserve, protect, and defend the constitution and laws of the United States and of this state; do you affirm that you have not directly nor indirectly paid, offered or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment as a reward to secure your appointment?

(9) Will you support putting a maintenance tax proposition on the district's confirmation election ballot provided the district has the legal authority to call a maintenance tax election?

[(Name) _____]

[(Address) _____]

[(City) _____]

[(Zip) _____]

Before me, the undersigned authority, on this day personally appeared _____ who desires to be appointed as director of

_____ to serve until his successor is elected or appointed, and who being by me duly sworn on his oath deposed and said that every response and statement set forth herein is true and correct.

Signature _____

Sworn to and subscribed before me this _____ day of _____, 19____.

Notary Public in and for _____ County, 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 March 19, 1993.

TRD-9320615 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

Issuance of Bonds

• 31 TAC §293.41

(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 Water Commission or in the Texas Regis-

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

The repeal is proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.41. Approval of Engineering Projects.

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 March 19, 1993.

TRD-9320609 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

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- 31 TAC §§293.41, 293.43-293.48, 293.50, 293.51, 293.56, 293.57, 293.59

The new and amended sections are proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.41. Approval of Engineering Projects and Issuance of Bonds.

Bonds, as referred to in this section include all obligations defined as bonds in Texas Civil Statutes, Article 717k-8, except refunding bonds, and specifically includes all revenue notes authorized to be issued by the Texas Water Code or special statute if issued in bearer or registered form within the meaning of Texas Civil Statutes, Article 717k-8. The commission has been given the statutory responsibility to approve engineering projects relating to the issuance and sale of bonds for the following:

- (1) Regional Districts, Texas Water Code, Chapter 50;
- (2) Water Control and Improvement Districts, Texas Water Code, Chapter 51;
- (3) Underground Water Conservation Districts, Texas Water Code, Chapter 52;
- (4) Municipal Utility Districts, Texas Water Code, Chapter 54;

(5) Regional Plan Implementation Agencies, Texas Water Code, Chapter 54, Section 54.037;

(6) Water Improvement Districts, Texas Water Code, Chapter 55;

(7) Drainage Districts, Water Code, Chapter 56;

(8) Levee Improvement Districts, Texas Water Code, Chapter 57;

(9) Irrigation Districts, Texas Water Code, Chapter 58;

(10) Special Utility Districts, Texas Water Code, Chapter 65;

(11) Stormwater Control Districts, Texas Water Code, Chapter 66;

(12) Freshwater Supply Districts, Texas Water Code, Chapter 12;

(13) Water, sewage, or drainage projects of Municipal Management Districts, Texas Civil Statutes, Local Government Code, Chapter 375;

(14) any bond issues, payable wholly or partially from taxes, of districts created under Article XVI, Section 59, of the Texas Constitution, the boundaries of which include less than the total area of one county, unless:

(A) the district was created by special act of the legislature;

(B) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(C) the total taxable value of the real property and improvements to the real property zoned by the one or more home-rule municipalities for residential purposes and located within the district does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(D) the district was not required by law to obtain commission approval of its bonds before September 1, 1989; and

(15) other districts where specifically required by law.

§293.43. Application Requirements. For the approval of engineering projects and the issuance of bonds, a district shall submit:

- (1) an application including the subject matter contained in the Texas Water Code, §50.107, together with the materials required by the Texas Water Code, §50.466, for Regional Districts [for Water,

Sanitary Sewer, and Wastewater Drainage; the Texas Water Code, §51.421, for Water Control and Improvement Districts; the Texas Water Code, §52.291(b), for Underground Water Conservation Districts; the Texas Water Code, §54.516, for Municipal Utility Districts; the Texas Water Code, §54.037(f), for Regional Plan Implementation Agencies; the Texas Water Code, §55.503, for Water Improvement Districts; Texas Water Code, §56.2045, for Drainage Districts; Texas Water Code, §57.2075, for Levee Improvement Districts; the Texas Water Code, §58.451, for Irrigation Districts; the Texas Water Code, §65.512, for Special Utility Districts; the Texas Water Code, §66.310, for Stormwater Control Districts; and the Texas Water Code, §12.082, for Freshwater Supply Districts;

(2) a certified copy of the district board's resolution authorizing submission of application for bond issuance;

(3) evidence acceptable to the executive director of compliance with the Texas Water Code, §50.101, and, if applicable, the Texas Water Code, §54.016, and [Texas Civil Statutes] Texas Civil Statutes, Article 970a, §8(b), including consent by any city having extraterritorial jurisdiction, if not previously provided to the commission, and referencing the appropriate petition or bond application if these documents have been previously provided;

(4) a filing fee of \$500 plus the cost of any required notice;

(5) a bond application report in accordance with the applicable provisions of the "Bond Application Report Format" manual adopted by the executive director, formally approved by the commission by minute order, and currently in effect, which manual shall be subject to revision, as deemed necessary by the executive director, [and] with the formal approval [by] of the commission by minute order; and

(6) additional data and information as [required by] the executive director or the commission [when deemed] may deem necessary and pertinent to the bond application under consideration.

§293.44. *Special Considerations.*

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular [peculiar] situation renders an inequitable result.

(1) A developer project is a district engineering project which provides water, sewer[,] or drainage service for property owned by a developer, as defined by the Texas Water Code, §50.026(d).

(2) Except as permitted pursuant to subsection (a) (7), the costs [cost] of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, [Normally] the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way[,] or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations shall be determined by the amount of the estimated district share, including any required developer contribution; provided, however, that in instances where such clearing and grubbing construction contracts are let and awarded in the developer's name and the developer's aggregate reimbursable share of such costs, including any required developer contribution, exceeds 50% of the total construction contract costs, the competitive bidding statutes and/or regulations are not considered to be applicable.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district [and the costs of any clearing and grubbing in these areas, should not be paid by the district unless the district can demonstrate a net savings in the cost of disposal of excavated materials when compared to the estimated costs of disposal offsite].

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6)[(5)] When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7)[(6)] When a developer changes the plan of development requiring

the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8)[(7)] A district shall not finance the pro rata share of oversized water, sewer or drainage facilities to serve areas outside the district unless:

(A) such oversizing [is]:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications; [and]

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv)[(ii)] the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity which provides adequate payment to the district to pay the cost of financing, operating and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9)[(8)] Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally.

(10)[(9)] Engineering studies, such as topographic surveys, soil studies,

fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission.

(11) [(10)] Land planning, zoning and development planning costs should not be paid by the district, except for conceptual land use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) [(11)] The cost of constructing lakes or other facilities that are part of the developer's amenities package should not be paid by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off-site.

(13) [(12)] Bridge and Culvert Crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district unless such crossing consists of a single culvert with a cross sectional area of not more than nine square feet. The districts share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Drainage Districts and Levee Improvement Districts which were confirmed and operating pursuant to the Water Code, Chapters 56 and 57, respectively, prior to September 1, 1989, may fund the costs of bridge and culvert crossings larger than those specified in subparagraph A of this paragraph which are necessary as a result of required channel improvements subject to the following limitations:

(i) the crossing must be located entirely or partially within the district's boundaries;

(ii) the drainage channel construction or renovation must benefit property within the district's boundaries;

(iii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total

cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing;

(iv) the district shall be responsible for not more than 50% of the cost as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic carrying capacity of bridges or culverts shall not be financed by the district.

(14) [(13)] In evaluating district construction projects, including those described in paragraphs (1)-(12) of this [the] subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursable and approved by the commission but which are no longer proposed to be issued; or

(C) fees for completed projects which are not and will not be of benefit to the district; provided, however, that the foregoing limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) The district shall not program bond funds to finance operation and administrative costs except for:

(A) deficits incurred during the period of construction prior to the issuance of the subject bonds or the net expenses expected to accrue during the period of construction after the issuance of the subject bonds but in no event shall the total period exceed three years; and

(B) deficits incurred for the district's share of operation and administration costs resulting from the district entering into an agreement for the construction of a Water Plant or Waste Water Treatment Plant serving or programmed to serve three thousand equivalent single family connections or more. For purposes of this paragraph, deficits shall be calculated by taking the total operating and administrative cost of the district for the period and subtracting:

(i) revenue received which shall include but not be limited to interest earnings, rates, charges and other fees assessed by the district and

(ii) revenue which would be received from the assessment of a \$0.25 per/\$100 assessed valuation maintenance tax during the period assuming a 100% collection rate. Lease payments associated with lease/purchase agreements for central plant capacity are not considered operation expenses.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable and customary and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection and other matters not directly related to the district's water sewage and drain system, even if required for city consent.

(18) The district shall not purchase, pay for or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer which compel the district to become liable for costs above that approved by the Commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the District, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the current condition of the facilities and estimated cost of repair, as evidenced by an on-site inspection.

(2) (No change.)

(3) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, pursuant to contracts authorized under Local Government Code, §402.014, [Texas Civil Statutes, Article 1109j] or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(4) (No change.)

§293.45. Action of the Commission and Bond Proceeds Fee.

(a) The commission may by order dismiss an application for lack of prosecution or failure to comply with the regulations of the commission, allow the applicant to withdraw the application, or approve or deny the project and the issuance of bonds therefore. Upon issuing such an order, the commission shall forward certified copies to the applicant and the attorney general of Texas. District compliance with any special condition in the Order Approving Engineering Project and Issuance of Bonds, as executed by the commission, is mandatory. Unless bids are received and accepted for sale of the bonds within one year of the effective date of the commission's order approving the bonds, the district may not proceed with the sale of such bonds without executive director approval of an application for an extension of time meeting the requirements of §293.88 of this title (relating to Application for Extension of Time to Sell Bonds). [The commission's approval of a bond issue prior to September 4, 1986, shall be valid until September 4, 1987, unless such approval is extended by order of the commission. The commission's approval of a bond issue after September 4,

1986, is valid for only one year after the date of the commission order approving the bond issue] Under no circumstances shall a Commission order approving a bond issue be extended beyond three years from the date of the Commission Order originally approving the bonds.

(b) If the bonds are approved by the commission, the district [seller] shall pay to the commission by check 0.25% of the principal amount of the bonds actually issued not later than the seventh business day after receipt of the bond proceeds. The commission may allow the district to pay a lesser amount if it determines that the circumstances surrounding a particular bond issue justify a lesser amount. [The fee shall be payable by certified check payable to the Texas Water Commission.]

(c) The commission may condition the approval on any terms or conditions considered appropriate by the commission.

§293.46. Construction Prior to Commission Approval. The developer may proceed with financing or construction of water, wastewater, and drainage facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions.

(1) Prior to entering into construction contracts for such facilities, the developer and district shall execute an agreement setting out the terms of reimbursement, providing for the use of the facilities by the district until [prior to] reimbursement and providing that the construction contract will be awarded and administered in accordance with commission regulations and applicable statutes relating to districts. If the district has not been created at the time of the execution of the construction contracts, the developer and district shall execute an agreement as described in the preceding sentence within 60 days after confirmation of the district. The contract shall not bind the district to payment of costs above that approved by the Commission. If such an agreement is not entered into within the time period specified above, and such actions of the developer are not subsequently ratified and approved by the district in a subsequent agreement with the developer, the developer shall be denied interest costs.

(2)-(4) (No change.)

(5) Contract advertising and award[.] and construction and installation of facilities shall be accomplished in the manner required by the general law for districts[,] and in conformity with commission rules [regulations]. For construction contracts awarded after the effective date of this subsection, if substantial compliance

with statutory requirements is not achieved [followed], reimbursement to a developer [may] shall be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6) The filing of the materials provided herein or construction inspections by the commission shall not constitute approval of the project in any manner. A person proceeding with construction of a project prior to its formal approval by the commission shall do so with no assurance that public funds will be authorized for acquiring the facilities. Construction which is not in the best interests of the district, and improper or ineligible expenditures, will be disallowed for district purchase.

(7)-(8) (No change.)

§293.47. Thirty Percent of District Construction Costs To Be Paid by Developer.

(a) It has been determined by experience that some portion of the cost of district water, sewer, and drainage facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to districts which have a ratio of debt (including proposed debt) to certified assessed valuation of more than 10%. This section does not apply to:

(1) a district which has a ratio of debt (including proposed debt) to certified assessed valuation of 10% or less; provided, however, that any bond issue proposed to be exempted on this basis must include funds to provide sufficient capacity in facilities exempted in subsection (d) of this section to serve all connections to be financed by the bond issue;

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

(b) For purposes of this chapter, the following definitions shall apply.

(1) Developer is as defined in the Texas Water Code, §50.026(d).

(2) Debt includes all outstanding bonds of the district, all bonds approved by the commission and not yet sold (less such portions thereof for which the authority to issue such bonds has lapsed or been voluntarily cancelled), all proposed bonds with respect to which applications for project and bond approvals are presently on file and pending with the commission, and all outstanding bond anticipation notes which are not to be redeemed or paid with proceeds derived from such pending bond application(s). For the purpose of this subsection, the amount of such outstanding bond anticipation notes shall be deemed to be the sum of:

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

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

(5) Credit enhanced rating is a rating of Aa or higher from Moody's Investors Service, Inc., or AA or higher from Standard and Poors Corporation, which rating is obtained by the district by virtue of municipal bond guaranty insurance, [guarantee, endorsement, assurance, letter of credit or other credit enhancement technique] furnished by or obtained through any other party; provided, however, that such municipal bond guaranty insurance [credit enhancement] shall be unconditional, irrevocable and in full force and effect for the scheduled maturity of the entire bond issue; and provided, further, that payment of the premium on [or commitment or other similar fees for] such municipal bond guaranty insurance [credit enhancement] shall not be made from district funds except through the establishment of the interest rate or premium or discount on such bonds.

(c) If a district anticipates receipt of a certified assessed valuation evidencing a debt ratio of 10% or less or an acceptable credit rating, or a credit enhanced rating, as provided in subsection (a) of this section, prior to the bond sale identified in the bond application being considered, the district may, at its discretion, request a conditional waiver to the developer cost participation requirements of this section as follows.

(1) (No change.)

(2) Except for districts which have achieved a debt ratio of 10% or less at the time of application, the cost summary in support of any bond application proposed to be exempted by virtue of subsection (a) of this section, must show the district bond issue requirement, cash flow, and tax rate with and without the developer contribution.

(3) If a conditional waiver is granted by the commission in anticipation of the District obtaining an acceptable credit rating, a credit enhanced rating or a certified assessed valuation evidencing a ratio of debt to certified assessed valuation of 10% or less, no bonds shall be sold by the district unless such acceptable or enhanced credit rating is obtained or such debt ratio is achieved.

(4) If a bond issue is approved on the basis of obtaining an acceptable credit rating, and an acceptable credit rating is not obtained, and if the district wishes to proceed with such bond issue on the basis of an enhanced credit rating, the district shall not issue the bonds unless the district requests and obtains a commission order approving the bonds to be sold [solid] with an enhanced credit rating and finding the financing to be feasible without the devel-

oper contribution.

(5) (No change.)

(d) Except as provided in subsection (a) of this section or in the remaining provisions of this subsection, [and unless the commission otherwise determines that the feasibility of a district's financing is not dependent upon the developer contribution,] the developer shall contribute to the district's construction program an amount not less than [equal to] 30% of the construction costs for all water, sewer, and drainage facilities, including attendant engineering fees and other related expenses, with the following exemptions:

(1) wastewater treatment plant facilities, including site costs;

(2) water supply, treatment, and storage facilities, including site costs;

(3) stormwater pump stations associated with levee systems, including site costs;

(4)[(3)] that portion of water and sanitary sewer lines from the district's boundary to the interconnect, source of water supply or wastewater treatment facility as necessary to connect the district's system to a regional, city, or another district's system;

(5)[(4)] pump stations and force mains located within the boundaries of the district which directly connect the district's sanitary sewer system to a regional [plan] plant, regardless of whether such plant is located within or without the boundaries of the district;

(6)[(5)] segments of water transmission or sanitary sewer trunk lines of districts or other authorities which are jointly shared or programmed to be jointly shared between the district and another political subdivision whether inside or outside of a participating district or authority;

(7) [(6)] water and sanitary sewer lines serving or programmed to serve 1, 000 acres or more within the district;

(8)[(7)] drainage channels, levees and other flood control facilities and stormwater detention facilities, or contributions thereto, meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) or §293.53 of this title (relating to District Participation in Regional Drainage Systems), and which are serving or are programmed to serve either areas of 2,000 acres or more or, at the discretion of the commission, areas of less than 2, 000 acres, as the commission may deem appropriate to encourage regional drainage projects.;

(9)[(8)] land costs for levees or stormwater detention facilities; and

(10)[(9)] alternate water supply

interconnects between a district and one or more other entities [two or more districts].

(e) A developer will also be required to contribute toward construction costs in districts which are within the limits of a city, except for:

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

(3) districts that are providing facilities and services on behalf of, in lieu of, or in place of the city and which have contracted with the city to receive rebates of 65% or [on] more of the city taxes actually collected on property located within the district.

(f) (No change.)

(g) The developer must enter into an agreement with the district, secured by a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of utility construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the letter of credit to pay the developer's share of construction costs and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least 30 days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least 30 days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title, must be valid for a minimum of one year from the date of issuance and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

[(g) For incomplete projects requiring developer participation, the developer must provide a letter of credit, irrevocable development loan commitment or other guarantee for the applicable contribution to constructions and engineering costs for each bond application prior to advertisement for sale of the district's bonds. This guarantee

must provide assurance to the satisfaction of the commission that the developer has the financial capability to provide the required amount of funds for his applicable share of the district's construction project.]

(h)-(j) (No change.)

(k) If the bond issue includes funds owed the developer in an amount which exceeds that amount required as the developer's contribution and the estimated costs of required street and road construction, the district may request a waiver of the requirement of a letter of credit if the developer enters into an agreement with the district whereby the developer agrees to defer receipt of payment of a sufficient amount of such owed funds until the facilities for which guarantees are required have been completed and certified complete by the district's engineer. Any such agreement shall be made a part of the agreement required by subsection (g) of this section if the funds are being withheld for the developer 30% contribution of construction costs, and if appropriate, such agreement shall be made part of the street and road construction Agreement required by §293.48 of this title, if the funds are being withheld for guaranteeing street and road construction costs.

§293.48. *Street and Road Construction by Developer.* Unless street and road construction is completed within the area to be developed by the proposed bond issue, the developer must provide assurance to the satisfaction of the commission prior to advertisement for sale of the district's bonds that such street and road construction will be completed as hereinafter provided.

(1) The developer must enter into an agreement with the district, secured by a letter of credit [irrevocable development loan commitment or other acceptable guarantee.] specifying that if street and road construction is not completed within a reasonable and specified period of time after the district sells its bonds, the district may award a contract for completion of the streets and roads with financing to be accomplished by utilizing the letter of credit [developer's financial commitment]; provided, however, the district shall not proceed in such a manner until the commission, after having given at least 10 days written notice to both the district and the developer, has reviewed the matter, either on the petition of the district or on the motion of the executive director, and has approved the district's awarding of the contract and utilization of the letter of credit [developer's financial commitment]; and provided further, the commission may extend the time for the developer to complete the streets and roads if the developer renews the letter of credit [guarantee] and ade-

quately compensates the district for lost revenues and taxes resulting from failure to complete the streets and roads within the specified time. In the event that the letter of credit [or other developer financial commitment] has not been renewed or replaced 45 days prior to its expiration date [the district shall have the right to draw down the lesser of the current costs, as estimated by the district's engineer, to construct the streets and roads, or the entire remaining balance of a letter of credit or other developer financial commitment.] or, in the event that the developer commences any proceeding, voluntary or involuntary, or any proceeding voluntary or involuntary, [or any proceeding] is commenced against the developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the developer, or any receiver is appointed for the developer, or the developer makes a general assignment for the benefit of creditors, the district shall have the immediate right to draw down the lesser of the current cost, as estimated by the district's engineer, to construct the streets and roads, or the entire remaining balance of the letter of credit [or other developer financial commitment]. The current estimated costs to construct the streets and roads shall include construction contract amounts, engineering, surveying and testing fees and a 10% contingency. The district shall deposit such funds in a separate account and shall not commit or expend such funds until the commission has held the hearing and authorized use of the funds as provided in this [authorized use of the funds as provided in this] subsection [of this section]. Within 30 days after final completion of the streets and roads, the district shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the developer or his designee. A district shall not allow any letter of credit [or other financial commitment] to expire, except upon completion of the paving in substantial compliance with the agreement or written approval of the commission. A copy of the street and road construction agreement meeting the criteria specified in §293.57 of this chapter [(relating to Appendix B--Form of Letter of Credit), the letter of credit [or other developer financing commitment] and any amendments or renewals thereof shall be filed with the commission within 10 days after their execution or receipt by the district. The letter of credit must be from a financial institution meeting the qualifications as specified in §293.56 of this chapter, (relating to Appendix C- Form of Street and Road Construction Agreement. [For a form of a letter of credit and an agreement, refer to §293.56 of this title (relating to Appendix B--Form of Letter of Credit) and §293.57 of this title (relating to Appendix C-Form of Street and Road Con-

struction Agreement).]

(2)-(4) (No change.)

[(5) Commission approval of change orders initiated under this provision which are \$10,000 or more must be obtained by the district prior to implementation of the change order, as provided in §293.81 of this title (relating to Change Orders).]

§293.50. *Developer Interest Reimbursement.*

(a) A developer may be reimbursed by a district for interest accrued for a period of up to two years after the final payment by the developer on approved construction pay estimates, professional [engineering] fees, and attendant nonconstruction costs paid by a developer for providing facilities in anticipation of sale to such district. If final payment on a construction contract is 95% complete, the initiation of the two-year interest accrual period will be six months from the date the contract is 95% complete, unless the developer can demonstrate a genuine contractual dispute with the contractor, or other extenuating reasons, as determined by the commission. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied.

(b) If reimbursement for accrued interest for a period of more than two years after the completion date allowed in (a) of this subsection [such final payment by the developer] is requested by a district, and if no interest reimbursement has occurred, additional accrued interest up to five years from the completion date of the construction contracts including related professional fees and nonconstruction costs may be allowed if deemed feasible by the commission, and if:

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

(c) (No change.)

(d) If otherwise determined to be feasible by the commission, [the] time limitations on accrued developer interest [for the following facilities] shall not apply to:

(1) wastewater treatment facilities serving or projected [programmed] to serve 2,000 acres or more;

(2)-(4) (No change.)

(5) drainage channels, levees and other flood control facilities and stormwater detention facilities meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) and §293.53 of this title (relating to District

Participation in Regional Drainage Systems) which are serving or are programmed to serve 2,000 acres or more [; provided, however, that, except as permitted in subsection (b)(1) of this section, reimbursement of such accrued interest shall not be allowed for interest accrued after the time period beyond five years from the final payment by the developer].

(e) These time limitations on accrued developer interest also apply to advances made for organizational costs, repair costs and lease payments for central plant capacity associated with lease/purchase agreements.

§293.51. Land and Easement Acquisition.

(a) Water, Sanitary Sewer, Storm Sewer, and Drainage Facilities Easements. All easements required within [the] a district's boundaries for water lines, sanitary sewer lines, storm sewer lines, drainage channels, [; underground utilities, for drainage ditches, for] sanitary control at water plants, and [for] noise and odor control at wastewater treatment plants shall be dedicated to the public by the developer without reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) shall not apply to such acquisition. [Land for plant, lift station, or storm water detention facility sites acquired in fee simple by the district as part of the district project may be purchased at a price not to exceed the price paid for such land by the developer from whom the land is being acquired, in a bona fide transaction between nonrelated parties, plus carrying charges provided that, if the executive director considers such prices for land necessary for storm water detention facilities to be excessive, he may require an appraisal and payment to the developer, and the developer may be limited to the appraised value of said land; and provided, further, that in any event payment to the developer for storm water detention facilities sites shall be limited to the difference between the total land area necessary for the storm water detention facilities and the total land area within the boundaries of the district which would have been necessary if drainage ditches or channel improvements had been utilized in lieu of storm water detention facilities, with such land areas being determined based upon the requirements of any public entity having drainage jurisdictional responsibility.]

(b) Plants, Lift or Pump Stations,

Detention Ponds, and Levee Sites. All land needed by a district for plants, lift or pump stations, detention/retention ponds, or levees may be acquired in fee simple or by easement from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition. If a district acquires such a site from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual carrying charges (taxes and interest paid to the date of acquisition by the district); provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, he may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the actual carrying charges are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such site must contain a request by the district to acquire the site in such manner and must explain the reason the seller is unable to provide price and carrying cost records. If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying or court fees and expenses incurred in acquiring such land or easement.

(c) Joint Stormwater Detention/Water Amenity Facilities. If a detention or retention pond is also being used as an amenity by the developer, payment to the developer shall be limited to that cost that is associated only with the drainage function of the facility. The land costs of combined water amenity and detention facilities should be shared with

the developer on the basis of the volume of water storage attributable to each use.

(d)[(b)] Land or Easements Outside the District's Boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof; provided, however,]. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. [that] if the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (b) and such purchase price shall be subject to [not exceed the price paid for such land by the developer from whom the land is acquired, in a bona fide transaction between nonrelated parties, plus carrying charges. Land or easements acquired outside the district's boundaries from persons other than the developer shall be subject to developer contribution under] the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements or rights-of-way are, exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title.

(e)[(c)] When one or more upstream districts need land or easements through one or more downstream district(s) each upstream district may pay its pro rata share for its needs if none of the acquisitions is or will be required for partial or full development of the downstream district(s). In instances where] If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such [the required] land or easement is or will be needed by another [a downstream] district(s), whether upstream or downstream, [to achieve partial or full] for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the Commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way [each downstream district developer shall be required to dedicate easements at no cost, or to sell land at actual cost plus carrying charges, to its district for that portion of the land or easement necessary to serve the needs of its district. The upstream district(s)' share(s) of such costs shall be based upon the fair market value of such downstream land or easements; provided,

however, where the executive director considers such price excessive, he may require an appraisal and payment to the developer may be limited to the appraised value of said land].

[(d) The foregoing limitations shall not apply to sites acquired, in whole or in pro rata part, by districts outside of their boundaries for purposes of connecting to, expanding or joining a regional water supply or wastewater treatment system, and in all such cases, the price paid for such sites may not exceed the fair market value thereof; provided, however, if the executive director considers such price to be excessive, he may require an appraisal of such land and the price to be paid for such land may be limited to such appraised value.]

(f)(e) **Regional Facilities.** A district may use [issue] bond[s] proceeds to acquire the entire site for any [a] regional plant, lift or pump station, detention pond, drainage channel, or levee [water supply or regional wastewater treatment system] if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs [cost], carrying cost and bond issuance costs [cost] from future participation. The district may pay the fair market value based on an appraisal [price] for such [a] regional [project] site and also may pay legal, engineering, surveying or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs and bond issuance costs at such time as development occurs in such other districts requiring such regional site [(exclusive of any part of the land acquired for a project of the district, which shall be at the developer or other landowner's cost) and shall be limited to recovering the same market value cost, plus carrying cost and bond issuance cost from future participants].

(g) Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

\$293.56. Requirements for Letters of Credit (LOC) [Appendix "B"].

(a) Any LOC submitted as a financial guarantee for combined amounts greater than \$10,000 and less than

\$250,000 pursuant to these rules must be from financial institutions which meet the following qualifications.

(1) **Qualifications for Banks:**

(A) must be federally insured;

(B) Sheshunoff rating must be 10 or better; and

(C) total assets must be at least 50 million dollars.

(2) **Qualifications for Savings and Loan Associations:**

(A) must be federally insured; and

(B) tangible capital must be at least:

(i) 1.5% of total assets if total assets are 50 million dollars or more; or

(ii) tangible capital must be at least 3.0% of total assets if total assets are less than 50 million dollars; and

(C) Sheshunoff rating must be 30 or better.

(b) Any LOC submitted as a financial guarantee for combined amounts greater than \$250,000 pursuant to these rules must be from financial institutions which meet the following qualifications.

(1) **Qualifications for Banks:**

(A) must be federally insured;

(B) Sheshunoff rating must be 30 or better; and

(C) total assets must be at least 75 million dollars.

(2) **Qualifications for Savings and Loan Associations:**

(A) must be federally insured;

(B) tangible capital must be at least:

(i) 3.0% of total assets and total assets must be 75 million dollars or more; or

(ii) tangible capital must be at least 5.0% of total assets if total assets are less than 75 million dollars; and

(C) Sheshunoff rating must be 30 or better.

(c) All LOC's must be valid for a minimum of one year from the date of issuance and should provide that if the letter of credit is:

(1) not renewed for an additional year at least 30 days prior to its date of expiration;

(2) not called upon in its entirety at least 30 days prior to its date of expiration;

(3) not found to be unnecessary by the commission at least 30 days prior to its date of expiration; or

(4) unless the construction project has been completed as certified by the district's engineer at least 30 days prior to its date of expiration; the financial institution shall deposit in a special account in the name of the district, the face amount of the letter of credit. The District shall not commit or expend such funds until the Commission has held a hearing authorizing the use of said funds.

(d) All LOC's required pursuant to these rules must be approved by the Commission staff.

(e) [Appendix "B"-] Form of Letter of Credit. The following form shall be used [is sufficient for use] as a letter of credit for the financial guarantee for utilities construction and/or construction and paving of streets.

ROCK OF GIBRALTAR BANK

LETTER OF CREDIT

GREEN ACRES MUNICIPAL UTILITY DISTRICT, ONE HOLLOW LOG LANE, MEGALOPOLIS, TEXAS 77000; Irrevocable Credit No. 1; Amount: \$250,000

GENTLEMEN:

You are hereby authorized to value on ROCK OF GIBRALTAR BANK for account of ALL AMERICAN HOMES, INC. up to an aggregate amount of ----- TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ----- available by your drafts at ----- SITE ----- to be accompanied by the original of this letter of credit and the following documents:

1. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District that All American Homes Inc. has failed to construct streets in Knot Holes West Subdivision in accordance with the terms of the Utility/Street And Road Construction Agreement dated December 1, 1980. (Required only for draft No. 1), and a written certification(s) by the engineer for Green Acres Municipal Utility District that payment is due to the contractor for construction of streets in Knot Holes West

Subdivision in the amount shown on the draft(s); or

2. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District that All American Homes, Inc. has failed to renew or replace this letter of credit within 45 days prior to its expiration date; or

3. Written statement signed by the President or Vice president of the Board of Directors of Green Acres Municipal Utility District that All American Homes, Inc. has commenced any proceeding, voluntary or involuntary, or that any proceeding has been commenced against All American Homes, Inc. involving bankruptcy, insolvency, reorganization, liquidation or dissolution of All American Homes, Inc., that any receiver has been appointed by All American Homes, Inc., or that All American Homes, Inc. has made a general assignment for the benefit of creditors.

Multiple drafts may be presented.

Drafts must be presented to drawee bank not later than May 31, 1983, all drafts must state on their face "DRAWN UNDER ROCK OF GIBRALTAR BANK IRREVOCABLE CREDIT NO. 1".

We hereby engage with you, that all drafts drawn under and in compliance with the terms of this credit will be duly honored, if drawn and presented for payment at our office in Megalopolis, Texas, on or before the expiration date of this credit.

We further engage with you that without further notice, we shall deposit in a special account in the name of the district, the remaining face amount of the letter of credit if the letter of credit is:

(1) not renewed for an additional year at least 30 days prior to its date of expiration;

(2) not called upon in its entirety at least 30 days prior to its date of expiration;

(3) not found to be unnecessary by the Executive Director of the Texas Water Commission at least 30 days prior to its date of expiration; or

(4) unless the construction project has been completed as certified by the district's engineer at least 30 days prior to its date of expiration.

Very truly yours,

Authorized Signature

§293.57. [Appendix "C"-] Form of Street and Road Construction Agreement. The following form is sufficient for use as a contract between the developer and the district for street construction and paving and may be adapted to utilities construction.

STREET AND ROAD CONSTRUCTION AGREEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

THIS AGREEMENT is made and entered into as of this 1st day of December, 1980, by and between GREEN ACRES MUNICIPAL UTILITY DISTRICT of Travis County, Texas (the "District") and ALL AMERICAN HOMES, INC. (the "Developer").

Recital

The Developer is developing 300 lots in the Knot Holes West Subdivision which is located within the District. The District is preparing to sell its \$3, 500,000 Waterworks and Sewer Systems Combination Tax and Revenue Bonds, Series 1980 (the "Bonds") for the purpose of acquiring and/or constructing water, sewage, and drainage facilities to serve the Knot Holes West Subdivision. In order for the District's taxable valuations to increase to a level to support the debt service requirements on the Bonds, the Developer must complete the streets and road to service its 300 lots in the Knot Holes West Subdivision in the District. The purpose of this Agreement is to assure the District that the Developer will construct all streets and roads to serve its 300 lots in the Knot Holes West Subdivision.

WITNESSETH

Green Acres Municipal Utility District and All American Homes, Inc. do hereby agree as follows:

1. The District agrees to proceed with the sale of the Bonds in accordance with the Order of the Texas Water Commission approving the Bonds and all applicable laws in an expeditious manner.

2. The District agrees that it will use the proceeds from the sale of such Bonds in accordance with the Order of the commission approving the Bonds, including reimbursement to the Developer of funds advanced to or on behalf of the District.

3. The Developer agrees that it will cause the completion of all streets and roads to serve Developer's 300 lots within the Knot Holes West Subdivision in accordance with the plans and specifications prepared by ABC Engineers, Inc. and approved by the City of Megalopolis and Travis County not later than May 31, 1982.

4. The costs to construct the streets and roads to serve Developer's 300 lots in the Knot Holes West Subdivision are estimated to be \$250,000.00. To assure the District and the Commission that adequate funds will be available to the District in the event that All American Homes, Inc. fails to construct the streets and roads in accordance with the Agreement, the Developer will se-

cure a letter of credit from ROCK OF GIBRALTAR BANK, Megalopolis, Texas in the amount shown above in favor of the District which shall provide that in the event the Developer fails to construct the streets and roads in accordance with the terms and conditions of this Agreement that the District shall have the right to award and/or to assume existing construction contracts for the completion of the streets and roads and to draw on the letters of credit for the purpose of making all payments due on the construction contracts for the streets and roads; provided, however, the District shall not proceed in such a manner until the Commission has reviewed the matter and approved the District awarding the contract(s) or assuming existing contract(s) and utilizing the letter of credit. Such draw on a letter of credit shall be accompanied by an approved pay estimate by the District's engineer certifying that the amount is in order for payment. In addition, in the event that the letter of credit [or other developer financial commitment] has not been renewed or replaced 45 days prior to its expiration date, the District shall have the right to draw down the lesser of the current cost, as estimated by the District's engineer, to construct the streets and roads, or the entire remaining balance of a letter of credit [or other developer financial commitment]. In the event that the Developer commences any proceeding voluntary or involuntary, or any proceeding is commenced against the Developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the Developer, or the Developer makes a general assignment for the benefit of creditors, the District shall have the immediate right to draw down the lesser of the current cost, as estimated by the District's engineer, to construct the streets and roads, or the entire remaining balance of the letter of credit [or other developer financial commitment]. The current estimated cost to construct the streets and roads shall include construction contract amounts, engineering, surveying and testing fees and a 10% contingency. The District shall deposit such funds in a separate account and shall not commit or expend such funds until the Commission has held the hearing and authorized use of the funds as provided above. Within 30 days after final completion of the streets and roads, the District shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the Developer or his designee. In the event that a letter of credit is not sufficient to pay the entire cost of constructing the streets and roads, the Developer shall be liable to the District for any costs in excess of the amount of the letter of credit.

5. Upon completion of the streets and roads to serve Developer's 300 lots in the Knot

Holes West Subdivision in accordance with this agreement, the District, upon written request by Developer and certification of completion by the District's engineer, shall authorize cancellation of the letter of credit for that section.

6. Developer and District agree that this agreement is being entered into for the purpose of complying with the condition provided in the Commission's Order to permit the District to advertise for the sale of Bonds in compliance with the Commission's Order and in accordance with §293.0] 47(g) of this title (relating to Thirty Percent of District Construction Cost to be Paid by Developer) and as an inducement to the District to issue the Bonds.

Executed in multiple copies on the date shown above.

GREEN ACRES MUNICIPAL UTILITY
DISTRICT OF TRAVIS COUNTY,
TEXAS

By: _____

President, Board of Directors

ATTEST:

Secretary, Board of Directors

ALL AMERICAN HOMES, INC.

By: _____

Title _____

§293.59. *Economic Feasibility of Project.*

(a) In addition to determining the engineering feasibility of a project, the commission shall also determine the economic feasibility of each proposed bond issue, bond amendment, and extension of time application for a bond issue. The staff of the commission shall use following sections in making economic feasibility analysis. In its written recommendations to the commission which analyzes the particular application, the staff shall always address the economic feasibility.

(b)-(j) (No change.)

(k) For a district's first bond issue, the following paragraphs apply except that paragraphs (5), (6), (7), (8), and (10) of this subsection are only applicable to a district that has a developer as defined by the Water Code, §50.026(d).

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

(8) For bonds supported by taxes, a written agreement must be executed between the district and the developer and any other landowner and their respective lenders receiving proceeds of the bonds which permanently waives the right to claim agricultural, open-space, timberland or inventory valuation for any land, homes or buildings which they own in the district

with respect to taxation by the district. The agreement shall be [permanently] binding for 30 years on such developer, other landowners, their respective lenders, any related or affiliated entities and their successors and assignees, unless such exemptions were in effect at the time of the commission's approval of the bond issue and such exemptions were shown in the projected tax rate calculations. Such developer, landowners, and lenders shall record covenants running with the land to such effect, which shall not be modified or released without written authorization of the commission, and shall provide recorded copies to the commission prior to the approval of the bond issue.

(9)-(10) (No change.)

(11) Requirements of subsection (k)(6) (A), (C), and (E), and the requirements of subsection (k)(7) of this section shall not apply in the following cases where:

(A) the no-growth debt service tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed \$1.30[, or] [;] the no-growth debt service tax rate of a district providing major water and sewage facilities which it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed \$1.30, and the combined no-growth debt service tax rate does not exceed \$2.00[.]; and, [with respect to each of the described cases,] the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district; or

(B)-(C) (No change.)

(D) for the immediately preceding exceptions in Paragraph 11(A), or (C) of this subsection, the developer shall provide a guarantee for its 30% share, if required pursuant to §293.47 (Relating to Thirty Percent of District Construction Costs To Be Paid by Developer), in the form and manner required by subsection (g) thereof. For the immediately preceding exceptions in paragraph (11)(B) or (C) of this subsection, the developer shall provide a paving guarantee pursuant to §293.48 of this title (relating to Street and Road Construction by Developer).

(I) (No change.)

(m) Except for districts whose primary purpose is to provide service for agricultural uses, the economic feasibility of bond issues supported by benefit assessments shall be analyzed by converting the assessment to an equivalent tax rate per unit of assessment. The calculated equivalent tax rate shall be added into the combined no-growth tax rate defined in subsection (e) of this section and the combined projected tax rate defined in subsection (f) of this section. The com-

mission may compare these equivalent tax rates to those listed in §293.59(k)(3) and (4).

(n) Bond issues supported only by revenue from a defined area shall be analyzed to assure that the defined area meets the requirements of this section independently of the remainder of the issuing district.

(o)[(m)] A district may request a variance if it does not meet the guidelines contained in subsection (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The Commission shall not grant a variance to the maximum combined projected debt service tax rate or the maximum combined no-growth debt service tax rate specified in subsection (k) of this section for Districts that have a developer and the district is financing 100% of construction costs pursuant to criteria set out in subsection (a) of §293.47 which would otherwise require 30% developer participation. In determining whether to grant a variance, the following factors shall be considered;

(1)-(7) (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 March 19, 1993.

TRD-8320625

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

◆ ◆ ◆
District Actions if the Commission Approves the Engineering Project and Issuance of Bonds

• 31 TAC §293.61, §293.62

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

The repeals are proposed under the Texas Water Code, (Vernon 1992), §§5. 103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from

persons filing various applications with the commission.

§293.61. Documents to be Filed With the Commission.

§293.62. Transmittal of Reports.

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 March 19, 1993.

TRD-9320610

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993.

For further information, please call: (512) 463-8069

◆ ◆ ◆
• 31 TAC §§293.61, 293.62, 293.70

The new and amended sections are proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.61. Bond Related Documents To Be Filed with the Commission. Every district required to obtain commission approval of its engineering projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Engineering Projects and Issuance of Bonds), is required to file the following bond related reports and/or documents.

(1) If the commission directs funds from the bond issue to be escrowed, a certified copy of the executed escrow agreement with an authorized financial institution of the district's choice shall be filed within five days of that transaction.

(2) The district shall file with the executive director a copy of the final official statement within 30 days after the final official statement is issued. The executed contract for the sale of the bonds and debt service schedule shall be filed with the executive director within 30 days after execution of the contract.

§293.62. Construction Related Documents To Be Filed With The Commission. Every district required to obtain commission approval of its engineering projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Engineering Projects and Issuance of Bonds), is required to file the following construction related reports and/or documents.

ments.

(1) Within 10 days after construction contract execution, the district shall furnish to the appropriate commission field office true copies of the following documents:

(A) notice to contractors (advertisement affidavit for bids);

(B) addenda to plans and specifications;

(C) bid tabulation;

(D) engineer's letter recommending award of contract;

(E) executed contract and bid proposal documents with bonds; and

(F) notice to proceed (submit copy when issued).

(2) As the construction progresses, provide to the appropriate commission field office:

(A) engineer's monthly construction progress reports and monthly pay estimates for contract partial payments within 10 days after payment, together with a statement by the engineer that the contractor has been paid by the district;

(B) copies of proposed change orders;

(C) copies of infiltration/exfiltration tests for sanitary sewer lines and test results of waterlines prior to final construction inspection;

(D) notice of date and time of final inspection at least five days prior to the inspection;

(E) engineer's certification of completion for each construction contract within 10 days of the project acceptance; and

(F) letter of acceptance by owner within 10 days after project acceptance.

(3) At the time the district requests approval for funding of the project from the commission or executive director and subsequently thereafter as appropriate, the district shall provide to the executive director copies of the items listed in paragraphs (1) and (2) of this section.

§293.70. Audit of Payments to Developer.

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

(c) Upon completion, the auditor shall prepare a reimbursement report to the district. Such report shall include sufficient details and disclosures to serve the needs of the district and the commission. Within 10 days after approval by the governing board of the district, a copy of this report shall be filed with the executive director [commission]. The contents of the report shall include the following:

(1) auditor's report;

(2) schedules of amounts reimbursable to each developer; and

(3) comparison of amounts included in the interoffice memoranda [memorandums] with amounts reimbursable and anticipated amounts, if any, to be expended in the future.

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 March 19, 1993.

TRD-9320616

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

◆ ◆ ◆
Other Actions Requiring Commission Consideration of Approval

• 31 TAC §§293.81-293.86

The amendments are proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.81. Change Orders. A change order is a change in plans and specifications for construction work that is under contract. For purposes of this section, a variation between estimated quantities and actual quantities or use of supplemental items included in the bid where no change in plans and specifications has occurred is not a change order.

(1) Districts are authorized to issue change orders subject to the following conditions.

(A) Substantial alterations to commission approved plans and specifications must be approved prior to construc-

tion by the commission or the executive director as hereinafter provided.]

(A)(B) Except as provided in this subparagraph, change orders shall not be issued to increase the scope or change the nature of a project. Change orders may be issued only in response to:

- (i) unanticipated conditions encountered during construction;
- (ii) changes in regulatory criteria; or
- (iii) coordination with construction of other political subdivisions or entities.

(B)(C) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(2) No commission approval is required if the change order is \$25,000 or less [than \$10,000]. If the change order is [\$10,000 or] more [but less] than \$25,000 [\$50,000], the executive director or his designated representative may approve the change order. [If the change order is \$50,000 or more, the commission must approve the change order.] For purposes of this section, if either the total additions or total deletions contained in the change order [equal or] exceed \$25,000 [\$10,000], even though the net change in the contract price will be \$25,000 [\$10,000] or less, approval by the executive director is [or the commission will be] required.

(3) If the change order is \$25,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be filed with the executive director within 10 days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e. city, county, state, other, if required.

[(3) After a change order application is administratively complete, the executive director or his designated representative shall approve or disapprove any change order of less than \$50,000 within 10 days, and the commission shall make every effort to act on any change order application of \$50,000 or more within 20 days or at the earliest practicable date.]

(4) Applications [Filing of documents] for change orders requiring approval shall [require] include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor [district's governing board], and a resolution or letter signed by the board president indicating concurrence in the pro-

posed change;

(B) (No change.)

(C) a detailed explanation [complete justification] for the change;

(D)-(E) (No change.)

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

[(G) other information as the executive director or the commission may reasonably require; and]

(H) filing fee in the amount of \$100 [if estimated or actual cost is \$50,000 or more.]; and

(I) other information as the executive director or the commission may require.

(5) (No change.)

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application review.

§293.82. Change in Project Scope or Plans.

(a) A change in project scope is a change in projects funded or a change in the land use plan used to support the feasibility of a commission approved bond issue which affects the central water or wastewater needs of the district or the amount of financial guarantees required pursuant to commission rules and that does not require an increase in the commission approved bond amount. All applications for a change in the project scope shall include:

(1) a copy of a resolution or letter signed by a majority of the governing board indicating concurrence in the proposed change;

(2) revised land use plan;

(3) revised build-out projections used to support the feasibility of the bond issue, if changed;

(4) revised cash flow analysis, if revised build-out projections have caused a reduction in projected assessed valuations;

(5) a complete justification for

the change;

(6) the number of equivalent utility connections added or deleted by the change;

(7) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(8) draft of the revised financial guarantee and agreement between the district and developer, along with an engineers cost estimate to complete the required projects if a change in the amount of financial guarantees is necessary to comply with commission rules;

(9) Market Study Update if one was required at the time of the bond approval and bonds have not been issued and there has been a change in type of development;

(10) plans and specifications approved by all entities having jurisdictional responsibilities;

(11) other information as the executive director or commission may require.

(b) A change in plans is a change in commission approved plans and specifications for construction work that is not under contract and that does not require a change an increase in the commission approved bond amount.

(1) No commission approval is required if the change in plans is \$25,000 or less.

(2) If the change in plans is \$25,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be filed with the executive director within 10 days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required.

(3) All applications for change in plans shall include:

(A) a copy of a resolution or letter signed by the governing board indicating concurrence in the proposed change (and for drainage districts, an advertisement affidavit indicating the proposed change in plans was published as required by the Texas Water Code, §56.123);

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) revised land use plan, if changed;

(D) a detailed explanation for the change;

(E) a detailed cost summary showing additions and/or deletions to the approved plans and specifications and new cost estimate;

(F) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(G) the number of utility connections added or deleted by the change;

(H) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(I) a filing fee in the amount of \$100; and

(J) other information as the executive director or the commission may require.

(4) For purposes of this section, if either the total additions or total deletions contained in the change order exceed \$25,000, even though the net change in the contract price will be \$25,000 or less, approval by the executive director is required.

(c) Copies of all changes in plans, specifications and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

§293.83. District Use of Surplus Funds. Except as provided in paragraphs (3), (4), and (5) of this section a district contemplating use of surplus bond funds, interest earned on invested bond proceeds, grants, contributions by others for costs sharing of facilities constructed with bond funds and litigation settlements related to projects financed by bond proceeds must receive [commission] approval from the executive director prior to obligation of these funds for any purpose.

(1) For engineering projects, the following documents shall be filed:

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

(C) a detailed explanation [complete justification] of the project;

(D)-(E) (No change.)

(F) engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(G)[(F)] the amount and source of funding including how available funds were generated;

(H)[(G)] the 100-year flood data for area to be served if not previously provided;

[(H) other information or the executive director or the commission may reasonably require; and]

(I) a filing fee in the amount of \$100 [if estimated cost or actual cost of \$50,000 or more.]; and

(J) other information as the executive director or the commission may require.

(2) For expenditures other than engineering projects, the following documents shall be filed:

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

(D) a filing fee in the amount of \$100 [if estimated cost or actual costs is \$50,000 or more].

(3) Subject to the requirements prescribed in subsection (4) of this section, a district which meets the requirements of §293.59(k)(4) of this title (relating to Economic Feasibility of Project) related to the combined no-growth debt service tax rate, may use surplus funds for improvements necessary to serve development within the district as follows without further approval:

(A) rehabilitation or maintenance of facilities previously approved by the commission for funding and owned by the district if the scope of the originally approved project has not changed;

(B) engineering and construction costs associated with constructing water plant or wastewater treatment plant improvements located on the plant site, including storage facilities to meet project needs within the district's boundaries;

(C) pump stations and force mains located within the boundaries of the district which directly connect the districts sanitary sewer system to a regional plant;

(D) alternate water supply interconnects between two or more districts.

[(3) A proposed use of surplus funds that is less than \$50,000 may be approved by the executive director without additional formal commission approval.]

(4) Districts contemplating the use of surplus funds as provided in paragraph (3) of this section must:

(A) receive all required approvals of associated plans and specifications from other governmental agencies, including the commission, prior to construction;

(B) submit to the executive director and the appropriate field office those documents required by §293.62 of this title (relating to Construction Related Documents To Be Filed With the Commission).

(C) report expenditures of all surplus funds in their annual audit report in accordance with the Annual Audit Report Requirements.

(5) A district may transfer surplus interest earnings on invested bond proceeds to its debt service account without Commission approval if permitted by its bond covenants and if such funds are not committed for other purposes.

§293.84. District Use of Escrowed Funds.

(a) A district contemplating the use of commission-directed escrowed funds for [the] a purpose approved in the bond application [Documents needed to file are:] must file the following documents with the executive director:

(1) a resolution by the governing board or a letter from the board president requesting approval of the expenditure;

(2) evidence that the reason for escrow of such funds has been satisfied; and

(3) other information as the executive director or the commission may require and requested within 10 days of receipt of application; and

(4) a filing fee in the amount of \$100 [regardless of cost].

(b) A district contemplating use of commission-directed escrowed funds for purposes other than as approved by the commission [with] in the bond application [Documents needed to file are:] must receive approval of the executive director.

To secure such approval, the following documents must be filed:

(1) for engineering projects:

(A) the documents required by §293.83 (4) [(1)] of this title (relating to District Use of Surplus Funds); and

(B) a resolution of the governing board or a letter from the board president requesting such release from escrow;

(2) for purposes other than engineering projects:

(A) a resolution by the governing board requesting escrow release;

(B) a detailed explanation [complete justification] of purpose for which the funds will be expended; and

[(C) other information as the executive director or the commission may require; and]

(3) a [for] filing [,a] fee in the amount of \$100 [, regardless of cost.] ; and

(4) other information as the executive director may require.

§293.85. Change in Commission Approved [Bond Interest Rate] Maturity Schedules, Commission Approved Tax Rates, or Increase in Commission Approved Bond Interest Rate.

(a) If a district proposes an increase in a commission approved interest rate or a change in maturity schedule which requires [If there is] no increase [change] in bond amount or change in the commission approved [required] tax rate, the district shall file a written statement with the executive director signed by the board president indicating that [there is] no such increase or change is required and shall provide a revised bond issue cost summary. Under these conditions, no further approval is required [the executive director or his designated representative may approve the increased interest rate or maturity schedule without additional formal commission approval].

(b) If a district proposes a change in a commission approved interest rate or a change in maturity schedule which requires an increase in the bond amount, approval of the commission of a bond amendment by the district is required.

[(b) If there is a change in the required tax rate, the district shall file:

[(1) a resolution by the governing board requesting approval of the

change;

[(2) a revised cost summary, projection of revenues and expenses, and amortization schedule, as applicable;

[(3) a complete justification for the change; and

[(4) other information as the executive director or the commission may require.]

(c) If a district proposes a change in a commission approved interest rate or maturity schedule which requires a change in the commission approved tax rate, [may be approved by the chairman of the commission] approval of the executive director [without additional formal commission approval], is required. To secure such approval, the district shall file the following:

(1) a resolution by the governing board requesting approval of the change;

(2) a revised cost summary, if applicable, projection of revenues and expenses, and amortization schedule, as applicable;

(3) a detailed explanation for the change; and

(4) other information as the executive director may require.

[(d) A filing fee of \$100 is required, if the applicant requests formal commission action.]

§293.86. Bond Amendment. A bond amendment is a change in a commission approved bond issue project that requires an increase in [a revision of] the approved bond amount. Applications for bond amendments require commission approval and shall include the following [shall]:

(1) a resolution by the governing board requesting approval of the bond amendment;

(2) revisions to applicable required items which were previously submitted pursuant to §293.43 of this title (related to Application Requirements);

(3) a detailed [complete justification and] explanation of the amendment; [and]

(4) filing fee in the amount of \$100; and [.]

(5) other information as the executive director may require.

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 March 19, 1993.

TRD-9320617

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Proposed date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

Other Actions Requiring Commission Consideration for Approval

• 31 TAC §293.82

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

The repeal is proposed under the Texas Water Code, (Vernon 1992), §§5. 103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.82. Change in Plans.

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 March 19, 1993.

TRD-9320611

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

Reports

• 31 TAC §§293.91, 293.92, 293.94-293.97

The new and amended sections are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.91. Reporting by Districts.

(a) All districts are required to file certain documents and reports with the executive director by the Texas Water Code, Chapter 50, as follows:

(1)-(5) (No change.)

(6) an annual audit report, fi-

financial report, or financial dormancy affidavit, as required by subsections (c), (e), and (f) of §293.94; and [a certified copy of the annual audit report required by the Texas Water Code, §50.374, within 135 days after the close of the district's fiscal year, together with a statement explaining the district's refusal if the district refuses to approve the annual audit report;

(7) the annual financial dormancy affidavit, when applicable, provided for in the Texas Water Code, §50.377, on or before January 31 of each year;

(8) the annual financial report in lieu of an annual audit, when applicable, as provided for in the Texas Water Code, §50.378, within 45 days after the close of the district's fiscal year, together with the required affidavit verifying the report's accuracy and authenticity;

(9) an annual filing affidavit, as required by §293.94(g) of this title (relating to Annual Financial Reporting Requirements). The Texas Water Code, §50.374(d), certifying that all filings of copies of the annual audit report, an annual financial dormancy affidavit, or annual financial report, as applicable, have been completed.

(b) (No change.)

§293.92. Additional Reports and Information Required of Certain Districts. A district which is providing or proposing to provide, as the district's principal function, water, [and] sewer, drainage, and flood control or protection facilities or services, or any [either] of these facilities or services that have been financed or are proposed to be financed with bonds of the district payable in whole or in part from taxes of the district, to household or commercial users, other than agricultural or irrigation users, and which district includes less than all the territory in at least one county and which, if located within the corporate area of a city, includes less than 75% of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part shall file with the commission such additional reports and information as may be required by the executive director from time to time [shall provide and file with the executive directors reports and information required by the Texas Water Code, §50.301 and §50.302. The information shall include:]

(1) The information shall include:

(A)[(1)] the name of the district;

(B)[(2)] the complete and accurate legal description of the boundaries of the district;

(C)[(3)] the most recent rate of district taxes on property located in the district;

(D)[(4)] the total amount of bonds which have been approved by the voters and which may be issued by the district;

(E) the aggregate initial principal amount of all bonds of the district payable in whole or in part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) which have been previously issued;

(F) a statement as to whether a standby fee is imposed by the district, and, if so, the amount of the standby fee;

(G)[(5)] the date on which the election to confirm the creation of the district was held, if such was required;

(H)[(6)] a statement of the functions performed or to be performed by the district;

(I) the particular form of Notice to Purchasers required by §50.301 to be furnished by a seller to a purchaser of real property in that district completed by the district with all information required to be furnished by the district; and

(J)[(7)] a complete and accurate map or plat showing the boundaries of the district;

(K) if a district has not yet levied taxes, a statement to such effect together with the district's projected rate of debt service tax estimated at the time of creation of the district shall be substituted for subparagraphs (C) and (D) of this subsection.

(i) [(A)] The information and map or plat required by this section and each amendment to the same shall be signed by a majority of the members of the governing board of the district and by each such officer affirmed and acknowledged, before it is filed with the county clerk [and each amendment made to an information form or map shall also be signed by the members of the governing board of the district and by each such officer affirmed and acknowledged, before it is filed with the county clerk].

(ii) [(B)] The information

form required by this section shall be filed with the county clerk within 48 hours after the district is officially created. [executive director within five days of the date it is filed with the county clerk.] For purposes of this section, the words "officially created" mean the date and hour in which the results of the election to confirm the creation of the district are declared.

(iii)[(C)] Within seven days after a change in any of the information contained in the district information form, map or plat, the district shall file with the county clerk an amendment setting forth the changes made.

(iv) A copy of all information forms, maps, plats, and amendments thereto filed under this section shall also be filed with the executive director within five days of its filing with the county clerk.

(v)[(D)] If a district fails to file the information required by the Texas Water Code, §50.302, in the time required, the executive director may request the attorney general, or the district or county attorney of the county in which the district is located, to seek a writ of mandamus to force the governing board of the district to prepare and file the necessary information.

(vi)[(E)] If a district covered by the provisions of this section is dissolved, annexed to another local government or is consolidated with another district, the members of the governing board shall file a statement of this fact together with the effective date of the dissolution, annexation, or consolidation with the information form.

§293.94. Annual Financial Reporting Requirements. [Audits]

(a) Statutory provisions for fiscal accountability. All districts are required to comply with the provisions of the Texas Water Code, §§50.371-50.381, requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manuals. All districts shall comply with the accounting and auditing manuals adopted by the executive director and formally approved by the commission by minute order. The manuals shall consist of two publications, "Water District Accounting Manual" and "Annual Audit Report Requirements". The manuals may be revised as necessary by the executive director and formally approved by the commission by minute order.

(c)[(b)] Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense

of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. An audit performed by the state auditor pursuant to the Texas Water Code, §50.381, will not relieve the districts and river authorities listed therein from the annual audit requirements of the Texas Water Code, §50.371. Districts with limited [little] or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d)[(c)] Form of audit. The audit shall be performed according to [the] generally accepted auditing standards adopted by the American Institute of Certified Public Accountants and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles [as adopted by the American Institute of Certified Public Accountants].

[(d) Accounting and auditing manual. All districts shall comply with the accounting and auditing manual adopted by the executive director and formally approved by the commission by minute order. The manual shall consist of two publications entitled Minimum Accounting and Administrative Records Requirements and Annual Audit Report Requirements. The manual may be revised as necessary by the executive director and formally approved by the commission by minute order.]

(e) Audit report exemption.

(1) A district may elect to prepare an annual unaudited financial report in lieu of an audit provided:

(A) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(B) the district did not have gross receipts from operations, tax collections, loans, or contributions [revenues] in excess of \$20,000 [\$5,000] during the fiscal period; and

(C) the district's cash [, receivables,] and temporary investments were not in excess of \$50,000 [\$20,000] at any time during the fiscal period.

[(2) The annual financial report must be accompanied by an affidavit attesting to the accuracy and authenticity of the financial report signed by the district's current president or chairman of the board, or by a county judge who is presiding as chairman of the governing board.]

(2)[(3)] The annual financial report and filing affidavit must conform with

the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the commission's District Administration [Audit] Section of the Water Utilities [Districts] Division.

[(4) Districts governed by this section are subject to periodic audits by the executive director.]

(f) Financially dormant districts.

(1) A district [Those districts that can satisfy the criteria contained in this section] may elect to prepare a financial dormancy affidavit rather than an unaudited financial report, as prescribed by subsection (e) of this section, [or an audit report, as prescribed by subsection (b) of this section] provided:

(A) the district had \$500 or less of receipts [no revenue] from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(B) the district had \$500 or less of disbursements [no expenditures] of funds during the calendar year;

(C) the district had no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and [.]

(D) the district did not have cash or investments in excess of \$5,000 at any time during the calendar year.

(2) The required financial dormancy [annual calendar year affidavit] and filing affidavit shall be prepared in a format prescribed by the executive director and shall be signed by the board's current president or chairman of the board, a member of the board designated by the presiding officer, the board's attorney, or by a county judge who is presiding as chairman of the governing board. Financial dormancy affidavit forms may be obtained from the commission's District[s] Administration Section [Division].

[(3) Districts governed by this section are subject to periodic audits by the executive director.]

(g) Annual filing affidavit. Each district shall file annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office and with the local city or county as required by subsection (h) of this section. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary [un-

necessary]. However, each district that files an audit report must execute and submit, together with the audit, an annual filing affidavit when the audit is filed with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the commission's Districts Administration Section.

(h) Filing of audits, financial reports, and affidavits.

(1) Filing dates.

(A) (No change.)

(B) Financial reports. Financial reports and the annual filing affidavits that are integrated within the reports shall be filed as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year [(Texas Water Code, §50.378(c))].

(C) Financial dormancy affidavits. Financial dormancy affidavits shall be filed as prescribed by paragraph (2) of this subsection by January 31 of each year. The calendar year affidavit affirms that the district met the financial dormancy requirements stated in subsection (f) of this section [was financially inactive, or dormant.] during part or all of the calendar year immediately preceding the January 31 filing date.

(2) (No change.)

(i) Review by executive director.

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

(3) Districts governed by this section are subject to periodic audits by the executive director. The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the executive director considers necessary for the review, analysis, and approval of an audit report, financial report, or financial dormancy affidavit.

[(j) Access to and maintenance of district records.

[(1) The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the executive director considers necessary for the review, analysis, and approval of an audit report.

[(2) The governing board of each district shall ensure that the minutes of governing board meetings and the district's accounting records are prepared on a timely basis and maintained in an orderly manner throughout the district's fiscal year in accordance with the requirements prescribed by the executive director within the publica-

tion *Minimum Accounting and Administrative Records Requirements*. Each district shall preserve its minutes, contracts, notices, accounts, and all other records or certified copies thereof in a safe place, suitable for public inspection. All records, including the fiscal records, shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purpose of recording its fiscal affairs and for preparing an audit, during which time the fiscal records are under the control of the district's auditor. Those districts proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district and having at least 100 qualified electors residing in the district shall maintain all district fiscal records in a district office located in the district.

[(3) Prior to the start of a fiscal year, the governing board of each district shall adopt an operating budget for the upcoming fiscal year. The adopted budget and any subsequent amendments shall be passed and approved by a resolution of the governing board and shall be made a part of the governing board minutes. Budget amendments are required by the commission only if events occur which prevent meaningful comparison of the budget to the actual results of operations. The adopted budget is not a spending limitation imposed by the commission. However, the governing board may adopt rules to limit the spending authority of the district officers in relation to the budget. A comparison of the actual operating results to the adopted budget, as amended, shall be presented in the annual report of each district. The budgetary comparison statement shall be included either within the audited financial statements or within a supplementary section.

[(4) Each district, whether active or dormant, shall maintain records sufficient to determine amounts paid by a developer or others, to any other party or parties, on behalf of the district. Such payments shall be disclosed in all of the audit reports, financial reports, or financial dormancy affidavits that are required to be filed by subsections (b), (e), and (f) of this section.

[(5) Districts using proprietary funds (e.g., enterprise funds) in their audited financial statements shall provide sufficient supplemental information to demonstrate compliance with all legal restrictions on the use of district monies. Such supplemental information shall be shown on the format included in the *Annual Audit Report Requirements* referred to in subsection (b) of this section.

[(k) Fiscal year. Within 30 days after a district becomes financially active, the governing board of that district shall adopt a

fiscal year by a formal board resolution and so note it in the district's minutes. The president or chairman of the governing board, a member of the board designated by the presiding officer, or the attorney representing the district shall notify the executive director of the adopted fiscal year within 30 days after adoption.

[(l) Penalties for noncompliance.

[(1) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

[(2) Any district that violates the provisions of the Texas Water Code, Chapter 50, Subchapter K, is subject to a civil penalty of not less than \$50 nor more than \$100 a day for each act of violation and for each day a violation continues.

[(3) Each district, whether active or dormant, shall maintain records sufficient to determine amounts paid by a developer or others, to any other party or parties, on behalf of the district. Such payments shall be disclosed in all of the audit reports, financial reports, or financial dormancy affidavits that are required to be filed by subsections (c), (e), and (f) of this section.]

(j) Penalties for Noncompliance.

(1) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

(2) Any district that violates the provisions of the Texas Water Code, Chapter 50, Subchapter K, is subject to a civil penalty of not less than \$50 nor more than \$100 a day for each act of violation and for each day a violation continues. Before a district is subject to the penalty provided in this subsection, it must continue to violate this subchapter after receipt of written notice of violation from the executive director sent by certified mail, return receipt requested.

§293.95. *Access to and Maintenance of District Records.*

(a) The governing board of each district shall ensure that the minutes of governing board meetings and the district's accounting records are prepared on a timely basis and maintained in an orderly manner throughout the district's fiscal year in accordance with the guidelines set forth in the publication *Water District Accounting Manual*. Each district shall preserve its minutes, contracts, notices, accounts, and all other records or certified copies thereof in a safe place, suitable for public inspection. All records, including the fiscal records, shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purpose of recording its fiscal affairs and for preparing an audit, during

which time the fiscal records are under the control of the district's auditor. Those districts proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district and having at least 100 qualified electors residing in the district shall maintain all district fiscal records in a district office located in the district.

(b) Each district, whether active or dormant, shall maintain records sufficient to determine amounts paid by a developer or others, to any other party or parties, on behalf of the district. Such payments shall be disclosed in all of the audit reports, financial reports, or financial dormancy affidavits that are required to be filed by subsections (c), (e), and (f) of this section.

(c) Districts using proprietary funds (e.g., enterprise funds) in their audited financial statements shall provide sufficient supplemental information to demonstrate compliance with all legal restrictions on the use of district monies. Such supplemental information shall be shown on the format included in the *Annual Audit Report Requirements*.

§293.96. *Miscellaneous [Required] Reports To Be Filed with the Executive Director.*

(a) Certified copy of order canvassing results of any maintenance tax elections shall be filed within 30 days after adoption [All districts shall annually file a currently accurate list showing of the names and addresses of the district's directors and expiration dates of their terms of office].

(b) Certified copy of water and sewer rate order adopted by the board and any amendments thereto, shall be filed within 30 days of adoption.

[(b) The members of the governing board of any district dissolved by procedures other than those provided in the Texas Water Code, §§50.251-50.258 (relating to the dissolution of districts by the commission) shall file a report of such action together with the effective date of the dissolution.]

§293.97. *Adoption of Fiscal Year and Operating Budget.*

(a) Fiscal year. Within 30 days after a district becomes financially active, the governing board of that district shall adopt a fiscal year by a formal board resolution and so note it in the district's minutes. The president or chairman of the governing board, a member of the board designated by the presiding officer, or the attorney representing the district shall notify the executive director of the adopted fiscal year within 30 days after adoption.

(b) **Operating Budget.** Prior to the start of a fiscal year, or as soon thereafter as possible, the governing board of each active district shall adopt an operating budget for the upcoming fiscal year. The adopted budget and any subsequent amendments shall be passed and approved by a resolution of the governing board and shall be made a part of the governing board minutes. Budget amendments may be made from time to time in the discretion of the governing board [are required by the commission only if events occur which prevent meaningful comparison of the budget to the actual results of operations]. The adopted budget is not a spending limitation imposed by the commission. However, the governing board may adopt rules to limit the spending authority of the district officers in relation to the budget. A comparison of the actual operating results to the adopted budget, as amended, shall be presented in the annual report of each district. The budgetary comparison statement shall be included either within the audited financial statements or within a supplementary section.

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 March 19, 1993.

TRD-9320621 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

◆ ◆ ◆
• 31 TAC §293.95

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

The repeal is proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.95. *Required Reports Related to Bond Issues.*

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 March 19, 1993.

TRD-9320612 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

◆ ◆ ◆
Dissolution of Districts

• 31 TAC §293.131

The amendment is proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.131. *Authorization for Dissolution of Water Districts by the Texas Water Commission.*

(a)-(e) (No change.)

(f) Applications shall include a list of assets and liabilities of the district.

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 March 19, 1993.

TRD-9320622 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

◆ ◆ ◆
Petition for Approval of Impact Fees

• 31 TAC §§293.171-293.177

The new sections are proposed under the Texas Water Code (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.171. *Definitions of Terms.* The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Impact fee—Impact fee means a charge or assessment imposed by a district against new development in order to generate revenue for funding or recouping the

costs of capital improvements or facility expansions necessitated by and attributable to such new development.

Capital improvement plan—Capital improvement plan means a plan which identifies capital improvements or facility expansions pursuant to which impact fees may be assessed.

Capital improvements—Capital improvements means water supply, treatment, and distribution facilities, wastewater collection and treatment facilities, stormwater, and drainage, and flood control facilities, including facility expansions, whether or not located within the service area, with a life expectancy of three or more years, owned and operated by or on behalf of a district with authorization to finance and construct such facilities, but such term does not include materials and devices for making connections to or measuring services provided by such facilities to district customers.

Connection—Connection means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards. Connections shall be described in terms of single family equivalent connections, living unit equivalents, or other generally accepted unit typically attributable to a single family household. The assumed population equivalent per service unit shall be indicated.

Service area—Service area means an area within or without the boundaries of a district to be served by the capital improvements specified in the capital improvements plan. The service area may include all or part of the land within a district or land outside a district served by the facilities identified in the capital improvements plan.

§293.172. *Information Required to Accompany Applications for Approval of Impact Fees.* Pursuant to the Local Government Code, §395.080, a district proposing to assess impact fees shall file with the commission an application for commission review. Upon submission of an application for commission review, the executive director has the responsibility for reviewing and the commission has the responsibility for approving or denying impact fee requests by all districts created pursuant to the Texas Constitution, Article III, §52, or Article XVI, §59. Each application filed shall contain the following:

(1) a \$100 filing fee;

(2) a certified board resolution requesting approval of the impact fee and stating the amount of the proposed fee;

(3) a capital improvements plan report prepared, signed and sealed by a professional engineer registered to practice in the State of Texas and which identifies

the proposed capital improvements for which impact fees will be assessed and which shall specifically include the following:

(A) an accounting of the capacity of the existing facilities, the level of current usage, the outstanding capacity commitments, and any unallocated excess capacity. This information should be presented in terms of flows and in terms of connections;

(B) an established land use plan including both the number of connections and the method used in determining the number of connections associated with each category of development;

(C) a map of the service area (on sheets not larger than 24 inches by 36 inches) which clearly:

(i) indicates the properties against which the impact fees shall be assessed;

(ii) identifies proposed land uses;

(iii) identifies existing facilities servicing the area including line sizes and approximate peak daily flow capacities; and

(iv) identifies proposed facilities necessary to serve the area including line sizes and approximate peak daily flow capacities;

(4) projected number of connections attributable to the new development may not be based on a development period exceeding 10 years;

(5) a table establishing the additional demand required by the new connections, including the level of consumption represented by a connection for each category of capital improvements. Justification must be provided if the consumption levels differ from the minimum design criteria established by the Texas Water Commission;

(6) a description of the facilities intended to be financed through impact fees and a detailed analysis of all costs required to finance those improvements;

(7) a detailed calculation of the impact fee amount, including a complete explanation of all assumptions used in the calculation. All terms used should be defined;

(8) any other information as the executive director may require.

§293.173. Impact Fee Notice Actions and Requirements.

(a) The chief clerk of the commission shall set the petition for hearing, and the district shall issue notice thereof.

(b) The notice of the hearing must be published once in a newspaper with general circulation in each county in which the district intends to levy an impact fee. The notice shall be of sufficient size to be easily legible and appear at least 30 days before the scheduled date of the hearing. An affidavit verifying publication of the notice must be filed with the commission prior to the date of the hearing.

(c) The notice shall:

(1) state the time, date, and location of the hearing;

(2) contain a statement of the purpose of the hearing;

(3) include an easily understandable map showing the location of the district in relation to roads and other major landmarks and designating the areas upon which impact fees will be imposed;

(4) state the amount of the impact fee;

(5) inform all persons of their right to appear and present evidence for or against the impact fee or to propose higher or lower impact fees; and

(6) state that the impact fee application and supporting information are available for inspection and copying in the commission's offices during regular business hours and that the capital improvements plan is available for inspection and copying at the district's office during regular business hours.

(d) The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing to each owner of property within the service area, as reflected by the county tax rolls as of the date of filing the application with the commission, unless good cause is shown why such notice should not be given. The district shall obtain a "certificate of mailing" from the United State Post Office to verify such mailing. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls as of the date of filing of the application with the commission.

§293.174. Commission Actions Following the Impact Fee Hearing.

(a) If the commission finds that the impact fee is reasonable, equitable and necessary as a mechanism to finance improvements to serve the designated service area, the commission shall approve the capital improvements plan and impact fee. The commission may approve an impact fee amount that is different than the impact fee amount requested in the application for commission approval; however, in no event shall the commission approve an impact fee amount higher than the impact fee amount

contained in the notice required under §293.173(b) of this title (relating to Impact Fee Notice Actions and Requirements).

(b) The commission shall issue an order defining the impact fee to be imposed based on evidence presented at the hearing.

§293.175. Material Changes. A district's capital improvements plan may be amended from time to time as development needs of the district change; provided, however, that to the extent that such amendments constitute a revision of the impact fee structures, commission approval of the amended plan and impact fee shall be required. A property owner affected by an impact fee may petition the commission to review its authorization of impact fees if there is a substantial amendment to or change in the conditions described in the capital improvements plan subsequent to the commission's approval. The burden of proof will be on the landowner to show that there has been a substantial change which would materially change the amount or applicability of the impact fee. If the executive director is satisfied that the landowner has presented a prima facie case, the district will be required to submit information and/or materials in rebuttal.

§293.176. Prior Approval of Overlapping Impact Fees. If a district is required to assess an impact fee by another political subdivision which has complied with the procedures set out in the Local Government Code; Chapter 395, then the district is not required to seek further approval from the commission of the same fee.

§293.177. Form of Notice of a Public Hearing on the Levy of Impact Fees. The following form should be used to provide notice of the public hearing on an application for the levy of impact fees.

NOTICE ON A PUBLIC HEARING FOR THE LEVY OF (Water, Wastewater, Drainage) IMPACT FEES

Notice is hereby given that a Public Hearing will be held at _____ o'clock, on _____, before the Texas Water Commission (the "Commission"), in its office at the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Travis County, Texas upon an Application Requesting Approval of Impact Fees in the area of the _____ District (the "District") shown in Exhibit A. The application is filed and the hearing is held under the authority of V.T.C.A., Local Government Code, Chapter 395, 31 Texas Administrative Code, Sections 293.151 through 293.155, and under the procedural rules of the Commission.

The purpose of the impact fee is to generate revenue for funding or recovering the costs of capital improvements or facility expansions necessitated by and attributable to serving new development in the areas designated in Exhibit A. At the direction of the District, a registered engineer has prepared a capital improvements plan report which identifies the capital improvements or facility expansions for which impact fees for water, wastewater or drainage is \$_____ per equivalent connection (standard unit).

Prepared testimony to be offered into evidence by any one at the hearing on the application shall be filed with the Chief Clerk of the Commission at least eight days prior to the hearing date, with copies furnished to the applicant, Executive Director and Public Interest Counsel of the Commission, and to any person who files a written protest to the proposed impact fee. Any person may appear at the hearing and present evidence and testify for or against the proposed impact fee.

Signed this the _____ day of _____, 19____.

Texas Water Commission

By:
Chief Clerk

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 March 19, 1993.

TRD-9320623 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 463-8069

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 25. Medical Assistance in State Institutions

Trust Fund Money

The Texas Department of Human Services (DHS) proposes the repeal of §§25.1-25.3, concerning trust fund money; §25.21 and §25.22, concerning general policies; §§25.31-25.36, concerning eligibility; §§25.51-25.65, concerning services provided; §§25.81-25.87, concerning medical assistance and money payments for patients; and §25.101 and §25.102, concerning support documents, in its Medical Assistance in State Institutions chapter. The purpose of the repeals is to delete obsolete rules.

Burton F. Raiford, commissioner, has determined that for the first five-year period the

repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be unnecessary and obsolete rules will be deleted from the Texas Administrative Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Questions about the content of this proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long Term Care Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-022, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §§25.1-25.3

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§25.1. Use for Prior or Current Hospital Claims.

§25.2. Use of Trust Fund to Purchase Medical Treatment.

§25.3. Disposal of Money After Death of Recipient.

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 March 22, 1993.

TRD-9320638 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1993

For further information, please call: (512) 450-3765

General Policies

• 40 TAC §25.21, §25.22

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§25.21. Audits, Inspections, and Utilization Reviews.

§25.22. Long-Term Care.

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 March 22, 1993.

TRD-9320639 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: June 1, 1993

For further information, please call: (512) 450-3765

Eligibility

• 40 TAC §§25.31-25.36

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§25.31. Eligible Recipients.

§25.32. Differentiation Between Patient and Inmate in State Institution.

§25.33. How Eligibility is Established.

§25.34. Applications Based on Blindness.

§25.35. Applications Based on Permanent and Total Disability.

§25.36. Applications Based on Deprivation of Parental Support and Care.

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 March 22, 1993.

TRD-9320640

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: June 1, 1993

For further information, please call: (512)
450-3765

Services Provided

• 40 TAC §§25.51-25.65

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§25.51. Types of Services.

§25.52. How Services Are Provided.

§25.53. Responsibilities of the Institution.

§25.54. Responsibilities of the Social Service Staff of the Institution.

§25.55. Responsibilities of DHS Worker Based in the Institution.

§25.56. Responsibilities of the DHS Workers in the Local Office.

§25.57. Definition of Alternate Care Mental Health.

§25.58. Required Services to Patients in Alternate Care Mental Health.

§25.59. Recognized Alternate Care Mental Health Arrangements.

§25.60. Responsibilities of the DHS Social Services Alternate Care Mental Health Worker.

§25.61. Services to Patients Under 65 in State Mental Hospitals.

§25.62. Referrals From State Mental Hospitals.

§25.63. Processing Applications Prior to

Release from a State Mental Hospital.

§25.64. Services to Patients in State Tuberculosis Hospitals.

§25.65. Referrals From State Tuberculosis Hospitals.

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 March 22, 1993.

TRD-9320641

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: June 1, 1993

For further information, please call: (512)
450-3765

Medical Assistance and Money Payments for Patients

• 40 TAC §§25.81-25.87

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§25.81. Agreement with TDH.

§25.82. Payment for Inpatient Hospital Services in State Mental and Chest Hospitals.

§25.83. Authorization of Vendor Payment.

§25.84. Vendor Payment for Patients Not Covered by Title XVIII.

§25.85. Vendor Payments for Patients Covered by Title XVIII.

§25.86. Definition of Pay Period.

§25.87. Means of Payment.

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 March 22, 1993.

TRD-9320642

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: June 1, 1993

For further information, please call: (512)
450-3765

Support Documents

• 40 TAC §§25.101-25.102

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

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§25.101. State Schools for the Mentally Retarded.

§25.102. State Chest Hospitals.

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 March 22, 1993.

TRD-9320643

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: June 1, 1993

For further information, please call: (512)
450-3765

Chapter 55. Family Services

Subchapter G. Standards

• 40 TAC §§55.7001-55.7011

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

The Texas Department of Human Services (DHS) proposes the repeal of §§55.7001-55.7011, concerning standards in its Family Services chapter. The purpose of the repeal is to delete obsolete rules.

Burton F. Raiford, commissioner, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Raiford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that unnecessary and obsolete rules will be deleted from the Texas Administrative Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Questions about the content of this proposal may be directed to Rita King at (512) 450-4148 in DHS's Client Self-Support Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-034, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§55.7001. Intake Standards.

§55.7002. Referral and Follow-up Standards.

§55.7003. Standards for Developing the Service Plan.

§55.7004. Standards Regarding Methods of Service Delivery.

§55.7005. Standards for Monitoring of Planned Case Activity.

§55.7006. Standards for Reassessing Service Plan.

§55.7007. Standards for Transfer/Termination of Services.

§55.7008. Standards Regarding Protective Payee.

§55.7009. Standards for Monitoring Protective Payee Arrangement.

§55.7010. Outreach Standards.

§55.7011. Resource Development Standards.

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 March 22, 1993.

TRD-9320637

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: June 1, 1993

For further information, please call: (512) 450-3785

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 145. Treatment Alternatives to Incarceration Programs

General Provisions

• 40 TAC §§145.1-145.7

The Texas Commission on Alcohol and Drug Abuse proposes new §§145.1-145.7 concerning treatment alternatives to incarceration programs (TAIP). The new sections establish minimum provisions and criteria for the operation of approved TAIP programs which are designed to provide substance abuse offenders with screening, assessment, referral and placement into licensed and approved chemical dependency program if applicable. The sections are proposed to define what programs must do to become a TAIP program approved by the Texas Commission on Alcohol and Drug Abuse.

Denise Hudson, Director, Fiscal Services, 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.

Ms. Hudson 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 the establishment of quality programming in the Treatment Alternatives to Incarceration Programs approved by the commission. 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 Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2576.

The new sections are proposed under Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of Treatment Alternatives to Incarceration Programs which are designed to provide substance abuse offenders with screening, assessment, referral, and placement into licensed and approved chemical dependency program if appropriate.

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

Approved TAIP Program—A treatment alternatives to incarceration program (TAIP) approved by the Texas Commission

on Alcohol and Drug Abuse as set forth under this chapter.

Assessment—The process of determination of treatment needs by prescribed evaluation procedures.

Commission—The Texas Commission on Alcohol and Drug Abuse.

Education—A system of instruction provided in courses, which is based on a curriculum that provides alcohol and drug information and enhances life skills, and is comprehensive in scope and intent.

Reporting period—That period of time beginning with the date the approval of the TAIP program was granted by the commission and ending August 31 of each year.

Screening, Assessment, and Referral Unit (SAR)—A unit of the approved TAIP program assigned the task of administering and interpreting the screening instrument, performing the assessments, and making the indicated referrals to treatment providers.

Screening instrument—A written device administered to each approved TAIP program participant for the purpose of:

(A) identification of the existence of a substance abuse problem; and

(B) making recommendations for further evaluation, counseling or treatment where indicated.

TAIP—Treatment Alternatives to Incarceration Program

Target Population—Persons arrested for an offense, other than a Class C misdemeanor, in which an element of the offense is the use or possession of alcohol or the use, possession, or sale of a controlled substance; persons arrested for an offense against property who are referred to an approved TAIP program by a judge; persons referred by the community supervision and corrections department; and persons referred to treatment who are determined to be in need of treatment.

Treatment—A planned, structured, and organized program designed to initiate and promote a person's chemical-free status to maintain the person free of illegal drugs.

§145.2. Objective. Pursuant to the legislative directive in Acts 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017, it is the intent of the commission to promulgate written rules and regulations setting forth minimum standards for the operation of treatment alternatives to incarceration programs approved by the commission, for persons who are arrested for an offense other than a Class C Misdemeanor, in which an element of the offense is the use or possession of alcohol or the use, possession or sale of a controlled substance; persons arrested for property of-

fenses who are referred to the program by a judge; persons referred by the community supervision and corrections department; and persons referred to treatment who are determined to be in need of treatment pursuant to the Texas Health and Safety Code, §461.017. These rules establish the minimum acceptable level of quality and operational content for commission approved treatment alternatives to incarceration programs in Texas.

§145.3. Scope of Rules, Regulations, and Standards. Any entity or individual seeking to operate an approved TAIP program shall be required to obtain written approval by the commission pursuant to this chapter. In addition, any entity or individual operating an approved TAIP program, employed by an approved TAIP program, or providing services of an approved TAIP program shall be required to comply with this chapter.

§145.4. TAIP Program Approval.

(a) A TAIP program seeking approval by the commission shall be required to make application to the commission on a prescribed application form and provide the commission with the following:

(1) a detailed description of the operational guidelines, including, without limitation, the policy and procedures manual and letters of agreement between participating criminal justice agencies and treatment service providers for the purpose of making and accepting referrals for treatment;

(2) a copy of the screening instrument and assessment instruments to be utilized by the TAIP program.

(b) Upon approval of the TAIP program, a notification of approval will be issued to the TAIP program by the commission.

(c) Approval shall become effective on the first day of the month following notification of approval, and shall expire on the 31st day of August of the first odd numbered year thereafter.

§145.5. Approved TAIP Program Renewal.

(a) Within 30 days prior to the expiration of approval, a TAIP program seeking renewal by the commission shall be required to make application to the commission on a prescribed application form and provide the commission the following:

(1) make application to the commission for renewal on a prescribed application form;

(2) provide a detailed copy of the current operational procedures manual, including any changes, as well as outcome documentation of participants served and letters of support indicating satisfaction of TAIP program;

(3) provide a copy of the screening instrument and assessment instrument to be utilized by the TAIP program.

(b) Upon the renewal of approval of the TAIP program, a notification of renewal of approval will be issued to the TAIP program by the commission.

(c) Approval shall become effective on September 1st of the year of renewal, and shall expire on the 31st day of August of the first odd numbered year thereafter.

(d) Approved TAIP programs which fail to obtain renewal of approval prior to September 1st on the year of expiration of approval, shall be required to make application to the commission pursuant to §145.4 of this chapter (relating to TAIP Program Approval).

§145.6. Denial, Revocation or Non-Renewal of Approval.

(a) Grounds. The commission may deny, revoke, or refuse to issue or renew a TAIP programs approval if the TAIP program or any person connected with the TAIP program fails to comply with the rules, regulations, and standards of the commission as set forth in this chapter, or with any other requirement of law.

(b) Notice of intent to deny, revoke, or refuse to renew TAIP program approval. Whenever the commission proposes to deny, revocation or refusal to renew TAIP program approval, the TAIP program shall be given written notification by the issuance of a notice of intent to deny, revoke or refuse to renew TAIP program approval to include grounds of denial which shall be mailed to the TAIP program by registered or certified mail at the address on file with the commission.

(c) An informal show cause hearing before the executive director or designee. Any TAIP program which has been issued a notice intent to deny, revoke, or refuse to renew TAIP program approval shall be entitled to submit within 30 days of mailing of such notice, a request for hearing before the executive director or designee and shall be given the opportunity to show cause why such action should not be taken by the commission. At the show cause hearing the TAIP program shall have the right to introduce evidence, to call witnesses, and to cross-examine witnesses who testify in support of the commission's proposed action. The commission shall be entitled to submit evidence through affidavits and documentation, or through the testimony of witnesses. The rules of evidence shall not apply. The executive director shall decide whether or not the show cause hearing shall be recorded.

(d) Notice of denial, revocation, or refusal to renew TAIP program approval. After an informal show cause hearing under subsection (c) of this section, or after 30 days from the mailing of the notice of intent to deny, revoke, or refuse to renew TAIP Program approval if a show cause hearing was not requested, the TAIP program shall be given written notification of the decision of the commission or executive director. If the commission decides to deny, revoke, or refuse to renew TAIP program approval, a notice of denial, revocation, or refusal to renew TAIP program approval shall be issued to the TAIP program, which shall include written notification of the grounds upon which such action was taken, and the procedure for seeking an appeal.

(e) Contested cases: Administrative review. A TAIP Program which has been issued a notice of denial, revocation, or refusal to renew TAIP program approval shall have the right to contest such action by the commission pursuant to the procedures set forth for administrative review of contested cases in the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), provided however, within 30 days from the registered or certified mailing of the notice of denial, revocation or refusal to renew TAIP program approval, the TAIP program shall be required to give notice of the commission of the TAIP programs intent to contest the commission's action and request for administrative hearing.

(f) Final action. Unless contested pursuant to the procedures set forth in subsection (e) of this section or as otherwise required by law, the commissions action shall become final 30 days after the registered or certified mailing of the notice of denial, revocation or refusal to renew TAIP program approval and shall not thereafter be subject to appeal or review.

§145.7. Invalidity of Provisions. If any part of this chapter is found to be invalid by a court or competent jurisdiction, this shall not affect any other part of this chapter which is not dependent upon the invalid part. For this purpose, all parts of this chapter are declared to be severable.

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 March 18, 1993.

TRD-9320515

Bob Dixon
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Proposed date of adoption: April 26, 1993

For further information, please call: (512) 867-8720

Performance Standards

• 40 TAC §§145.20-145.30

The Texas Commission on Alcohol and Drug Abuse proposes new section §§145.20-145.30 concerning treatment alternatives to incarceration programs (TAIP). The new sections establish minimum standards and criteria for the operation of approved TAIP programs which are designed to provide substance abuse offenders with screening, assessment, referral and placement into licensed and approved chemical dependency program if appropriate. The sections are proposed to define what programs must do to become a TAIP program approved by the Texas Commission on Alcohol and Drug Abuse.

Denise Hudson, Director, Fiscal Services, 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.

Ms. Hudson 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 the establishment of quality programming in the Treatment Alternatives to Incarceration Program approved by the commission. 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 Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2576.

The new sections are proposed under Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 481 by adding §481.017, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of Treatment Alternatives to Incarceration Program which are designed to provide substance abuse offenders with screening, assessment, referral, and placement into licensed and approved chemical dependency program if appropriate.

§145.20. Purpose of Approved TAIP Program. The purpose of a treatment alternatives to incarceration program approved by the commission shall be to provide referred offenders with screening, assessment, referral, and placement into a licensed and approved chemical dependency program if appropriate. The TAIP programs are designed to serve as a linkage between community-based chemical dependency treatment systems and the criminal justice system in order to serve the chemically dependent population more efficiently.

§145.21. TAIP Program Content. The services to be provided by an approved TAIP program shall include at minimum the following:

- (1) automatic screening and assessment of the identified offender target population when referred;
- (2) referral and placement of those determined to be in need of treatment;
- (3) a system of referral resources for detoxification, residential, and outpatient treatment services, and substance abuse education programs;
- (4) determination of client's income and ability to pay for treatment;
- (5) collection of information regarding follow-up activities of approved TAIP program participants.

§145.22. Organizational Requirements. All approved county treatment alternatives to incarceration programs shall be required to:

- (1) designate a county TAIP coordinator:
 - (A) to manage the county TAIP program and to maintain communication among the courts; other criminal justice agencies and treatment facilities relating to the standards set forth by TCADA;

- (B) to coordinate screening, assessments, referrals, and placement in the treatment resources;

- (2) document support of the criminal justice system, and establish and maintain necessary communication and agreements for participant referrals from criminal justice system components to ensure effective and accountable operation of approved TAIP programs;

- (3) document support of the treatment community and establish and maintain necessary communications and formal agreements for TAIP participant referrals to the treatment community for effective and accountable operations of approved TAIP programs;

- (4) communicate participant eligibility criteria to set clear standards on participant eligibility as established by the commission so that all approved TAIP program staff and cooperating criminal justice system components and treatment agencies understand exactly who is eligible for approved TAIP program services;

- (5) establish procedures for screening, assessment, referral and placement for eligible offenders including:

- (A) identification, screening, and assessment of eligible offenders at the earliest appropriate time;

- (B) standardized screening and assessment approved by the commission for potential approved TAIP program clients so that all eligibility criteria are met and each client's appropriateness for treatment is determined;

- (6) provide training for all approved TAIP program staff so that staff understands the approved TAIP program mission, as well as their own program's philosophy and specific procedures, thus enabling staff to perform designated job functions;

- (7) establish a management information system for effective tracking of client activities, and to provide timely, accurate, and necessary information to the commission and others as designated by the commission or the criminal justice system;

- (8) establish an advisory board which shall be facilitated by the county coordinator, and which shall:

- (A) be composed of criminal justice representatives and treatment providers;

- (B) meet at least quarterly;

- (C) document all meetings;

- (D) communicate with, inform, serve, and motivate the criminal justice system and treatment system in order to function as a team; and

- (E) promote consistency and continuity between the criminal justice system and the treatment community in dealing with the target population;

- (9) establish procedures for regularly reporting TAIP clients' progress to referring criminal justice system components necessary for effective and efficient tracking through the treatment system, and accurate and timely reporting of each TAIP participants status to referring criminal justice system components.

§145.23: Approved TAIP Program Admission. The following persons are eligible for admission to an approved TAIP program:

- (1) persons arrested for an offense, other than a Class C misdemeanor, in which an element of the offense is the use or possession, of alcohol or the use, possession or sale of a controlled substance;

(2) persons arrested for an offense against property who are referred to the TAIP program by a judge;

(3) persons referred by the community supervision and corrections department; and

(4) persons referred to appropriate treatment who are determined to be in need of treatment.

§145.24. TAIP Program Operations Requirement. All approved TAIP program providers shall be required to:

(1) establish written agreements between involved criminal justice agencies and treatment service providers for the purpose of making and accepting referrals for treatment;

(2) establish a written procedure for screening, assessment, referral, and placement in treatment;

(3) establish a procedure for referral to a certified substance abuse education program when treatment placement is not available;

(4) participate in approved TAIP program evaluations;

(5) develop written operational procedures for the following:

(A) progress reports to criminal justice agencies or the court;

(B) notification to appropriate criminal justice personnel of the participant's discharge from treatment, and aftercare plans, if applicable;

(6) determine a person's ability to pay for the costs of treatment;

(7) document a procedure for referral to private for-profit treatment providers for participants who have the ability to pay for such services;

(8) establish a management information system including the maintenance of follow-up information;

(9) submit reports as established by the commission; and

(10) participate in required commission training activities.

§145.25. Discrimination Prohibited. Any action taken, or function performed by an approved TAIP program and any person associated therewith, including, without limitation, staff, volunteers, administrators, officers and directors, pursuant to this chapter or otherwise shall be done without regard to the sex, race, religion, age, national origin, or disability of the person affected.

§145.26. Complaints. Approved TAIP programs shall prominently display at each site where approved TAIP program services are conducted a sign containing the name, mailing address, and telephone number of the commission and a statement notifying all persons that any complaints against the approved TAIP program may be directed to the commission. Upon verbal or written request, approved TAIP programs and any person associated therewith, including, without limitation, staff, volunteers, administrators, officers and directors, shall also be required to expeditiously provide complete and concise information about complaint procedures, including procedures for complaining directly to the commission.

§145.27. Confidentiality. Approved TAIP programs shall abide by all applicable federal

and state laws relating to confidentiality of patient/client records including, without limitation, 42 United States Code, §290dd-3 and §290ee-3; 42 Code of Federal Regulations, Part 2; and Texas Health and Safety Code, Chapter 611.

§145.28. Approved TAIP Program List. A list of approved TAIP programs shall be maintained by the commission.

§145.29. Approved TAIP Program Monitoring. Approved TAIP programs may be monitored by the commission for compliance with this chapter.

§145.30. Payment of Referral. Under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 464, and as required by the Chemical Dependency Counselor Licensure Rules:

(1) payment for a referral for treatment service is prohibited;

(2) licensed chemical dependency counselors shall not pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for treatment.

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 March 18, 1993.

TRD-9320516

Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption: April 26, 1993

For further information, please call: (512) 867-8720

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Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after 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 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 80. Tow Trucks

- 16 TAC §§80.10, 80.20, 80.30, 80.40, 80.70, 80.80-80.82, 80.90, 80.91, 80.100, 80.101, 80.103

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption proposed amendments to §§80.10, 80.20, 80.30, 80.40, 80.70, 80.80-80.82, 80.90, 80.91, 80.100, 80.101, and 80.103 which appeared in the October 9, 1992, issue of the *Texas Register* (17 TexReg 6989). The effective date of this withdrawal is March 17, 1993.

Issued in Austin, Texas, on March 17, 1993.

TRD-9320427

Jack W. Garison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: March 17, 1993

For further information, please call: (512) 463-3127

- 16 TAC §§80.91-80.94, 80.102

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption proposed repeals to §§80.91-80.94 and 80.102 which appeared in the October 9, 1992, issue of the *Texas Register* (17 TexReg 6994). The effective date of this withdrawal is March 17, 1993.

Issued in Austin, Texas, on March 17, 1993.

TRD-9320419

Jack W. Garison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: March 17, 1993

For further information, please call: (512) 463-3127

TITLE 22. EXAMINING BOARDS

Part VIII. Texas Appraiser Licensing and Certification Board

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

- 22 TAC §153.9

The Texas Appraiser Licensing and Certification Board has withdrawn the emergency effectiveness of amendment to §153.9, concerning the provisions of the Texas Appraiser Licensing and Certification Act. The text of the emergency amendment appeared in the February 9, 1993, issue of the *Texas Register* (18 TexReg 789). The effective date of this withdrawal is April 1, 1993.

Issued in Austin, Texas, on March 17, 1993.

TRD-9320405

Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: April 1, 1993

For further information, please call: (512) 465-3950

- 22 TAC §153.17

The Texas Appraiser Licensing and Certification Board has withdrawn the emergency effectiveness of amendment to §153.17, concerning the Provisions of the Texas Appraiser Licensing and Certification Act. The text of the emergency amendment appeared in the February 9, 1993, issue of the *Texas Register* (18 TexReg 789). The effective date of this withdrawal is April 1, 1993.

Issued in Austin, Texas, on March 17, 1993.

TRD-9320406

Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: April 1, 1993

For further information, please call: (512) 465-3950

- 22 TAC §153.19

The Texas Appraiser Licensing and Certification Board has withdrawn the emergency effectiveness of amendment to §153.19, concerning the Provisions of the Texas Appraiser Licensing and Certification Act. The text of the emergency amendment appeared in the February 9, 1993, issue of the *Texas Register* (18 TexReg 790). The effective date of this withdrawal is April 1, 1993.

Issued in Austin, Texas, on March 17, 1993.

TRD-9320407

Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: April 1, 1993

For further information, please call: (512) 465-3950

- 22 TAC §153.20

The Texas Appraiser Licensing and Certification Board has withdrawn the emergency effectiveness of new §153.20, concerning the Provisions of the Texas Appraiser Licensing and Certification Act. The text of the emergency new section appeared in the February 1, 1993, issue of the *Texas Register* (18 TexReg 791). The effective date of this withdrawal is April 1, 1993.

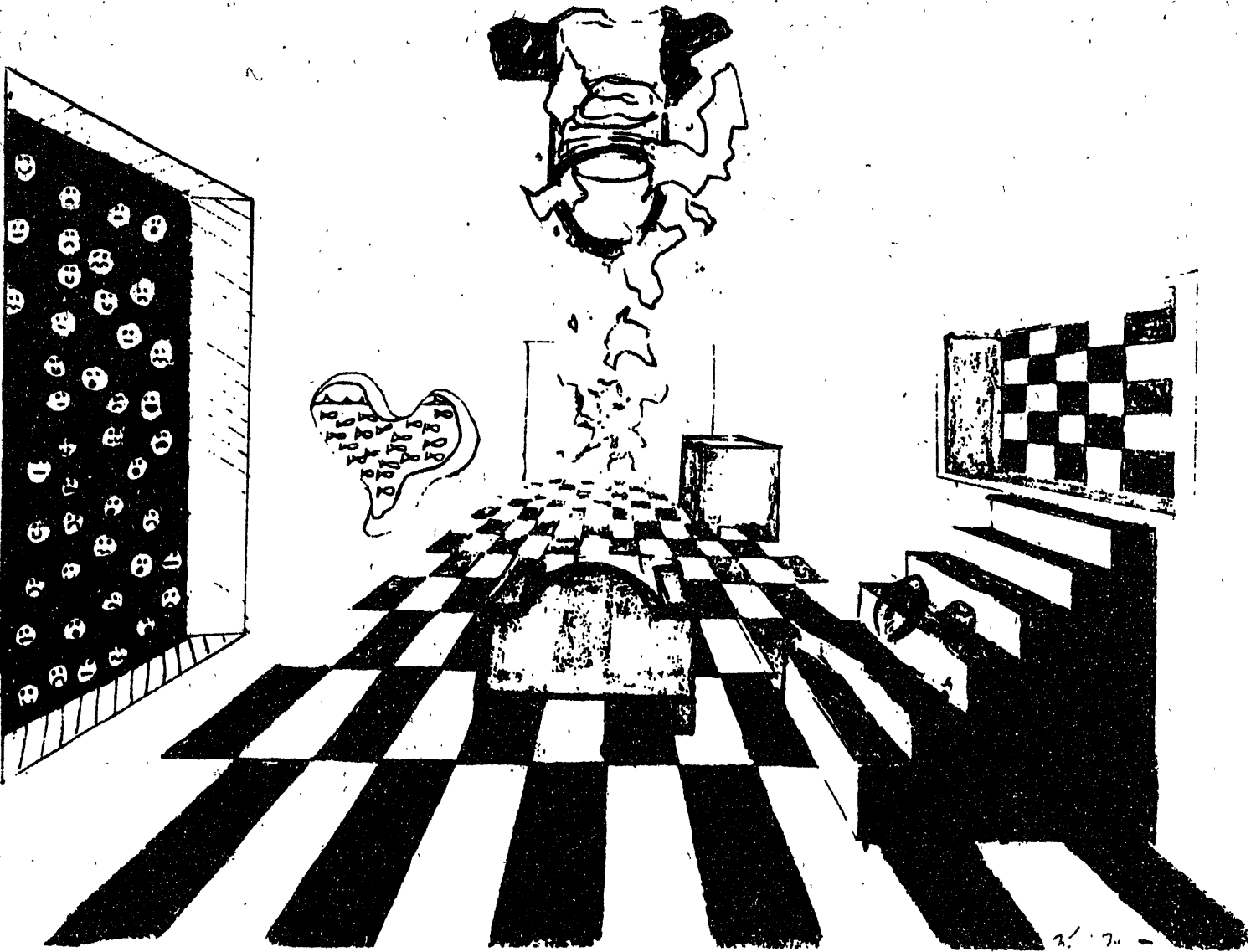
Issued in Austin, Texas, on March 17, 1993.

TRD-9320408

Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: April 1, 1993

For further information, please call: (512) 465-3950



Name: Kevin Martin
Grade: 12
School: Plano East Senior High, Plano ISD

Adopted Sections

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 VIII. Texas Racing Commission

Chapter 301. Definitions

• 16 TAC §301.1

The Texas Racing Commission adopts an amendment to §301.1, concerning definitions, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 545).

The amendment is adopted to ensure that the rules of the commission are consistent with state law and are easily understood by its licensees.

The amendment adds a definition for reasonable belief.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing 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 March 15, 1993.

TRD-9320584 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

Chapter 311. Conduct and Duties of Individual Licensees

Subchapter C. Alcohol and Drug Testing

Drugs

• 16 TAC §311.201

The Texas Racing Commission adopts an amendment to §311.201, concerning use prohibited, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 545).

The amendment is adopted to ensure that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity.

The amendment prohibits a licensee from having a dangerous drug or controlled substance in his or her system while on the grounds of a pari-mutuel racetrack.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

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 March 15, 1993.

TRD-9320585 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

• 16 TAC §311.202

The Texas Racing Commission adopts an amendment to §311.202, concerning subject to testing, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 545).

The amendment is adopted to ensure that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity.

The amendment establishes the penalty for licensee's refusal to submit to a drug test.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

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 March 15, 1993.

TRD-9320586 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

• 16 TAC §311.203

The Texas Racing Commission adopts an amendment to §311.203, concerning method of selection, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 546).

The amendment is adopted to ensure that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity.

The amendment clarifies the method of selection for drug testing.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

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 March 15, 1993.

TRD-9320587 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

• 16 TAC §311.206

The Texas Racing Commission adopts an amendment to §311.206, concerning positive test results, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 546).

The amendment is adopted to ensure that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity.

The amendment clarifies the procedure for evaluating drug test results, including the du-

ties and requirements for the selection of the medical review officer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

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 March 15, 1993.

TRD-9320588 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

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• 16 TAC §311.208

The Texas Racing Commission adopts an amendment to §311.208, concerning penalties, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 546).

The amendment is adopted to ensure that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity.

The amendment outlines the penalties for an individual licensee who has been tested for drugs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

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 March 15, 1993.

TRD-9320589 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

◆ ◆ ◆
Alcohol

• 16 TAC §311.222

The Texas Racing Commission adopts an amendment to §311.222, concerning breathalyzer or other test, without changes to the proposed text as published in the January

29, 1993, issue of the *Texas Register* (18 TexReg 547).

The amendment is adopted to ensure that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity.

The amendment clarifies the selection process for licensees to submit to a breathalyzer or other testing while on association grounds.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

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 March 15, 1993.

TRD-9320590 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

◆ ◆ ◆
• 16 TAC §311.223

The Texas Racing Commission adopts an amendment to §311.223, concerning penalties, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 548).

The amendment is adopted to ensure that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity.

The amendment outlines the penalties for an individual licensee who has been tested for alcohol.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

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 March 15, 1993.

TRD-9320591 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: April 10, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 794-8461

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 157. Hearings and Appeals

Subchapter A. General Provi- sions for Hearings Before the Commissioner of Educa- tion

The Texas Education Agency (TEA) adopts the repeal of §§157.1-157.16, 157.64-157.68, and 157.91-157.98, concerning hearings and appeals, without changes to the proposed text as published in the January 5, 1993, issue of the *Texas Register* (18 TexReg 101).

The chapter is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. A new Chapter 157 is being proposed in a separate submission. The review process will result in a clearer, more concise statement of the rules relating to hearings and appeals.

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• 19 TAC §§157.1-157.16

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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 March 17, 1993.

TRD-9320429 Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 5, 1993

For further information, please call: (512) 463-9701

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Subchapter A. Hearings Con-
cerning Students with
Disabilities under the Indi-
viduals with Disabilities Ed-
ucation Act

• 19 TAC §§157.1-157.9

The Texas Education Agency (TEA) adopts new §§157.1-157.9, 157.21, and 157.26, concerning hearings and appeals. Section 157.8 is adopted with changes to the proposed text as published in the January 5, 1993, issue of the *Texas Register* (18 TexReg 101). Sections 157.1-157.7, 157.9, 157.21, and 157.26 are adopted without changes and will not be republished.

The new sections are adopted in accordance with the sunset review process mandated by

Senate Bill 1, 71st Legislature. The sections provide procedures for hearings concerning proprietary and driver training schools and cases related to students with disabilities. The change to §157.8(m) and new §157.8(p) are adopted in response to new federal requirements concerning hearings. The sunset review process will result in a clearer, more concise statement of the rules relating to hearings and appeals.

The following public comments were received concerning adoption of the new sections.

Comment: When the state is conservator of a student, the rights and duties of the state to request a hearing and represent a student should be specified.

Agency response: Because of potential conflict of interest, federal regulations forbid the state to represent a student or bring a hearing. When the state is conservator of a student, the school district in which the child is enrolled is required by federal law to appoint a surrogate parent to represent the child. Therefore the hearing rules cannot include provision for the state to request a hearing.

Comment: The rules should require provision and posting of written notice of student's rights to request a hearing.

Agency response: Federal regulations and State Board of Education rules currently require such notice.

Comment: The hearing rules should make it clear that a parent may bring an attorney and/or a representative.

Agency response: This suggestion has been included in §157.6(a)(1).

Comment: The rules should clarify that the 45-day time line starts from the date of filing the request for hearing, regardless of any notification to the requestor to specify the issues to be heard.

Agency response: This requirement is currently stated in §157.8(k).

The commentators were Advocacy, Inc., and several individuals representing private law firms.

The new sections are adopted under the Texas Education Code, §21.501 and §32.22; 20 United States Code, §1415; and Texas Civil Statutes, Article 4413(29c), §4 and §17, which authorize the State Board of Education to promulgate rules regarding hearings on proprietary and driver training schools and cases related to students with disabilities.

§157.8. Hearing.

(a) The hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than 10 days, unless the parties agree otherwise.

(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district

courts of the State of Texas. All argument shall be made to the hearing officer alone.

(d) Before the offer, documents offered into evidence shall be numbered, have pages within each exhibit numbered, and have personally identifiable information deleted.

(e) The hearing officer may set reasonable time limits for the presentation of evidence at the hearing.

(f) Upon request, the hearing officer at his or her discretion may permit the testimony of experts to be received by telephone.

(g) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.

(h) Hearings conducted under these sections shall be closed to the public, unless the parent or eligible student requests that the hearing be open.

(i) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to the parties. The hearing officer shall instruct the reporter and the parties to delete all personally identifiable information from the transcription and from all evidence submitted.

(j) Filing of post-trial briefs shall be permitted only upon order of the hearing officer and shall be limited to issues specified by the hearing officer.

(k) The hearing officer shall issue a final decision no later than 45 days after a request for hearing is filed. A final decision must be in writing and shall include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence and on matters officially noticed under the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a, §14. The final decision shall be mailed to each party by the hearing officer. The hearing officer at his or her discretion may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(l) A hearing officer may grant extensions of time for good cause beyond the period set out in subsection (k) of this section at the request of either party. Such extensions shall be granted to a specific date and shall be set forth in writing by the hearing officer to the parties.

(m) The decision made under subsection (k) of this section is final, unless a party brings a civil action under 20 United States Code, §1415(e) in state or federal court.

(n) Under the Individuals With Disabilities Education Act (IDEA) requirements concerning prompt rendering of final decisions, decisions issued under this subchapter shall be final. No motion for rehearing shall be required for a decision to be appealable to court, under the APTRA, Texas Civil Statutes, Article 6252-13a, §16(c). The decision shall recite the fact that the public welfare requires immediate effect of the final decision.

(o) Under the Texas Rules of Civil Procedure, Rule 298, a party may request, within 10 days after the date of the decision, specified additional or amended findings or conclusions. The hearing officer shall issue any additional or amended findings or conclusions that are appropriate, within the discretion of the hearing officer, within ten days after such request is filed.

(p) Final decisions containing findings of fact and conclusions of law shall be made available to the public after any personally identifiable information has been deleted.

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 March 17, 1993.

TRD-9320432 Cries Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 5, 1993

For further information, please call: (512) 463-9701

Subchapter B. Hearings Held under the Texas Proprietary School Act

• 19 TAC §157.21

The new section is adopted under the Texas Education Code, §21.501 and §32.22; 20 United States Code, §1415; and Texas Civil Statutes, Article 4413(29c), §4 and §17, which authorize the State Board of Education to promulgate rules regarding hearings on proprietary and driver training schools and cases related to students with disabilities.

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 March 17, 1993.

TRD-9320433 Cries Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 5, 1993

For further information, please call: (512) 463-9701

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**Subchapter C. Hearings Held
under the Texas Driver and
Traffic Safety Education Act**
• 19 TAC §157.26

The new section is adopted under the Texas Education Code, §21.501 and §32.22; 20 United States Code, §1415; and Texas Civil Statutes, Article 4413(29c), §4 and §17, which authorize the State Board of Education to promulgate rules regarding hearings on proprietary and driver training schools and cases related to students with disabilities.

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 March 17, 1993.

TRD-9320434 Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 5, 1993

For further information, please call: (512) 463-9701

◆ ◆ ◆
**Subchapter B. Specific Appeals
to the Commissioner**
• 19 TAC §§157.64-157.68

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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 March 17, 1993.

TRD-9320430 Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 5, 1993

For further information, please call: (512) 463-9701

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**Subchapter D. Hearings Con-
cerning Handicapped Stu-
dents**

• 19 TAC §§157.91-157.98

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Educa-

tion to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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 March 17, 1993.

TRD-9320431 Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 5, 1993

For further information, please call: (512) 463-9701

◆ ◆ ◆
**Subchapter AA. General Provi-
sions for Hearings Before
the Commissioner of Educa-
tion**

• 19 TAC §§157.1041-157.1060

The Texas Education Agency (TEA) adopts new §§157.1041-157.1060, and 157.1071-157.1074, concerning hearings and appeals. Sections 157.1046, 157.1049-157.1054, 157.1057-157.1059, and 157.1071-157.1074 are adopted with changes to the proposed text as published in the January 15, 1993, issue of the *Texas Register* (18 TexReg 287). Sections 157.1041-157.1045, 157.1047, 157.1048, 157.1055, 157.1056, and 157.1060 are adopted without changes and will not be re-published.

The new sections are adopted in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. The sections govern the proceedings in contested cases and appeals before the commissioner of education. The changes are adopted in response to public comment or are editorial in nature.

The sunset review process will result in a clearer, more concise statement of the rules relating to hearings and appeals.

The following comments were received regarding adoption of the new sections.

Comment: Several commentators opposed the decrease in the time lines for filing an appeal, an answer, exceptions to the proposal for decision, and replies to exceptions.

Response: The commissioner accepted these comments and returned to the time lines established in the previous version of the rule.

Comment: Several commentators opposed the deletion of the continuance provision which automatically granted the parties a continuance upon agreement of the parties; one commentator approved the change.

Response: The commissioner rejected the re-instatement of the original rule based upon docket control needs and the need to streamline the time for conducting the hearing.

Comment: One commentator pointed out an incongruity in the rule pertaining to motions for continuance.

Response: This rule was modified prior to publication as a proposal and no further action was required.

Comment: Several commentators requested that the document filing rule eliminate the requirement that in order to timely file by mail, the document must be mailed one day prior to the deadline.

Response: The commissioner accepted this comment.

Comment: Two commentators approved of the rule permitting the admission of the local record; several commentators disagreed with the admission of the local record of the board of trustees' hearing on the same basis as a deposition, on the basis that repetitious testimony would be excluded at the hearing before the commissioner, that the hearing before the board of trustees was intimidating to the employee's witnesses, that admission of the record of proceedings should be by agreement, that a record should not be used against a party who had reasonable notice of the proceeding but who was not present at the hearing, and that the local hearing is often tried on a political basis, not a legal basis.

Response: The commissioner rejected the request that the provision be withdrawn in its entirety, because it gives both parties an opportunity to reduce costs by offering prior testimony in the cause without the necessity of deposing the witness or paying witness fees or travel expenses to the hearing; the commissioner rejected the request for admission by agreement because that process is currently in use and parties often fail to agree to admit the record; and the commissioner rejected the contention that the nonappearing parties should not be bound by the record of the proceedings because all parties are to have reasonable notice and thus have an opportunity to present or rebut claims. However, the commissioner agreed with one commentator, who asked that the rule be applied prospectively to local hearings held after the effective date of the rule and agreed with a second commentator who asked that persons who testified at the local hearing be permitted to testify before the commissioner if the party presenting the witness wished to call the witness.

Comment: Two commentators requested that the provision defining contemptuous conduct as knowingly or recklessly offering or using false evidence be deleted because the party or the attorney may not have reason to know that the evidence was false.

Response: The commissioner accepted this comment and deleted the word "recklessly" from the rule.

Comment: One commentator requested that the rules pertaining to filing by facsimile be amended to allow filing up to midnight.

Response: The commissioner accepted this comment.

Comment: One commentator disagreed with the requirement that an answer contain specific denials to each allegation, because

many petitions for review contain minor comments that should not require an answer.

Response: The commissioner rejected this comment because the specific denials and admissions serve to streamline the process to determine which factual and legal questions are at issue.

Comment: One commentator requested that the rules deal with amended or supplemental pleadings.

Response: The commissioner rejected this comment as not being a necessary procedure.

Comment: Two commentators disagreed with the need for specific discovery sanctions.

Response: The commissioner rejected this comment because, in rare cases, the hearings examiner must impose sanctions for discovery abuse or failure to respond in order to assure progress of the proceeding. Also, the provisions were recommended by a committee of administrative law practitioners.

Comment: One commentator noted a contradiction in whether a motion to compel discovery was required prior to requesting sanctions.

Response: The commissioner accepted this comment and revised the rule to provide the needed clarity that a motion to compel was required.

Comment: A commentator questioned which forms of discovery can be initiated without the approval of the hearings examiner, while a second commentator requested a provision that allowed for discovery by any means permitted in the Texas Rules of Civil Procedure.

Response: The commissioner rejected these comments because each of the discovery provisions sets forth the prerequisites for acquiring the discoverable information.

Comment: One commentator requested that the order of procedure be revised to require that the party with the burden of proof presents its case first.

Response: The commissioner rejected this position because the hearings examiner has the inherent authority to allow that the order of presentation be modified in the interests of justice.

Comment: One commentator suggested that the Texas Rules of Evidence be incorporated by reference.

Response: Both past and current versions of the rules have contained that provision.

Comment: One commentator requested that agency appeals be drafted to discourage schools from adopting extremely short time lines for grievances.

Response: The commissioner rejected this position as being in excess of his authority.

Comment: One commentator requested that all complaints and hearings conducted by the agency, the commissioner, and the State Board of Education be a review of the local record only.

Response: The commissioner rejected this comment as requiring a statutory amendment.

Comment: One commentator recommended that local boards of trustees be established as the entity within the hearing procedure required to conduct de novo hearings and produce the legal record of the hearings.

Response: The commissioner rejected this comment as requiring a statutory amendment.

Comment: One commentator requested that substitution of a hearings examiner be permitted only when the original examiner resigns or becomes incapacitated.

Response: The commissioner rejected this recommendation because the management of the docket requires the flexibility to reassign cases to a new staff member or to an experienced hearings examiner.

Comment: One commentator opposed the definition of hearings examiner on the basis that the commissioner cannot delegate discretionary final actions.

Response: The commissioner rejected this position based upon his authority under the Texas Education Code, §11.52.

Comment: One commentator disagreed with the provision allowing a hearings examiner to align a party with a compatible party if the party representative has been excluded for violating the decorum standards.

Response: The commissioner rejected this position because the rules provide the safeguard of an appeal of the issue of whether a party representative can be excluded. During this time, a party can secure a new party representative.

Comment: One commentator opposed the requirement that all filings and communications with the agency must be served by certified mail.

Response: The commissioner accepted this comment. The rule now allows for any nonpleading communication to be filed and served by first class mail.

Comment: A commentator questioned the discovery process and the requirement to file a motion to compel discovery in order to obtain a sanction. The commentator requested that the hearings examiner be specifically prohibited from ordering sanctions on his or her own motion without issuing a motion to compel.

Response: The commissioner rejected this position on the basis that the hearings examiner normally would be unaware of a dispute until a party moved for a motion to compel and a sanction.

Comment: The commentator also requested that the rule specify that a request to produce documents does not constitute a motion to compel.

Response: The commissioner rejected this position as unnecessary; however, the language "discovery motion" in subsection 157.1054(b) was clarified to include the words "motion to compel discovery."

Comment: One commentator requested that the motion for rehearing rule contain the provisions contained in the Administrative Procedures and Texas Register Act concerning

extending the time for filing and deciding a motion for rehearing.

Response: This provision was contained in the proposed rule.

Comment: One commentator requested that the definition of notice of final decision contained in the Administrative Procedures and Texas Register Act be included.

Response: The commissioner rejected this comment because the Administrative Procedures and Texas Register Act has been incorporated by reference, and because the purpose of placing the motion for rehearing provisions in the rules was to fully inform pro se litigants and other less experienced party representatives of the procedures required for judicial appeal.

Comment: One commentator requested a provision allowing for hearings outside of Austin.

Response: The commissioner rejected the comment at this time due to lack of funding and staff.

Comment: One commentator requested that the commissioner be established as the first appellate level in Term Contract Nonrenewal Act appeals.

Response: The commissioner rejected this position as requiring a statutory change.

Comment: One commentator requested that the notice of proposed nonrenewal be included in the record of the nonrenewal proceedings.

Response: The commissioner accepted this comment.

Comment: One commentator asserted that the provisions governing appeals under the Term Contract Nonrenewal Act should not be conducted on the basis of the record created at the hearing before the board of trustees, and if the record was to be used, that various conditions be imposed upon the use.

Response: The commissioner rejected this comment on the basis that this process had been in place for thirteen years without invalidation.

Comment: One commentator disagreed with the requirement that reasonable follow up measures be undertaken to secure a witness' testimony at the local hearing as being vague.

Response: The commissioner rejected this comment because the party should undertake some further action to confirm the witness' appearance or nonappearance.

Comment: Another commentator felt that this provision would too easily allow additional testimony at the commissioner's level.

Response: The commissioner rejected this comment because the intent of the rule to balance the positions of the parties was served.

Comment: One commentator requested that the certified transcription of the nonrenewal hearing before the board of trustees be taken by a certified court reporter.

Response: The commissioner accepted this comment.

Comment: One commentator requested that corrections to the nonrenewal transcript be broadened to include corrections to the entire record of the proceeding.

Response: The commissioner accepted this comment.

Comment: One commentator requested that briefs be allowed in nonrenewal proceedings before the commissioner.

Response: The commissioner accepted this comment.

Comment: One commentator disagreed with the inclusion of instances in which the commissioner may substitute his judgment for that of the board of trustees in a nonrenewal proceeding.

Response: The commissioner rejected this position because the commissioner has authority to correct the unlawful actions of the board in these instances.

A public hearing was held on February 10, 1993, before the commissioner of education. Several individuals and the following groups presented testimony: the Texas Classroom Teachers Association, the Texas Association of School Boards, the Texas State Teachers Association, and the Association of Texas Professional Educators.

Several individuals and the following organizations submitted written comments: the Texas State Teachers Association and the Texas Classroom Teachers Association.

In public hearing prior to publication of the rules as proposed, several individuals and the following organizations submitted comments: the Texas Classroom Teachers Association, the Houston Independent School District, the Association of Texas Professional Educators; and the Texas State Teachers Association.

The new sections are adopted under The Texas Education Code, §11.13, which provides for appeals before the commissioner; and Texas Civil Statutes, Article 6252-13a, §3 and §4, which authorize the State Board of Education to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

§157.1046. Conduct and Decorum.

(a) Standards of conduct during adjudicative proceedings.

(1) The hearings examiner and the party representative should refer to the Texas Disciplinary Rules of Professional Conduct for guidance, regardless of whether all participants are licensed attorneys (Texas State Bar Rules, Article 10, §9).

(2) Party representatives shall maintain high standards of professionalism during the administrative process and promote an atmosphere of civility and fairness.

(3) A party representative shall use these rules for legitimate purposes and not for dilatory purposes or to harass or intimidate other participants.

(b) Exclusion or disqualification of party representatives.

(1) Contemptuous conduct. A hearings examiner may exclude or disqualify a party representative from participating in an agency hearing for contemptuous conduct. The hearings examiner shall warn the party representative prior to exclusion, if possible. Contemptuous conduct includes:

(A) actual or threatened physical assault of any participant to the proceeding;

(B) knowingly or recklessly making a false statement of material fact or law to the hearings examiner;

(C) counseling or assisting a witness to testify falsely;

(D) knowingly offering or using false evidence;

(E) filing a frivolous or knowingly false pleading or other document, or filing a frivolous or knowingly false defense. A frivolous filing is one:

(i) primarily for the purpose of harassing or maliciously injuring another person; or

(ii) for which the party representative is unable to make a good faith argument consistent with existing law, or a good faith argument for an extension, modification, or reversal of existing law;

(F) paying, offering to pay, or acquiescing in a payment or offer of payment to a witness based on the content of the witness' testimony or the outcome of the proceeding;

(G) continually violating an established rule of agency procedure or of evidence;

(H) raising superfluous objections or otherwise unreasonably delaying the proceeding or increasing the costs or other burdens of the proceeding;

(I) misrepresenting, mischaracterizing, or misquoting facts or law to gain unfair advantage;

(J) except as otherwise permitted by law, communicating or causing someone else to communicate with the hearings examiner without the knowledge and consent of opposing party representatives in order to gain unfair advantage or to influence the proceeding;

(K) using vulgar or abusive language during the proceeding; and

(L) engaging in disruptive conduct.

(2) Conflicts of interest. A hearings examiner may disqualify a party representative from participating in a proceeding if the hearings examiner decides that the party representative has a conflict of interest. Conflicts of interest can be, but are not limited to, the following:

(A) when a party representative who previously acted as a public officer or employee on a matter later attempts to represent a private client on the same matter, unless the appropriate government agency consents;

(B) when a party representative who serves as a public officer or employee on a matter negotiates for private employment with a party or party representative involved in the same matter;

(C) when a party representative who serves as a public officer or employee participates in a matter involving a former private client whom he or she represented on the same matter, unless no one may legally act in the attorney's stead;

(D) when an attorney engages in the practice of law while under suspension or in violation of a disciplinary order or judgment; and

(E) any other conflict of interest that, in the opinion of the hearings examiner, offends the dignity and decorum of the proceeding.

(3) Procedures for excluding or disqualifying a party representative.

(A) Notice. The hearings examiner shall state the specific reason for excluding or disqualifying a party representative on the record or in a written order. The hearings examiner shall notify the affected party and party representative of the exclusion or disqualification personally or by certified mail.

(B) Reasonable time for substitution. After the hearings examiner has excluded or disqualified a party representative, the affected party or party representative shall have reasonable time to appeal to the commissioner. If the commissioner sustains the exclusion or disqualification, the party shall have a reasonable time

to substitute a new representative. In determining a reasonable time, the hearings examiner shall consider the right of opposing parties to have the proceeding resolved without undue delay. The hearings examiner may therefore align the affected party with another party in interest instead of permitting a substitution.

(C) Appeal to the commissioner. A party or party representative may appeal the exclusion (if it is for a period of more than eight hours) or disqualification to the commissioner. The motion shall be filed with the commissioner within five working days after actual notification of the exclusion or disqualification. If the commissioner does not act within ten days after the motion is filed, the motion is overruled by operation of law. The commissioner may, however, extend the time for taking action on the motion.

(D) No further participation. After being disqualified from a proceeding, a party representative may not provide further assistance, either directly or indirectly, to any party with regard to the proceeding, except to the extent reasonably necessary to appeal to the commissioner and to complete the withdrawal and substitution of a new party representative.

(E) No recusal. The exclusion or disqualification of a party representative by a hearings examiner is not a ground for recusal of the hearings examiner in the same or any subsequent proceeding.

§157.1049. Service of Documents.

(a) Every pleading, plea, or motion, filed with the division of hearings shall be served by delivering a copy to all party representatives of record either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's current address of record, or by facsimile to the recipient's current telecopier number of record. All party representatives shall be served by the same method as the document was filed with the agency. Service by facsimile may be substituted for personal service.

(b) All other communications not specified in §157.1047 of this title (relating to Classification of Pleadings) filed with the division of hearings may be served by first class mail.

(c) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(d) Service by facsimile completed

after midnight local time of the recipient shall be deemed served on the following day.

(e) The party representative shall certify to the hearings examiner compliance with this rule in writing over the signature of the party representative on the filed instrument.

§157.1050. Filing of Documents.

(a) Any document shall be deemed filed only when actually received by the director of hearings and appeals, the assigned hearings examiner, or the designated docket clerk.

(b) Documents may be filed by mail if sent by certified United States mail, return receipt requested, or by an overnight courier service. A document shall be deemed timely filed if it is mailed on the filing deadline as evidenced by a legible postmark placed on the envelope by the United States Postal Service and the document was received by the director of hearings, the hearings examiner, or the designated docket clerk by the close of business on the third calendar day following the filing deadline.

(c) Facsimile transmission of pleadings by telecopier to the division of hearings, in proper form, containing a facsimile of the signature of the party representative filing the pleading, constitutes filing. Parties shall not mail a duplicate of the transmitted document. Filing by facsimile completed after midnight Austin, time shall be deemed filed on the following business day.

§157.1051. Petition for Review.

(a) Except where otherwise provided by law, the petitioner shall file with the commissioner a petition for review within 45 calendar days after the decision, order, or ruling complained of is first communicated to the petitioner. In all cases, when a decision is announced in the presence of the petitioner or the petitioner's representative of record at a hearing, the announced decision shall constitute communication to the petitioner.

(b) A petition for review shall contain the following:

(1) a description of the ruling, action, or failure to act complained of;

(2) the date of the ruling, action, or failure to act;

(3) a precise description of the action the petitioner wants the commissioner to take on the petitioner's behalf;

(4) a statement of the reason the petitioner is entitled to have the commissioner take action;

(5) a statement of the facts of which the petitioner is aware or which the petitioner believes to be true, which would lead to a reasonable conclusion that the petitioner is entitled to the relief sought; and

(6) the name, mailing address, telephone number of the petitioner's party representative during business hours, and facsimile number, if any.

(c) Nothing in this section requires the petitioner to plead all evidence relied upon. However, all issues relied upon by the petitioner must be raised in the petition for review, and the petitioner will be denied the opportunity to present evidence on issues not raised in the petition for review.

(d) The petition for review shall be served on the respondent by personal delivery or by certified mail. A certificate evidencing service shall be included in the petition for review.

§157.1052. Answers.

(a) The respondent shall file an answer within 30 calendar days after receiving notice from the commissioner that an appeal has been docketed.

(b) The answer shall specifically admit or deny each allegation in the petition for review and shall set forth all affirmative defenses.

(c) The answer shall contain the name of the respondent or the respondent's party representative, the mailing address, telephone number during business hours, and facsimile number, if any.

(d) All well-pled factual allegations will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition for review.

§157.1053. Prehearing Conference.

(a) In any appeal, the hearings examiner or a party may move for the setting of a prehearing conference. The hearings examiner shall direct the parties to appear, either in person or by telephone, at a specific time for a conference prior to a hearing on the merits for the purposes of considering any of the following:

(1) the formulation or simplification of issues;

(2) admission of certain assertions of fact or stipulations;

(3) the procedure at the hearing on the merits;

(4) any limitation, where possible, of the number of witnesses; and/or

(5) such other matters as may aid in the simplification of the proceeding or the disposition of matters in controversy, including the settlement of matters in dispute.

(b) Action taken at the conference shall be recorded in the manner directed by the hearings examiner.

§157.1054. Discovery.

(a) Permissible forms of discovery are:

(1) oral or written deposition governed by Texas Civil Statutes, Article 6252-13a, §14;

(2) written interrogatories to a party governed by Rule of Civil Procedure 168;

(3) requests of a party for admission of facts and the genuineness or identity of documents or things governed by Rule of Civil Procedure 169;

(4) requests and motions for production, examination, and copying of documents or other tangible materials governed by Texas Civil Statutes, Article 6252-13a, §14a;

(5) requests and motions for entry upon and examination of real property governed by Texas Civil Statutes, Article 6252-13, §14a; and

(6) motions for a mental or physical examination of a party or person under the legal control of a party governed by Rule of Civil Procedure 167a.

(b) Any motion to compel discovery shall contain a certificate by the party filing the motion that efforts to resolve the discovery dispute without the necessity of agency intervention have been attempted and failed.

(c) Requirements concerning discovery sanctions include the following.

(1) Motions for sanctions or order compelling discovery. Upon reasonable notice to all party representatives and affected persons, a party may apply to the hearings examiner for an order compelling discovery. A party may not request sanctions under paragraph (3) of this subsection without having first obtained an order compelling discovery.

(2) Enforcement in district court. If a person fails to comply with a subpoena or a commission for deposition issued by a hearings examiner, the agency or party requesting the subpoena or commission for deposition may seek its enforcement in district court in any manner provided by law.

(3) Failure to comply with order or with discovery request. If a party; or an

officer, director, or managing agency of a party; or a person designated to testify on behalf of a party fails to comply with proper discovery requests or to obey an order compelling discovery, a hearings examiner may, after opportunity for hearing, make orders in response to the failure, including any of the following orders:

(A) preventing the disobedient party from further discovery of any kind, or of a particular kind;

(B) deeming any facts pertaining to the order, or any other facts, to be established, as claimed by the moving party;

(C) disallowing the disobedient party from supporting or opposing designated claims or defenses, or prohibiting the party from introducing designated matters in evidence; and

(D) striking out pleadings or parts of pleadings, staying further action until the order is obeyed; dismissing the proceeding with or without prejudice; or rendering a judgment against the disobedient party.

(4) Abuse of discovery process. The hearings examiner may impose any of the sanctions listed above on a party who abuses the discovery process in seeking or resisting discovery or who files a request, response, or answer that is frivolous, oppressive, or made for the purpose of delay.

(5) Failure to respond to or supplement discovery. A party who fails to respond to or supplement a discovery request or refuses to supplement a response to a discovery request may not present evidence that the party was under a duty to provide in a response or supplemental response, and may not offer the testimony of an expert witness or of any other person having knowledge of the discoverable matter, unless the hearings examiner finds good cause to permit the evidence despite the noncompliance. The burden of establishing good cause is upon the party offering the evidence, and good cause must be shown in the record.

(6) Impermissible communications. Unless permitted by law, party representatives shall not communicate with the hearings examiner or the commissioner without the knowledge of all other parties. The hearings examiner or commissioner may impose any of the preceding sanctions for impermissible communication.

(7) Record of basis for sanction. The hearings examiner shall state the specific basis for any sanction in the record or in a written order. A sanctioned party has

the right to appeal the sanction to the commissioner in accordance with §157.1046(b)(3) (C) of this title (relating to Conduct and Decorum).

§157.1057. Order of Procedure at Hearing.

(a) The petitioner may state briefly the nature of the claim or defense, what the petitioner expects to prove, and the relief sought. Immediately after, the respondent may make a similar statement, and the intervenors and other parties will be afforded similar rights as determined by the hearings examiner.

(b) Evidence shall then be introduced by the petitioner. The respondent and intervenors shall have the opportunity to cross-examine each of the petitioner's witnesses.

(c) Cross-examination is not limited solely to matters raised on direct examination. Parties are entitled to redirect and recross examination.

(d) Unless the statement has already been made, the respondent may briefly state the nature of the claim or defense, what the respondent expects to prove, and the relief sought.

(e) Evidence, if any, shall be introduced by the respondent. The petitioner and intervenors shall have the opportunity to cross-examine each of the respondent's witnesses.

(f) The intervenor and other parties may make their statement, unless they have already done so, and shall introduce their evidence, if any. The petitioner and respondent shall have the opportunity to cross-examine the intervenor's witnesses.

(g) The petitioner may present rebuttal evidence.

(h) The parties may be allowed closing arguments at the discretion of the hearings examiner.

(i) The hearings examiner may permit deviations from this order of procedure in the interests of justice.

(j) Parties shall provide four copies of each exhibit offered.

(k) At the hearing before the commissioner, any part or all of a certified transcript of sworn testimony and exhibits taken in a hearing before the board of trustees from which the petitioner appeals may be used by any party for any purpose against any party who was present or represented at the hearing before the board of trustees or who had reasonable notice of the meeting. The Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness were then present and testifying. Unavailability of a witness is not a requirement for admissibil-

ity. Testimony of a witness in the hearing before the commissioner shall not be precluded solely because the testimony is contained in the record of the hearing before the board of trustees. This subsection applies only to records of hearings held before a board of trustees after the effective date of this section.

(l) In any appeal where a party is represented by more than one attorney, a lead attorney must be designated.

§157.1058. Filing of Exceptions and Replies to Proposal for Decision.

(a) A copy of the proposal for decision in a contested case shall be simultaneously delivered or mailed by certified mail, return receipt requested, to each party representative of record.

(b) Exceptions to the proposal for decision shall be filed within 30 calendar days of the date of the proposal for decision.

(c) Replies to exceptions shall be filed within 50 calendar days of the date of the proposal for decision.

(d) All disagreements with the factual findings of the proposal for decision must be made in the parties' exceptions to the proposal for decision or be waived.

(f) The exceptions shall be specifically and concisely stated. The evidence relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

§157.1059. Orders. After the time for filing exceptions and replies to exceptions expires, the hearings examiner's proposal for decision will be considered by the commissioner and either adopted or modified and adopted. All final decisions or orders of the commissioner shall be in writing and signed. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Party representatives shall be simultaneously notified either personally, by certified mail, or by facsimile transmission of each decision or order.

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 March 17, 1993.

TRD-9320435

Chris Cloud
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 15, 1993

For further information, please call: (512) 463-9701

◆ ◆ ◆
Subchapter BB. Specific Appeals to the Commissioner

• 19 TAC §§157.1071-157.1074

The new sections are adopted under the Texas Education Code, §11.13, which provides for appeals before the commissioner; and Texas Civil Statutes, Article 6252-13a, §3 and §4, which authorize the State Board of Education to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

§157.1071. Proceedings Brought Under the Term Contract Nonrenewal Act.

(a) This section shall apply in all appeals brought under the Term Contract Nonrenewal Act (Texas Education Code, §21.201 et seq). To the extent that this section conflicts with any other sections governing proceedings before the commissioner, the requirements in this section shall prevail.

(b) All allegations by the teacher that the decision of the board of trustees was arbitrary, capricious, unlawful, or not supported by substantial evidence shall be decided upon a review of the record of the proceeding of the board of trustees as required by the Texas Education Code, §21.205(b); however, on the motion of either party, the hearings examiner may order that additional evidence be taken to supplement the transcript if it appears that the party has evidence to offer that is material, relevant, and not unduly repetitious, that the party, for good cause, was unable to adduce at the local hearing. Good cause for failure to secure the testimony of a witness may be demonstrated by:

(1) a clear and unambiguous communication to the witness of the party's intention to call the witness at the hearing;

(2) reasonable notice to the witness of the date, time, and place of the board meeting at which the testimony will be required; and

(3) such reasonable follow-up measures as an ordinarily prudent person would exercise to secure the attendance of a material witness at a hearing before the board of trustees.

(c) In all nonrenewal cases, the school district must file a record of the proceeding before the board of trustees that includes a certified court reporter transcription of the hearing before the board of trustees; the policies on evaluation, nonrenewal, and administrative recommendations concerning nonrenewal; the notice

to the employee of the proposed nonrenewal; the request for a local hearing; and all documents and exhibits filed in the local proceeding. The school district shall provide the teacher with written notice when the record of appeal is prepared and shall make the record available to the teacher for inspection. The school district shall provide the teacher with copies of all items in the record other than the transcript. A copy of the transcript shall be provided to the teacher upon request for a reasonable charge.

(d) The record of the proceeding filed by the school district shall be considered complete and accurate and shall be admitted into evidence before the commissioner for all purposes, unless the petitioner files objections to the record within 30 days after the date of filing of the record that set forth specifically those items that are relevant and material and that have been erroneously omitted from the record or those portions of the record that are relevant and material but that have been inaccurately transcribed. The commissioner may conduct a proceeding for the purpose of receiving evidence relevant to any such challenge to the record if it appears that the matter in dispute is material to the outcome of the appeal.

(e) Allegations in the petition for review that the decision of the board of trustees was arbitrary, capricious, or unlawful must allege sufficient facts that would support a holding that the board of trustees' decision was arbitrary, capricious, or unlawful, even if it should also be held that the decision was supported by substantial evidence. If such factual allegations are not made, no cause of action will be stated regarding these claims.

(f) Upon either party's request, the commissioner shall afford both parties the opportunity to present oral argument and/or briefs concerning the merits of the appeal.

(g) The commissioner of education may substitute his or her judgment for that of the board of trustees upon finding that the board of trustees' decision was arbitrary, capricious, unlawful, or not supported by substantial evidence including, but not limited to, the following circumstances:

(1) where the written notice that the teacher's nonrenewal was under consideration was not given to the petitioner by April 1. Notice sent by certified mail, addressed to the last known address of the teacher, postmarked by the United States Postal Service on or before March 25, will be considered timely;

(2) where the written notice to the teacher failed to state the reasons for the action under consideration;

(3) where the required notice failed to state the reasons in a manner sufficient to allow the teacher the opportunity to adequately prepare a response at the local hearing to the allegations in the notice, and the teacher, at the time the teacher requested a hearing, set forth clearly in writing any deficiencies in the notice, and any such deficiencies were not promptly corrected prior to the date of the hearing;

(4) where the evidence adduced at the local hearing does not support the specific reasons of which the teacher was given written notice;

(5) where the teacher requested a hearing within 10 days after receiving the required notice, and the hearing was not held within 15 days after the request was received, except as provided in this subsection. The teacher may waive his or her right to be heard within 15 days by written agreement. If the school district, within five days of receiving the request for hearing, schedules the hearing for a date outside the 15-day period, the teacher will be deemed to have consented to that date, unless the teacher files an objection to that date within three days after receiving notice from the district;

(6) where the school district fails to provide the commissioner with a certified transcript of the local hearings;

(7) where the decision of the local board was not supported by substantial evidence that would have been admissible in an evidentiary hearing before the agency;

(8) where no written evaluation of the teacher was prepared by the administration, or where the board of trustees failed to consider the administration's evaluation of the teacher prior to its decision not to renew the teacher's term contract as required by the Texas Education Code, §21.202. The board of trustees is not bound by the administrator's evaluation, but the evaluation must be considered;

(9) where the reason for nonrenewal was not set forth in writing in the school district's policies as required by the Texas Education Code, §21.203(b);

(10) where the nonrenewal is based on a reason contained in a policy that was adopted so recently prior to its use as a reason for nonrenewal that the teacher did not have fair opportunity to conform his or her conduct accordingly; and

(11) where the board of trustees prevented the teacher from introducing at the local hearing admissible evidence that was material, relevant, and not unduly repetitious.

(h) Except concerning those matters specifically agreed to, a teacher does not waive any right to raise any procedural

defect or substantive issue on appeal simply by participating in the hearing before the board of trustees; however, any procedural defect known at the time of the hearing and not presented by the teacher at the hearing is waived, unless good cause is shown for the failure to present the defect.

§157.1072. Hearings Concerning Complaints Made to the Teachers' Professional Practices Commission of Texas.

(a) This section shall apply to hearings concerning complaints made to the Teachers' Professional Practices Commission of Texas (TPPC). To the extent that this section of the rules adopted by TPPC conflict with any other sections governing proceedings before the commissioner of education, the requirements of this section shall prevail.

(b) When a complaint is received by TPPC, the director of TPPC will consult with the attorney assigned to TPPC to discuss the jurisdictional determination. If the attorney believes that the facts alleged, even if true, would not constitute a violation of the code of ethics, the attorney shall advise the director of that opinion in writing. In addition, the commissioner or his or her hearing examiner may, at any time, advise the TPPC of their opinions concerning the issue of jurisdiction.

(c) Upon being notified by TPPC that it has accepted jurisdiction of a complaint, the commissioner shall appoint a hearing examiner to preside over the proceeding and an attorney to advise TPPC at the hearing.

(d) The rules of evidence shall be liberally construed at any hearing conducted under this section, and all evidence shall be admitted, unless:

(1) it is clearly irrelevant, immaterial, or unduly repetitious;

(2) its evidentiary value is clearly outweighed by its tendency to prejudice the fact finder against a particular party or witness; or

(3) it is otherwise clearly inadmissible for any purpose.

(e) Parties who are not represented by counsel shall not be placed at a disadvantage by the fact that they are unfamiliar with courtroom procedure. Whenever such a party is prevented from presenting relevant evidence by objections unrelated to the admissibility of that evidence, the attorney assigned by the commissioner to assist TPPC may explain to that party the proper method of presenting the evidence.

(f) After the parties have concluded their examination of any witness, TPPC and the hearing examiner may ask any questions that are necessary and proper to enable

them to understand fully the witness's testimony.

(g) After both parties have presented their evidence and argument, the hearing examiner may discuss any aspect of the case freely with the TPPC during its deliberations.

(h) The commissioner may receive a recommendation from TPPC that any of the following actions be taken regarding the complaint in part or in its entirety:

(1) that the complaint be dismissed;

(2) that the respondent be issued a warning to be made a part of the respondent's file kept by the Texas Education Agency division responsible for educational personnel records;

(3) that the respondent be issued a reprimand to be made a part of the respondent's file kept by the educational personnel records division;

(4) that the respondent be issued a reprimand to be made a part of the respondent's file kept by the educational personnel records division and inscribed on the respondent's Texas teacher certificate, with notification of the reprimand to be provided to all superintendents of all school districts in the State of Texas and to certification officers in each state or territory of the United States by the educational personnel records division;

(5) that the respondent's certificate be suspended for a period not to exceed one year; or

(6) that the respondent's certificate be revoked.

(i) After receiving the TPPC's recommendation, the commissioner shall give the parties the opportunity to respond to the recommendation in the manner set forth in §157.1058 of this title (relating to Filing of Exceptions and Replies to a Proposal for Decision).

(1) No additional evidence may be presented following the TPPC's recommendation without good cause, other than lack of diligence, as determined by the commissioner.

(2) If the commissioner determines that it is necessary to take additional evidence, TPPC and the parties shall be notified of the hearing date. Those members of TPPC who participated in the initial hearing may participate to the same extent in the hearing to receive additional evidence, and after hearing the additional evidence, shall be given an opportunity to file an amended recommendation to the commissioner.

(j) If TPPC recommends that the complaint be dismissed or that the respon-

dent be issued a warning or reprimand to be kept on file by the DEPR, the commissioner may adopt that recommendation with no further proceedings if it is supported by substantial evidence in the hearing transcript. Prior to taking any action other than that recommended by TPPC, the commissioner shall instruct the hearing examiner to prepare a proposal for decision pursuant to subsection (k) of this section.

(k) If TPPC recommends that the respondent's certificate be suspended or revoked, or that the respondent be publicly reprimanded, the hearing examiner shall enter a proposal for decision. The hearing examiner may adopt the TPPC's recommendation in whole or in part in the proposal. The parties shall be given an opportunity to respond to the proposal pursuant to §157.1058 of this title. After receiving TPPC's recommendation, the hearing examiner's proposal for decision, and the parties' exceptions and replies, the commissioner shall take whatever action he or she deems appropriate.

(l) In any case in which the hearing examiner's recommendation is different than that of TPPC, the commissioner shall schedule a conference concerning the matter with the hearing examiner and a representative of the TPPC prior to issuing a decision. The TPPC shall be given 10 days' notice of the conference.

§157.1073. Proceedings Concerning the Suspension or Cancellation of a Certificate or Permit by a District or the Agency.

(a) This section shall apply to all proceedings concerning the sanction of any certificate or permit issued by the commissioner of education other than proceedings brought to the commissioner by the Teachers' Professional Practices Commission of Texas (TPPC). To the extent that this section conflicts with any other section governing proceedings before the commissioner, the provisions of this section shall prevail.

(b) A complaint may be filed at any time by a school district or the Texas Education Agency division responsible for educational personnel records as petitioner requesting the commissioner to sanction a certificate or permit issued by the agency. Any complaint must clearly set forth facts that would justify taking such action and set forth with specificity the sanction sought to be imposed. This complaint shall constitute, and its contents shall be subject to, the rules governing petitions for review. Sanctions include:

(1) that the respondent be issued a warning to be made a part of the respondent's file kept by the educational personnel records division;

(2) that the respondent be issued a reprimand to be made a part of the re-

spondent's file kept by the educational personnel records division;

(3) that the respondent be issued a reprimand to be made a part of the respondent's file kept by the educational personnel records division and inscribed on the respondent's Texas teacher certificate, with notification of the reprimand to be provided to all superintendents of all school districts in the state of Texas and to certification officers in each state or territory of the United States by the DEPR;

(4) that the respondent's certificate be suspended for a period not to exceed one year; or

(5) that the respondent's certificate be revoked.

(c) The respondent shall file an answer that complies with §157.1052 of this title (relating to Answers). All well-pled factual allegations will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in §157.1052(a) of this title. A general denial shall not be sufficient to controvert factual allegations contained in the petition for review.

(d) After receipt of the respondent's answer, the commissioner shall schedule a hearing at which all parties shall have the opportunity to present evidence and argument concerning the merits of the complaint.

(e) The burden of proof at any such hearing will be on the petitioner or petitioner/intervenor to prove its allegations by a preponderance of the evidence.

§157.1074. Student Appeals.

(a) This section shall apply in all appeals brought by students from actions or decisions of a local board of trustees pursuant to the Texas Education Code, §11.13(b). To the extent that this section conflicts with any other section governing proceedings before the commissioner, the provisions of this section shall prevail.

(b) In all cases, the school district must file a record of the proceedings before the board of trustees with its answer. The record of the proceedings must include all policies relevant to the appeal, all written correspondence between the district's representatives and the student (or the student's parents or representatives) concerning the matter appealed, and a certified transcript of the local hearing on the matter. The school district shall notify the student in writing when the record of appeal is prepared and make the record available to the student for inspection. The school district shall provide the student with copies of all items in the record other than the transcript. A copy of

the transcript shall be provided to the student for a reasonable charge upon request.

(c) The commissioner's decision shall be based on a review of the record of the proceedings before the board of trustees; however, on the motion of either party, the commissioner may order that the record be reopened to supplement the transcript if it appears that the party has evidence to offer that is material, relevant, and not unduly repetitious, that the party, for good cause, was unable to adduce at local hearing. Good cause for failure to secure the testimony of a witness may be demonstrated by:

(1) a clear and unambiguous communication to the witness of the party's intention to call the witness at the hearing;

(2) reasonable notice to the witness of the date, time, and place of the board meeting at which the testimony will be required; and

(3) such reasonable follow-up measures as an ordinarily prudent person would exercise to secure the attendance of a material witness at a hearing before the board of trustees.

(d) The record of the proceedings shall be considered complete and accurate and shall be admitted into evidence before the commissioner for all purposes, unless within 30 days of the date of filing the record, the student files objections to the record that set forth specifically the items that are relevant and material and that have been erroneously omitted from the record or the portions of the record that are relevant and material but have been inaccurately transcribed. The commissioner shall conduct a proceeding to receive evidence relevant to any such challenge to the record if it appears that the matter in dispute is material to the outcome of the appeal.

(e) If the record of the proceedings does not contain a certified transcript of the local hearing, the commissioner may either reverse the school district's decision without a hearing, or conduct a hearing to receive evidence concerning all material facts in dispute.

(f) Upon either party's request, the commissioner shall afford both parties the opportunity to file briefs and present oral argument concerning the merits of the appeal.

(g) The commissioner may substitute his or her judgment for that of the board of trustees only when the board's decision was arbitrary, capricious, unlawful, or not supported by substantial evidence.

(h) Cases in which the student's education is being disrupted in any manner pending the outcome of the appeal may be expedited.

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 March 17, 1993.

TRD-9320436

Crisis Cloud
Director of Policy Planning
and Evaluation
Texas Education Agency

Effective date: April 7, 1993

Proposal publication date: January 15, 1993

For further information, please call: (512) 463-8701

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Mandatory Continuing Educa- tion

• 22 TAC §535.71, §535.72

The Texas Real Estate Commission adopts amendments to §535.71, concerning approval of mandatory continuing education (MCE) providers, courses, and instructors and §535.72, concerning presentation of courses, advertising, and records. Section 535.71 is adopted with changes to the proposed text as published in the February 2, 1993, issue of the *Texas Register* (18 TexReg 631). Section 535.72 is adopted without changes and will not be republished.

The amendment to §535.71 adopts by reference a series of revised forms used by MCE applicants and providers. A number of minor changes have been made in the forms to request additional information or reword questions, and two forms relating to course schedules and schedule changes have been discontinued. Two new forms are adopted to permit real estate licensees to request MCE credit for courses approved by another state or by the State Bar of Texas. The amendment also clarifies that providers offering a course originally approved for another provider must use all materials required in the original course. The amendment permits MCE credit to be given for specific core real estate courses, and MCE courses can be used to satisfy relicensing or salesman annual education requirements.

A number of comments were received regarding the proposed amendment to §535.71(m) which would have required MCE providers to furnish students with a course outline and bibliography. The commenters suggested that providers furnish students with all written materials which are the basis for a course. In response to these comments the commission did not amend §535.71(m); the existing section will require providers to continue to furnish students with printed material which is a basis for a substantial portion of the course.

The amendment to §535.72 eliminates requirements for MCE providers to file course schedules or changes to course schedules. Providers may not use enrollment agreements in lieu of precourse announcements about required attendance. Restrictions on use of facilities and use of business names were removed. Providers who charge separate fees for course materials will be required to include the fees in advertisements of the course. The amended section also provides guidelines for instructors to receive credit once for each course for the portion taught by the instructor. Credit may only be given for the remainder of the course if the instructor attends all the course.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(n), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

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

(c) The commission adopts by reference the following forms published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) MCE Form 1A-1, MCE Provider Application;

(2) MCE Form 1B-1, MCE Provider Application Supplement;

(3) MCE Form 2-2, MCE Principal Information Form;

(4) MCE Form 3A-1, MCE Course Application;

(5) MCE Form 3B-2, MCE Course Application Supplement;

(6) MCE Form 3C-1, MCE Single Course Offering Application;

(7) MCE Form 4A-2, MCE Instructor Application;

(8) MCE Form 4B-2, MCE Instructor Application Supplement;

(9) MCE Form 7-0, MCE Course Completion Card;

(10) MCE Form 8-2, MCE Course Completion Roster;

(11) MCE Form 9-2, MCE Correspondence Course Reporting Form;

(12) MCE Form 10-0, MCE Out of State Course Credit Request;

(13) MCE Form 11-3, MCE Instructor Credit Request; and

(14) MCE Form 12-0, State Bar Course Credit Request.

(d) (No change.)

(e) To be approved to offer a classroom course for MCE credit, the provider must satisfy the commission that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate.

(1) A provider applicant must submit an MCE Form 3A-1, MCE Course Application, the first time approval is sought to offer an MCE course. Once a course has been approved, no further approval is required for another approved provider to offer the same course. Prior to advertising or offering the course, however, the subsequent provider must complete MCE Form 3B-1, file the form with the commission, and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. Providers must submit an instructor's manual for each proposed course. A copy of the previously approved instructor's manual must also be submitted for each previously approved course the provider intends to offer. Subsequent providers must offer the course as originally approved or as revised with the approval of the commission and must use all materials required in the original or revised course. The commission will publish guidelines to aid providers in the development of instructor manuals. Each manual must contain the following:

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

(2) The commission may approve a course for a single offering without regard to the requirements of paragraph (1) of this subsection. The provider must be approved by the commission in accordance with the provisions of this section. The course may not be offered again during a providership unless the course has been approved by the commission for subsequent offerings by the original provider in accordance with the provisions of this section. The provider must submit MCE Form, 3C-1, MCE Single Course Offering Application.

(f) To be approved as an instructor of any MCE course, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. An instructor applicant must submit through the proposed provider an MCE Form 4A-2, MCE Instructor Application, the first time approval is sought to teach an MCE course. For subsequent approval to teach a different course, an MCE Form 4B-2, MCE Instructor Application Supplement, must be submitted. Once an instructor has been approved to teach a course, no further approval is required for the instructor to teach the same course for another provider, although the subsequent provider must complete MCE

Form 4B-2 and file the form with the commission prior to using the instructor in the course.

(1) (No change.)

(2) The commission may also approve an instructor for a single offering of a course. The provider must submit an MCE Form 3C-1, MCE Single Course Offering Application, and provide additional information about the instructor's qualifications at the commission's request.

(g) (No change.)

(h) Fees shall be established by the commission in accordance with the provisions of the Real Estate Licensing Act, §7A, at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a cashier's check or money order, or, in the case of state agencies, colleges, or universities, in a form of payment acceptable to the commission. If a provider seeks approval to offer a course previously approved for another provider, and less than one year remains for the course to be offered, the filing fee shall be one-half the current fee for approval of a course. Provided, however, the full current fee is required for an application for approval of a single course offering.

(i)-(k) (No change.)

(l) A course must be devoted to one or more of the subjects specified under the course titles in the Act, §7(a)(2)-(4) and §7(a)(7)-(9), to real estate professionalism and ethics or to other subjects approved by the commission for MCE credit. MCE courses must be presentations of relevant issues and changes within the subject areas as they apply to the practice of real estate in the current market. The commission shall periodically publish lists of subjects other than legal topics which are approved for MCE credit. Courses approved by the commission for prelicensing education or salesman annual education requirements provided in the Act, §7(d) and (e), may be accepted for satisfying MCE requirements provided the student attended the entire course, and MCE courses may be accepted by the commission as real estate related courses for satisfying the education requirements of the Act, §7(d) and (e). The commission may not approve a course which promotes the sale of goods or services by the provider or by a vendor affiliated or associated with the provider. Providers may sell educational materials, such as textbooks or recordings, related to the subjects of the course.

(m)-(p) (No change.)

(q) To be approved to offer a correspondence course for MCE credit, the provider must satisfy the commission that the course subject matter is appropriate for a

continuing education course for real estate licensees and that the information provided in the course will be current and accurate. An applicant must submit an MCE Form 3A-1, MCE Course Application, the first time approval is sought to offer an MCE correspondence course. Once a course has been approved, no further approval is required for another approved provider to offer the same course. Prior to advertising or offering the course, however, the subsequent provider must complete MCE Form 3B-2, file the form together with the appropriate fee with the commission, and receive written or oral acknowledgement from the commission that all necessary documentation has been filed. The commission will publish guidelines to aid providers in the development of correspondence courses. Each correspondence course must contain the following:

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

§535.72. Mandatory Continuing Education: Presentation of Courses, Advertising, and Records.

(a) Providers are not required to file course schedules with the commission.

(b) Providers are not required to notify the commission of changes to their course schedules.

(c) The provider offering each MCE course shall file an MCE Course Completion Roster, MCE Form 8-2, and, for each student completing the course, an MCE Course Completion Card, MCE Form 7-0, with the commission within 10 days following completion of the course. Prior to the commencement of each course, each student seeking MCE credit for that course shall print his or her name and license number on MCE Form 8-2. The names of students not seeking MCE credit must not appear on MCE Form 8-2. If the provider was in attendance, the provider shall sign MCE Form 8-2. If the provider was not in attendance, an authorized representative of the provider who was in attendance and for whom an authorized signature exemplar is on file with the commission shall sign MCE Form 8-2. The commission may not accept signature stamps, unsigned forms, or forms signed by persons for whom an authorized signature exemplar has not been previously filed with the commission. Providers must make every reasonable effort to ensure that no student is certified for MCE credit who has not attended all class sessions. Providers may not use students for administration or monitoring duties during the course if the use prevents the student's participation in a significant portion of the course.

(d) (No change.)

(e) Providers of MCE correspondence courses shall furnish each student

with an MCE Correspondence Course Reporting Form, MCE Form 9-2, at the time of the final examination. Upon completion of the examination the student shall sign MCE Form 9-2. To report successful course completion the provider shall file the completed MCE Form 9-2 with the commission. Providers may not report correspondence courses on MCE Forms 7-0, 8-2, or 11-3.

(f) A provider shall, prior to commencement of a course, announce that the provider will not certify a student for MCE credit unless the student attends all sessions of the course, that partial credit will not be given for partial attendance, that no make-ups or written work will be allowed for MCE credit, that the student must determine if the course is timely and appropriate for the student's MCE requirement, and that the student should retain the detachable portion of MCE Form 7-0 as documentation of attendance. In addition to the pre-course announcements, the provider is encouraged to require each student to sign an enrollment agreement containing the foregoing information prior to the start of the course. If the provider has not advertised or otherwise made students aware of the provider's refund policy, the enrollment agreement must also contain the refund policy. If the course is offered in one continuous session with no meal break and no more than four hours of MCE credit is awarded, the provider may verify attendance by use of a course completion card, MCE Form 7-0, signed by each student attending all of the course. If the course involves a meal break or is presented in more than one session, such as a course offered for three hours each day for five days, the provider shall verify attendance prior to the beginning of each session, using the original course completion roster, MCE Form 8-2, as the enrollment record. A provider shall retain attendance records for the period of time required by these sections for the retention of provider records.

(g) (No change.)

(h) Providers may not present MCE courses in the offices of a real estate brokerage firm or real estate franchise organization. All MCE courses must be publicized as open to enrollment by the general public. Providers may give preference in enrollment to persons who need MCE credit to obtain, renew, or activate a license and may enroll all others on a space available basis.

(i) Advertising of MCE shall be subject to the following conditions.

(1) A person may not advertise a specific MCE course or represent in advertising that the person is a provider until the person has received written approval from the commission for the providership and at least one course. A person may ad-

vertise an intention to offer MCE courses if no specific course is described and the advertisement clearly indicates the person has not been approved as a provider.

(2) A provider may not advertise that a course has been approved or offer a course until the provider has received written approval of the course. If, however, the course has been previously approved for another provider, the course may be advertised once the commission has been notified of the provider's intention to offer the same course and the provider has received written or oral acknowledgment from the commission that all necessary documentation has been filed.

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

(6) Any name a provider uses in advertising must not be deceptively similar to the name of any other approved MCE provider or school accredited by the commission or falsely imply a governmental relationship.

(7) If a provider requires students to purchase course materials which are not included in the tuition, any such fees must appear in the advertisement of the course.

(j) Providers shall retain student attendance records, including copies of completed MCE Form 8-2, for a period of three years following the completion of a course and shall make copies of the records available to former students. A provider may charge a reasonable fee to defray the cost of copying student records. A provider's records must be kept at the location designated in the MCE Provider Application. Providers must obtain prior approval from the commission to change the location at which the provider's records are kept.

(k)-(l) (No change.)

(m) Providers shall request permission to change business name, street or mailing address, ownership, person responsible for records or day-to-day operations, or persons authorized to sign MCE forms at least 15 days prior to the desired date of change. Providers shall report any change in refund policy, attorney-in-fact, address of attorney-in-fact, or business telephone number as the change occurs. All changes must be submitted on MCE Form 1B-1, MCE Provider Application Supplement.

(n)-(o) (No change.)

(p) Providers may request MCE credit be given to instructors of MCE courses subject to the following guidelines.

(1) The instructors may receive credit for portions of the course which they teach.

(2) The instructors may receive full course credit by attending all of the remainder of the course.

(3) MCE credit may be granted only once for each course.

(4) The provider must report the instructor on MCE Form 11-3, and file that form with the commission along with other required forms for the course. The provider may not submit MCE Course Completion Card, MCE Form 7-0, for the instructor or obtain the signature of the instructor as a student on MCE Form 8-2.

(q)-(r) (No change.)

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 March 17, 1993.

TRD-9320495

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: April 8, 1993

Proposal publication date: February 2, 1993

For further information, please call: (512) 465-3900

Licenses

• 22 TAC §535.92

The Texas Real Estate Commission adopts an amendment to §535.92, concerning license renewals and satisfaction of mandatory continuing education (MCE) requirements, without changes to the proposed text as published in the February 2, 1993, issue of the *Texas Register* (17 TexReg 634).

The amendment clarifies requirements for inactive real estate brokers, permits issuance of a license to a previously licensed person prior to the resolution of a pending complaint and makes nonsubstantive changes for clarity. The amendment also requires licensees to use forms approved by the commission when requesting MCE credit for courses satisfying another state's continuing education requirements or for courses approved by the State Bar of Texas.

The amendment is necessary to provide guidelines for licensees and applicants.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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 March 17, 1993.

TRD-9320494

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: April 8, 1993

Proposal publication date: February 2, 1993

For further information, please call: (512) 465-3900

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas

Commission on Law Enforcement Officer Standards and Education

Chapter 229. Texas Peace Officers' Memorial Advisory Committee Division

• 37 TAC §§229.1, 229.5, 229.10, 229.15, 229.20

The Texas Peace Officers' Memorial Advisory Committee to the Texas Commission on Law Enforcement Officer Standards and Education adopts new §229.1, concerning the definitions to be used in this chapter; §229.5, concerning general eligibility of deceased Texas Peace Officers; §229.10, concerning specific eligibility of deceased Texas Peace Officers; §229.15, concerning deaths not included; and §229.20, concerning determination standards, as Final Order Number 92-2 POM with changes to the proposed text as published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9093). These new sections as adopted will establish a set of criteria for selecting qualified deceased Texas Peace Officers to be included on the Texas Peace Officer Memorial.

These new sections were adopted at the March 15, 1993, meeting of the Texas Peace Officers' Memorial Advisory Committee to the Texas Commission on Law Enforcement Officer Standards and Education.

The changes to these new sections as adopted are as follows: the definition of line of duty under §229.1 is to identify actions which are both lawful and reasonable and which are performed either as a condition of employment or appointment; the deletion of the specific sections of the Texas Education Code under §229.5 so as to include peace officers wherever in the code their authority may be found; and the additional language found under §229.20 is to state clearly the intent of the committee which is to review each incident on a case-by-case basis and to be able to waive rules for good cause in making final determinations, particularly concerning historical, sparsely documented incidents.

Responses to written and oral comments received regarding these new sections are as follows:

Chief of Enforcement of the Texas Alcoholic Beverage Commission requested that the definition "killed in line of duty" be amended to expressly include vehicular accidents. The committee appreciates the comments, but the committee feels that §229.10 which is entitled

Specific Eligibility of Deceased Texas Peace Officers, and contains the language "result of a personal injury," includes officers killed in vehicular accidents, without being too limiting.

President of the Texas Association of School District Police requested that language be added to specifically list Texas Peace Officers authorized by the Texas Education Code, §21.483 rather than being listed as "other." The correspondence indicates an awareness that these Texas Peace Officers are included by the existing language. The committee has through its deliberations proposed a rule broad in scope to include all Texas Peace Officers wherever in the law their authority may be found, without a definitive listing or intent to be limiting. The word "other" in §229.5 refers to law and not to a specific classification or group of Texas Peace Officers.

Vice President, Texas Association of School District Police and Treasurer, verbally commented that striking the specific references to the Education Code, §51.212 and §51.214 would accomplish the committee's objectives and the Association's concerns. These concerns are reflected in the modification of §229.5(4).

Staff members of the commission also provided written and oral comments. They requested that the definition "line of duty" be clarified to eliminate the compensation requirement. Further, they requested that a provision be added to reflect the intent of the committee to conduct reviews on a case-by-case basis. These concerns are reflected in the modifications to the rule as adopted.

The new sections are adopted under the Texas Government Code, Subchapter F, Chapter 415, §§415.111-415.123, which provides the Texas Peace Officers' Memorial Advisory Committee with the authority to pass rules for the administration of Subchapter F, Chapter 415, and Texas Civil Statutes, Article 6252-13a, when taken together establish the procedures for the rule making requirements for the Committee.

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

Agency—A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a Texas peace officer or reserve peace officer.

Certified copy—A true and correct copy of a document or record certified to by the custodian of the records of the submitting entity.

Committee—The Texas Peace Officers' Memorial Advisory Committee, a governing body authorized under Chapter 415, subchapter F, Government Code, or its successor.

Director—Director of the Texas Peace Officers' Memorial Advisory Committee or designee.

Individual—A human being who has been born and is or was alive.

Killed in the line of duty—A Texas

peace officer who has died as a directly attributed result of a personal injury sustained in the line of duty.

Law—Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners court; or a rule authorized by and lawfully adopted under a statute.

Line of duty—Any lawful and reasonable action which a Texas peace officer is authorized by law, rule, regulation, or written condition of employment or appointment to perform.

Texas Peace Officer—An individual elected, employed, or appointed under Texas law, and an individual appointed under Texas law as a reserve peace officer who had been officially called to duty.

Verification (verified)—The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

§229.5. General Eligibility of Deceased Texas Peace Officers.

(a) A deceased Texas peace officer, killed in the line of duty, is eligible for inclusion on the Texas peace officers' memorial if:

(1) the Texas peace officer was among those listed under the Texas Code of Criminal Procedure, Article 2.12;

(2) the Texas peace officer was among those licensed by the Texas Commission on Law Enforcement Officer Standards and Education, under the Government Code, Chapter 415;

(3) the Texas peace officer was officially called to duty as a Texas reserve peace officer;

(4) the Texas peace officer was among those listed under the Texas Education Code;

(5) the Texas peace officer was among those named as such by other Texas law; or

(6) the Texas peace officer who, in historical perspective, would be eligible under any of the preceding criteria.

(b) If the supported finding is that the Texas peace officer died as a result of infectious disease contracted while lawfully performing official duties, or by exposure to hazardous materials or conditions while lawfully performing official duties, the Texas peace officer is eligible for inclusion.

(c) The effective date of this section shall be April 30, 1993.

§229.10. Specific Eligibility of Deceased Texas Peace Officers.

(a) A deceased Texas peace officer is eligible for inclusion on the memorial if the fatal incident;

(1) was a direct result of a line of duty, on duty incident;

(2) was an indirect result but directly attributed to a line of duty, on duty incident;

(3) was a direct result of a line of duty, off duty incident, except for reserve Texas peace officers;

(4) was an indirect result of but directly attributed to a lawful line of duty, off duty incident, except for reserve Texas peace officers;

(5) was a direct result of a felonious assault on the Texas peace officer, perpetrated because of the status as a Texas peace officer regardless of duty status.

(b) The effective date of this section shall be April 30, 1993.

§229.15. Deaths Not Included.

(a) A Texas peace officer whose death is attributed to natural causes, is not eligible for inclusion, except when a medical condition arises out of a specific response to a violation of the law or an emergency situation causing a Texas peace officer's death, or causing the Texas peace officer's death during or after a period of hospitalization following the specific response to the violation of the law or emergency situation.

(b) A Texas peace officer whose death is attributed to any of the following is not eligible for inclusion.

(1) when caused as a result of or during the Texas peace officer's commission of a crime;

(2) as a direct result of the Texas peace officer's voluntary alcohol or controlled substance abuse; or

(3) when caused by the Texas peace officer's intention to bring about the Texas peace officer's own death.

(c) The effective date of this section shall be April 30, 1993.

§229.20. Determination Standards.

(a) The committee, through its director, will receive documents and reports to establish a deceased Texas peace officer's eligibility for inclusion on the memorial.

(b) The director of the memorial shall make every effort to confirm the au-

thenticity of documents and information submitted to the committee and shall cause research to be conducted concerning the reported deaths of Texas peace officers.

(c) Examples of documents, reports, and petitions which the committee and the director of the memorial should attempt to obtain include, but are not limited to:

(1) certified copy of the Law Enforcement Agency incident report or other records;

(2) certified copy of the Coroner's report;

(3) sworn affidavit from the law enforcement agency chief executive officer describing and detailing the incident and death;

(4) certified copy of statements of witnesses to the fatal incident;

(5) an original letter or petition of a family member with verified supporting documents;

(6) reproduced documents verified by a state or county historical commission chairperson;

(7) news articles or other published materials supported by documents listed in this section; or

(8) any other documentation which would reasonably substantiate a finding by the committee.

(d) the committee shall review the recommendations of the director of the memorial concerning names of deceased Texas peace officers for inclusion on the memorial at a regularly scheduled meeting and make its final determination. The Committee may waive rules for good cause in making its final determination, and nothing in this chapter shall be interpreted as limiting the committee's authority to determine inclusion or exclusion based on the facts of the incident.

(e) The effective date of this section shall be April 30, 1993.

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 March 18, 1993.

TRD-9320512

Fred Toler
Executive Director
Texas Commission on Law
Enforcement Officer
Standards and
Education

Effective date: April 30, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 450-0188

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 255. State Delivery Systems

Area Agency Designation

• 40 TAC §255.35

The Texas Department on Aging adopts new §255.35, concerning area agency on aging operations, with changes in the proposed text as published in the January 1, 1993 issue of the *Texas Register* (18 TexReg 38).

The justification for the new chapter is that it incorporates materials contained in a previous rule pertaining to staffing of area agencies, includes recent changes to the Older Americans act as amended, and establishes new criteria for area agencies as a result of new directions established by the Older Americans Act and the Board of the Texas Department on Aging.

The rule will function to improve the operation and visibility of area agencies on aging in leadership, advocacy, systems building, access to services, and accountability

During the public comment period, comments were received from Harris County Area Agency on Aging, the YMCA of Harris County, Brazos Valley Area Agency on Aging, Houston-Galveston Area Agency on Aging, Concho Valley Area Agency on Aging, Administration on Aging Region VI, (DHHS) and the Operations Committee of the Texas Board on Aging.

Comment: One commenter posed questions regarding the direction the Department was taking. As the Department moves toward newly targeted populations will service providers be asked to move away from those individuals currently served by our senior centers.

Response: The Older Americans Act, §306(a), as amended, requires targeting of Title III services to those in greatest social and economic need, isolated, and older individuals with Alzheimer's or related disorders. The continuing reduction in human services funding, the increase of the elderly population, and the emphasis of the Older Americans Act to serve the frail and most in need influence the focus. Hopefully, resources will be available or located to allow senior center operations to continue.

Comment: One commenter recommended that the words "with assistance from the Department" be incorporated into the training requirements established in subsection (c)(3) of this chapter.

Response: The department agrees and has incorporated this into the rule.

Comment: One commenter stated that the amount of training required exceeded the resources available to conduct the training and suggested it be scheduled over a period of three or four years.

Response: The Department will review the training plans submitted by each area agency and make recommendations and provide technical assistance to assist area agencies in meeting training requirements of this rule.

Comment: One commenter suggested that wording pertaining to written procedures for selection of state citizens advisory council members be removed from the bylaws requirements established for area agency advisory council bylaws.

Response: The Department concurs and has placed this in a separate paragraph identified as subsection (c)(6)(D) and re-identified subsequent paragraphs accordingly.

Comment: One commenter stated that the language pertaining to location of records in area agencies and service providers which had multi-site operations should be clarified.

Response: The Department concurs and has amended the language in the paragraphs to provide additional clarity.

Comment: One commenter stated that there was confusion between subsection (d)(1)(A) and (B) as to where provider records should be maintained.

Response: The Department concurs and has amended the language in subsection (d)(1)(B) to provide additional clarification.

Comment: One commenter stated that the requirement for grantee audits to be submitted to the Department within 180 days of the grantee organization's fiscal year-end would penalize that grantee.

Response: The Department believes that this requirement is reasonable and attainable. It would not appear to be reasonable to alter the rule because one grantee may have some difficulty meeting the requirements. Therefore, no change was made to this section.

Comment: One commenter stated the guideline for termination of an area agency's grant under subsection (d)(4)(A) was not consistent with other sections of the rule.

Response: The Department concurs and has amended various parts under subsection (d)(4) to provide consistency.

Comment: One commenter stated that the intent of subsection (d)(10)(A)(iv) was unclear.

Response: The Department concurs and amended the paragraph to provide clarity to its meaning.

Comment: One commenter stated that the wording in subsection (d)(10)(B)(ii) (iii) would increase the number of budget submissions.

Response: The Department concurs and deleted the paragraph entirely. subsection (d)(10)(B)(iii)(iii) was also deleted for consistency.

Comment: One commenter stated that 10 normal work days for a budget amendment under subsection (d)(10)(B)(iii) was unreasonable.

Response: After much discussion the Department and the commenter agreed to changing the requirement to 15 days.

Comment: One commenter stated that requiring reports be submitted timely 100% of the time is unrealistic.

Response: The Department agreed to relax the criteria by adding a three day grace period for all reports.

Comment: One commenter addressed the difficulty in meeting the time frame for publishing the area agency's phone listings, as prescribed in subsection (g), in all local phone books.

Response: The Department concurs and amended subsection (g)(4) to allow additional time for compliance. For consistency, subsection (h)(2) was amended to also reflect the later time frame.

Commenter: One commenter provided additional references from the Older Americans Act, Code of Federal Regulations 1321.53, and 45 Code of Federal Regulations Part 92 which could be added to the rule for the sake of clarity and accuracy.

Response: The Department has added these references.

In addition to the changes resulting from public comment, TDoA is adopting the rule with the following changes as a result of staff and board review and recommendations.

The new section is adopted under the Human Resources Code, §101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§255.35. Area Agency on Aging Operations.

(a) Area Agency Program Responsibilities. The operations of the Area Agency on Aging encompasses these distinct responsibilities relative to meeting the requirements of the Older Americans Act.

(1) Leadership. The area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area.

(2) Advocacy. The area agency shall serve as the visible public advocate for the development or enhancement of comprehensive and coordinated community-based system of services in each community through the planning and service area that focus on the needs of low-income minority individuals.

(3) Systems development. The area agency will be responsible for systems building in its planning and service area (PSA). The system building includes five components that will result in the interconnection of the elements of planning, development, service delivery, service access and management. System building will further develop or enhance the existence of a comprehensive and coordinated continuum of services within the planning and service area.

(4) Access to services. The area agency shall be the access point for older

individuals with needs through its information and assistance and case management services.

(b) Organization and staffing of the area agency. The area agency must be a single identifiable organizational unit either standing alone or with an umbrella agency and must have a qualified staff.

(1) Organization. Area agencies will develop and maintain an organizational structure which will effectively administer Older Americans Act programs and responsibilities.

(2) Director. Each area agency must have a full time director able to perform the functions as prescribed in 45 Code of Federal Regulations Part 1321.53 and the Older Americans Act of 1965, §306 as amended. Each individual selected to perform the duties of the full time director will be identified on the staffing pattern and in job descriptions as either director, area agency on aging, or as manager, area agency on aging, and will be budgeted at 100% of administration in the area plan budget.

(3) Qualifications. The full time area agency director should be qualified by education and/or experience to administer, coordinate, and supervise all duties and functions of the area agency.

(4) Staffing plan. The area agency must have on file for review a staffing plan that identifies the staff assigned to carry out area agency responsibilities and functions as detailed in §306, Title III of the Older Americans Act of 1965, as amended.

(5) Organizational chart. The area agency shall have an organizational chart which identifies:

(A) the area agency on aging as an agency which functions as a separate organizational unit to administer programs under the Older Americans Act, as amended;

(B) the area agency on aging director;

(C) all paid and volunteer staff;

(D) each staff position assigned, including part-time;

(E) lines of authority for all paid and volunteer staff; and

(F) the percent of time of each position which is dedicated to aging program activities that is compensated through direct charges to the aging contract.

(6) Job descriptions. Job descriptions for all positions specified on the organizational chart shall be developed and maintained. They will be signed by the incumbent and will include statements which define the scope, responsibilities, duties, and activities of the area agency director, full and part time staff, and volunteer staff.

(7) Hiring preference. Area agencies will give preference in hiring to older individuals. Special consideration shall be given to individuals with formal training in the field of aging (including an educational specialty or emphasis in aging and a training degree or certificate in aging or equivalent professional experience in the field of aging, in accordance with the Older Americans Act, §307(a)(11) as amended.

(c) Area agency activities. Area agencies will administer the provisions of the Older Americans Act as it relates to Title III programs in accordance with the approved area plan, and state and federal fiscal and programmatic rules, regulations and statutes.

(1) System building. Area agencies will facilitate systems building activities for the development of a continuum of services from current service providers to long-term care services for the frail elderly. Area agencies will facilitate systems development in their planning and service area to provide opportunities and protection for older persons in their communities. To do this, area agencies will:

(A) identify the needs of older persons on a continuing basis through the gathering and analysis of data. The outcomes of the needs assessment shall be utilized by the area agency in its area plan and should reveal the following:

(i) the identification of those persons of greatest economic and social need;

(ii) the identification of the needs of the frail elderly;

(iii) the identification of services most needed in the rural areas;

(iv) the establishment of priorities for funding decisions and service system development within the PSA;

(v) the establishment of a plan to target services to those individuals of greatest economic and social need with preference to the low income minority target group as specified in the OAA;

(vi) the identification of available resources which meet, or can be used to meet, the needs of older persons;

(vii) measurable and attainable objectives and outcomes which are

set out in the area plan and development of strategies or action plans which detail the activities to be used in implementing the area plan; and

(viii) the establishment of procedures which provide for the utilization of information obtained from public hearings, the advisory council, local officials, older persons and the general public in the planning and service area of the area agencies on aging;

(B) develop and publish methods for targeting services for those in social and economic need with preference to the low income minority as specified in the OAA as amended;

(C) develop a comprehensive and coordinated system of services delivery;

(D) determine the need for protective services, for the identification, prevention and treatment of abuse, neglect, and exploitation of older persons;

(E) evaluate the effectiveness of the use of resources in meeting such needs; and

(F) enter into contracts with service providers for the provision of services to meet the needs of the elderly as determined in the planning and service region.

(2) Planning. The area agency on aging has the principal responsibilities for carrying out activities necessary for effective planning on behalf of older persons in their planning and service area (PSA). Planning responsibilities include:

(A) needs assessment;

(B) developing and updating the area plan to meet the needs of the older persons as determined by the area agency;

(C) coordinating regional planning with all agencies, coalitions, and elderly persons to maximize all funding resources available to meet the needs of the elderly in the PSA; and

(D) engaging in program development to fill gaps in services or expand existing service delivery, advocacy, and service access.

(3) Training and Technical Assistance. The area agency, with assistance from the Department, shall provide for a training and technical assistance program necessary for the implementation of the area

plan and programs, including in-service training to staff of the area agency, advisory council members, volunteers, grantees, and service providers under the area plan.

(A) The area agency shall develop and implement a training plan for area agency and service provider staff development training each budget year based on information obtained from an assessment of training needs and requests made by the staff, grantees, and service providers under the area plan. The training plan shall include all required training indicated in TDoA standards.

(B) The area agency shall assure the availability of area agency and contractor staff to attend training as required by the state agency.

(4) Monitoring. Area agencies will conduct at least one on-site annual program monitoring of service providers. These monitoring visits may be announced or unannounced at the discretion of the area agency. Technical assistance will be furnished as needed. Area agencies on aging will monitor accomplishment of program outcomes and determine their effectiveness. Monitoring activities shall include:

(A) analysis of the performance of all service providers to which the area agency has awarded a contract;

(B) a monitoring procedure will be established by the area agency that includes written reports on findings to the service providers with a request for corrective action plan, follow up and appropriate correspondence to verify plan was accomplished and documentation of that accomplishment.

(5) Advocacy. Area agencies shall provide leadership and be a visible advocate for older persons within the PSA. Activities on behalf of the elderly are:

(A) involvement of older persons and other citizens in program planning ensuring community awareness of and involvement in addressing their needs;

(B) reviewing and commenting on state plans and grant applications, budgets, and policies which affect older persons;

(C) conduct public hearings to provide opportunities for older persons and those representing older persons to voice their needs and concerns;

(D) coordinating area planning and development of activities related to the purposes of the Older Americans Act;

(E) representing the interests of older persons before legislative, executive and regulatory bodies in their PSA;

(F) providing technical assistance to agencies, organizations, associations or individuals representing older persons;

(G) acting on behalf of older individuals by receiving and investigating complaints and resolving specific problems; and

(H) organizing coalitions which influence other community agencies and organizations to make changes which will benefit older persons, especially the low income minority and those with the greatest social and economic need as targeted in the OAA.

(6) Advisory councils. Area agencies will establish, utilize, and support an advisory council.

(A) Responsibilities of the advisory council are:

(i) advise on all matters relating to the development, administration and implementation of the area plan and its amendments;

(ii) conduct public hearings on the area plan;

(iii) review and comment on the area agency's budget prior to its submission to the TDoA;

(iv) review and comment on community policies, programs and actions affecting older individuals, represent the interests of older persons, and encourage the involvement of older persons;

(v) ensure, in collaboration with the area agency, that the advisory council membership is constituted as follows:

(I) more than 50% of the members shall be 60 years of age or older, and include those of greatest economic and social need and clients of services funded by the area agency;

(II) minority older individuals shall be represented at least in proportion to their number in the PSA;

(III) each county within the PSA shall have at least one rep-

representative on the area agency advisory council;

(IV) local elected officials will be members;

(V) members of the general public will be members;

(VI) providers of veterans health care (if appropriate);

(VII) participants of Title III services will be members;

(VIII) persons with disabilities and/or their caretakers and/or caregivers; and

(IX) additional membership will be determined by the area agency.

(B) Conflict of interest. Council members who are Title III subcontractors shall not vote on agenda items that would be considered conflict of interest. This action should be recorded in the minutes of the meeting to stand as an official record of the abstention. A conflict of interest would be indicated when an individual is:

(i) employed by, cohabitates with, or is the spouse of an employee or council member, or participates in the management of a business entity, agency or other organization regulated by or receiving funds from Title III programs;

(ii) uses or receives a substantial amount of tangible goods, services, or funds from programs authorized by the Older Americans Act of 1965 as amended.

(C) Bylaws. Area agencies shall develop and publish advisory council bylaws governing the following:

(i) role and functions of the advisory council;

(ii) number and characteristics of membership;

(iii) procedures for membership selection and tenure;

(iv) the procedures for the conduct of the advisory council's business and activities; and

(v) establish scheduled meeting requirements.

(D) State representation.

Area agencies shall have written procedures for selection of representation to the State citizens advisory council.

(B) Support of advisory council. The area agency shall support the council to facilitate its purpose and functions as follows:

(i) orient and train new advisory council members;

(ii) share agency information with council members;

(iii) brief members about upcoming programs and problems affecting older persons;

(iv) update members on state and federal legislative actions;

(v) meeting preparations, including notification, agenda and minutes; and

(vi) review and draft recommendations for action by the grantee board.

(d) Area agency fiscal responsibilities. Area agencies on aging must demonstrate and maintain fiscal integrity in order to assure compliance with the requirements of the Older Americans Act of 1965, as amended; Titled 45 CFR, Part 74; OMB Circular A-87 or A-122; OMB Circular A-128 or A-133; and all Texas Department on Aging Policies and Rules as published in the Texas Administrative Code (TAC); and, with all state and local laws as pertains to the operation of an Area Agency on Aging. In addition, the following financial standards will be followed to structure area agencies on aging.

(1) Records maintenance. The area agency on aging's provisions for maintenance of records shall include the following.

(A) Area agencies shall establish written procedures to adequately assure proper maintenance and retention of all financial records, supporting documents, statistical records, and all other records relating to its performance. All of the aforesaid records shall be kept at the Area Agency on Aging site, and shall be maintained for a period of five years following the end of Grantee's fiscal year or indefinitely if audit findings or other disputes or litigation have not been resolved. Multi-site Area Agencies on Aging shall maintain all records at a designated central location (administrative headquarters, etc.) for purposes of this section.

(B) The area agency shall assure that all service providers adhere to the requirements for proper maintenance of

records as specified in subsection (d) (1)(A) of this section relating to maintenance of records. Multi-site providers shall maintain all records at a designated central location (administrative headquarters, etc.) for purposes of this section.

(2) Records accessibility. The area agency on aging's provisions for accessibility of records shall include the following.

(A) The area agency on aging shall give the Texas Department on Aging, the Comptroller General of the United States, and the State of Texas, through any authorized representatives, the access to and right to examine all records, books, papers, contracts, or other documents related to this contract. Such right of access shall continue as long as such records, or any of them, are in existence.

(B) The area agency shall assure that all service providers adhere to the requirements for proper accessibility of records as specified in subsection (d)(2)(A) of this section referring to records accessibility.

(3) Audits. The area agency on aging shall provide an independent audit as follows.

(A) The area agency on aging shall provide and furnish the Texas Department on Aging an annual audit by an independent certified public accounting firm within 180 days of the end of the Grantee's fiscal year.

(B) The audit must cover the entire organization and be conducted in accordance with generally accepted auditing standards. Audits performed under this subsection are subject to review and resolution by the Texas Department on Aging.

(C) The area agency on aging receiving more than \$25,000 in federal funding from all sources must provide an audit in accordance with the standards for financial and compliance audits contained in the Standards for Audits of Governmental Organizations, Programs, Activities and Functions, issued by the United States General Accounting Office; the Single Audit Act of 1984; and the provisions of OMB Circular A-128, Audits of State and Local Governments, or OMB Circular A-133 Audits of Institutions of Higher Education, and Other Nonprofit Organizations, as applicable.

(D) The area agency on aging understands and agrees that the Area Agency on Aging shall be liable to the

Texas Department on Aging for any costs disallowed as a result of unresolved questioned costs revealed during the audit.

(4) Payment suspension and grant termination.

(A) In the event that monitoring/evaluation activities by the Texas Department on Aging disclose serious deficiencies in the operation of an Area Agency on Aging under provisions of all Texas Department on Aging policies and rules as published in the Texas Administrative Code (TAC) under subsection (e) of this section relating to area agency on aging accountability, the Texas Department on Aging may elect to suspend or terminate the area agency on aging's grant.

(B) The area agency on aging, upon notification of such suspension or termination, shall have the right to appeal such suspension or termination following procedures outlined in 40 TAC §257.71 of this title (relating to Right to Appeal).

(C) The area agency on aging's grant may be terminated upon the occurrence of any of the following events:

(i) discontinuance of funding to the Texas Department on Aging from the Administration on Aging; or

(ii) failure of the area agency on aging to comply with all Texas Department on Aging Policies and Rules as published in the Texas Administrative Code (TAC) under subsection (e) of this section relating to area agency on aging accountability; or

(iii) mutual agreement between the area agency on Aging and the Texas Department on Aging.

(D) If the area agency on aging's grant is terminated, the Texas Department on Aging may require the area agency on aging to transfer title and deliver to the Texas Department on Aging any property acquired by federal funds.

(5) Recapture of payments. Recapture of payments may occur when an area agency on aging has failed to comply with all Texas Department on Aging Policies and Rules as published in the Texas Administrative Code (TAC) under Chapter 251 et seq (Title 40 Part IX, Texas Administrative Code), or if the Area Agency on Aging has received funds in excess of those actually earned. The Texas Department on Aging may take appropriate action including the recapture of payment and/or withholding of funds in such cases that overpayment has occurred.

(6) Allowability. All purchases made with grant funds shall follow the cri-

teria of allowability as prescribed in OMB Circular A-87 or A-122 and the following.

(A) All purchases must have been made by actual receipt of the merchandise or issuance of a purchase contract, voucher, or other legal document that binds both parties to the transaction, no later than September 30 of the fiscal year for which funds have been budgeted and encumbered.

(B) Actual receipt of the merchandise and payment must be made no later than the December 15 immediately following the fiscal year for which funds have been budgeted and encumbered.

(C) Merchandise placed on order by a purchase order but not actually received by December 15 will have to be re-justified and paid for with current year funds.

(7) Debarment or suspension requirements. Dealing with entities under debarment or suspension shall be prohibited as follows.

(A) The area agency on aging shall not, using reasonably prudent judgement, deal with any person, business, or other entity which has been suspended or debarred from receiving federal funds under 45 Code of Federal Regulations 76, Government-wide Debarment and Suspension (non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants), subsection 200, or 48 Code of Federal Regulations 9, Contractor Qualifications, subsection 4.

(B) The area agency on aging shall assure that all service providers adhere to the requirements regarding debarment and suspension as specified in subsection (d)(7)(A) of this section, relating to use of prudent judgment and dealing with suspended entities or persons.

(8) Disallowance of costs. Disallowance of costs shall occur as follows.

(A) The allowable use of federal, state, and matching credit funds, in accordance with OMB Circulars A-87, A-122, and other applicable laws, regulations, and circulars promulgated by recognized authoritative bodies, may be reviewed by independent audit and/or subgrantee monitoring by the Texas Department on Aging, as required by OMB Circular A-128.

(B) Costs found to be unallowable, as defined in subsection (d)(8)(A) of this section relating to disallowed costs, shall be designated as questioned costs.

(C) Questioned costs shall represent costs that have been determined to be unallowable after the close of a grant year and, in the case of monitoring, submission of the final financial status report, Form 269. Disallowance is established when an area agency on aging receives notification of a proposed action, in accordance with §257.12 of this title (relating to Notice of Proposed Action), resulting from questioned costs which remain unresolved at the time of such notification.

(D) In accordance with 40 TAC §257.11 of this title (relating to Hearings For Area Agencies), an area agency on aging shall have the right to a hearing concerning the issuance of, or basis for the disallowance, and shall exercise such right by following the procedures in §257.13 of this title (relating to Request for Hearing).

(E) Any area agency on aging having funds recaptured in accordance with subsection (d)(5) of this section, relating to recapture of funds, because of a disallowance shall waive all rights to such funds and shall not receive any of the funds upon reallocation.

(F) Disallowance resulting from questioned costs revealed during independent audit shall be issued within 30 days following the failure to resolve all such questioned costs within the six months allowed for resolution in accordance with OMB Circular A-128, §14.

(G) Disallowance resulting from questioned costs established during monitoring by the Department shall be issued within 30 days following the failure to resolve all such questioned costs within the timeframe established in the monitoring report.

(9) Federal cash management requirements. 45 Code of Federal Regulations 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 31 Code of Federal Regulations 205, Withdrawal of Cash from the Treasury for Advances Under Federal Grant and Other Programs, respectively, requires that all Area Agencies on Aging comply with the following.

(A) Under 45 Code of Federal Regulations 92.21(b), methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 Code of Federal Regulations Part 205.

(B) Under 31 Code of Federal Regulations 205.4(a), cash advances to a recipient organization shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs and the proportionate share of allowable indirect costs.

(C) In order for area agencies on aging to comply with the minimization of funds, two procedures must be instituted within the fiscal departments.

(i) Advance funds must be requested from the Texas Department on Aging in a manner consistent with each agency's payment schedule and one which will minimize the time between receipt and disbursement. Agencies making only monthly payments may continue to request money monthly. Agencies making payments more often should request money twice each month. Requests should be timed to disbursement needs.

(ii) The form, "Federal Funds Daily Cash Balance," must be maintained beginning January 1, 1993. This form must be completed on a daily basis or as payments using federal funds are made.

(D) Any area agency on aging that cannot or does not choose to adhere to the requirements in paragraph (9) (A) and (B) of this section, relating to cash management requirements, may request reimbursement of funds per 45 Code of Federal Regulations 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, subsection 21(d).

(10) Budget and budget amendments. All budget and budget amendment submissions shall be required to meet the following requirements.

(A) For all original budget submissions.

(i) All area agencies on aging shall be required to submit an original budget as part of their area plan prior to the beginning of each federal fiscal year. The budget must quantify the persons and units to be served, the expenses to provide services, and the resources available to fully fund such expenses to assure compliance with the goals and objectives detailed in the area plan narrative in order to produce the desired outcomes of the AAA and fulfill-

ment of the AAA's mission, as stated in the Area Plan.

(ii) The original budget submission must be received by the due date as prescribed by the Texas Department on Aging (TDoA). The Department may request each AAA to set its own due date within a prescribed parameter. If the date of receipt is established by the AAA, it becomes the official required submission date.

(iii) The original budget must use the planning figures provided by the Department in allocating all funds provided by the Department.

(iv) In the event that an area agency provides services through case management and utilizes the direct purchase of services pool for the resources, these performance and financial standards must be submitted in a TDoA prescribed format.

(v) The area agency must complete all supporting documentation, as prescribed by the Department, for submission with the budget.

(B) For all budget amendment submissions.

(i) An amended budget shall be due when there is a change of scope in the operations of the area agency change of scope is a situation or event which could alter or affect an area agency's ability to comply with its approved area plan. The following are considered changes in scope.

(I) If funding increases or decreases by 10% or more of federal Title III funds on a cumulative basis into or out of a fund category for services provided under "Part B," "Part C-1," or "Part C-2." This provision shall not apply to the administrative budget. In addition, this provision shall not apply to AAA budgets placing all service funds, except those budgeted as direct service, into a direct purchase of services pool under the case management service.

(II) A service which was identified and approved in the area plan becomes unavailable within the planning and service area of the area agency.

(III) A contracted service is proposed to be established and funded by the area agency which was not identified and approved in the area plan. This provision shall not apply to vendor services established, in the case of area agency that budget service funds into a direct purchase of services pool under the case management service.

(IV) The area agency requests a waiver to provide a service directly which was not identified and approved in the area plan.

(V) If expenditures increase by 10% or more of the allocation of federal Title III funds into a fund category for services provided under "Part B," "Part C-1," or "Part C-2," when an area agency places all service funds, except those budgeted as direct service, into a direct purchase of services pool under the case management service. Other changes may occur which the area agency may feel will qualify as a change of scope. These issues will be addressed on an individual basis. If warranted, the situation may become specifically identified as a change of scope for the benefit of all area agencies.

(ii) An amended budget must be submitted and approved, regardless of the amount of funds transferred, prior to:

(I) contracting for a previously unbudgeted and unapproved service; or

(II) the area agency conducting a service directly, when waiver is required, which was not identified and approved in the area plan and budget; or

(III) the expenditure of unbudgeted funds resulting from an increase in the approved administrative budget, regardless of the amount.

(iii) An amended budget must be submitted for approval within 15 normal work days of:

(I) discontinuance of a service which was identified and approved in the area plan and budget; or

(II) changes in funding that increases or decreases a funding category by more than the cumulative 10% allowable of federal Title III funds, except in the case of area agencies that budget all service funds into a direct purchase of services pool under the case management service; or

(III) when expenditures increase in a funding category by 10% or more of the allocation of federal Title III funds in the case of an area agency that budgets all service funds into a direct purchase of services pool under the case management.

(iv) A final budget amendment will be required of all area agencies unless:

(I) no funds have been transferred between funding categories since the last approved budget or amendment; and

(II) no services have been added or deleted since the last approved budget or amendment; and

(III) the AAA provided no additional direct services since the last approved budget or amendment.

(v) The final budget amendment must be received by August 15 of each fiscal year or as otherwise prescribed by the Department.

(e) Area agency accountability. Area agencies on aging shall be accountable to meet all programmatic and financial performance targets as outlined in its area plan and the requirements established by its contract with the Department.

(1) Performance Measures. Area agencies on aging will meet the following performance measures.

(A) All reports, budgets, budget amendments, and other required submissions to the Department shall be accurate and have sufficient documentation to verify such accuracy upon review by the Department during any on-site review.

(B) An area agency must ensure, through appropriate contractor monitoring, that service standards established by the Department are met and that the well-being of older individuals within its service area is maintained. The area agency shall be able, through appropriate documentation, to demonstrate the successful accomplishment of all established service standards.

(C) On an annual basis, the area agency on aging achieves 90% of planned service units, unduplicated persons, and total expenditures for the area agency on aging's four largest (defined by dollar amount) budgeted programs.

(D) The area agency on aging will maintain a timely reporting rate, on an annual basis, of 100% for Forms 300, 269, Ombudsman, other required reporting obligations as prescribed by the Department and area plan objectives and outcomes. A three day grace period for timeliness shall be allowed for purposes of this paragraph.

(E) Area agencies on aging must file on time their area plan and any required amendments, all monitoring re-

sponses, Budget and Budget Amendments, unless written extension, not to exceed 10 working days, has been granted in accordance with subsection (e)(1)(F) of this section referring to requests for extensions.

(F) All extensions must be requested in writing prior to the due date. All requests must provide justification for the need of extension and no more than four extensions shall be approved during any fiscal year.

(G) The area agency on aging shall meet, unless written waiver is obtained; all requirements for adequate proportion with regard to access, in-home services, and legal services; and, maintenance of effort with regard to legal services and Ombudsman activities.

(2) Performance reports. On a timely basis, not to be less than quarterly, the Department may present to the Board of the Department a performance report for all area agencies on aging detailing the adherence to, or lack thereof, of the financial and reporting requirements outlined in subsection (d) of this chapter relating to the AAA fiscal operations standards. Such information may be the basis for Department actions such as:

(A) qualifying for carryover funding;

(B) inclusion in the carryover reallocation pool;

(C) institution of administrative sanctions; or

(D) implementing procedures leading to withdrawal of AAA designation.

(3) Compliance with performance standards. Performing up to the standards outlined in subsection (d) of this section referring to area agency fiscal responsibilities will provide positive incentive for AAAs in such ways as:

(A) ability to qualify for carryover funds following the procedures as prescribed in §251.7 of this title (relating to Carryover Policy); and

(B) ability to participate in the reallocation of carryover funds deobligated from ineligible area agencies on aging.

(4) Failure to meet performance standards. Failure to meet the required standards as outlined in this title may result in

the following actions being taken by the Department.

(A) First notification of standards deficiencies to the Area Agency on Aging by the Department of any such deficiency shall be sent with the following information provided:

(i) a complete explanation of the standards which have not been met; and

(ii) complete and detailed corrective actions required to be completed by the Area Agency in order to meet the standards; and

(iii) a timeframe within which the corrective actions must be completed.

(B) If corrective actions are not complete and acceptable within the timeframe established under paragraph (4)(A)(iii) of this subsection relating to establishment of a timeframe for corrective actions, second notification of standards deficiencies to the Area Agency on Aging by the TDoA shall be sent by certified mail with the following information provided:

(i) a complete explanation of the standards which have not been met; and

(ii) complete and detailed corrective actions, which may include additional reporting, required to be completed by the Area Agency in order to meet the standards; and

(iii) an explanation for the unacceptability of any corrective actions which may have been taken by the Area Agency on Aging; and

(iv) a timeframe within which the corrective actions must be completed; and

(v) notification that the area agency on aging has been placed in a probationary status and that all administrative funds shall be withheld by the Department until such time as the area agency on aging resolves all deficiencies outlined in the notification of standards deficiencies and is removed from probationary status; and

(vi) notice that failure to resolve all deficiencies may result in the TDoA seeking withdrawal of designation as an area agency on aging following the procedures outlined in §255.34 of this title (relating to Withdrawal of Area Agency Designation and Continuity of Services); and

(vii) notice that the area agency on aging may appeal the actions being taken by the Department by following

the procedures established in §257.11 of this title (relating to Appeal Procedures).

(f) Uniform logo for area agencies on aging. Each area agency on aging will use the logo designed by the Department to assure a uniform, statewide symbol for area agencies on aging designation for public information purposes. The following logo will be used.

**Area Agency
on Aging**

(1) The logo will be used for at least the following:

- (A) public service announcements;
- (B) pamphlets;
- (C) brochures;
- (D) signs;
- (E) newsletters;
- (F) business cards;
- (G) stationery;
- (H) displays;
- (I) reports;
- (J) other means of public communication media whenever possible.

(2) Failure to physically demonstrate adherence to this policy will be considered non-compliance with this rule.

(3) Use of the Department's logo is required for all area agencies on aging designated under Title III of the Older Americans Act, as amended, no later than December, 1993.

(g) Uniform telephone listings. The telephone number of each area agency on aging, the area agency on aging's information and assistance toll-free or collect number, and the area agency on aging's nursing home ombudsman toll-free or collect number will appear in each telephone

directory that is published by the provider of local telephone service, for residents in any geographical area that lies in whole or in part in the planning and service area served by the area agency on aging.

(1) The listings will appear in the unclassified sections and government sections under the listing "SENIOR CITIZENS SERVICES," "AGING," "SOCIAL SERVICES," or other appropriate sections of the phone book if these listings are not available.

(2) The listings will appear in the classified section of the telephone directories of the major metropolitan area of the area agency on aging, and to the extent possible, in other areas of the area agency on aging's service area.

(3) The listing in the unclassified section and classified section is to begin with the words: Area Agency on Aging to position it at or near the top of each heading. The listing will appear in boldface type, as follows: Area Agency on Aging of (name of area) Business Office area code and telephone number; Information and Assistance toll-free or collect number; Nursing Home Ombudsman toll-free or collect number.

(4) These listings are to be completed by:

(A) no later than December 31, 1994; or

(B) the next printing cycle of the telephone directory of each provider of local telephone service following the completion of the HHSC restructuring, whichever comes first.

(5) These listings will be used in all other service directories, public service announcements, pamphlets, brochures, re-

ports, newsletters, stationery, and other means of public communication media whenever possible.

(6) Failure to physically demonstrate adherence to this policy will be considered non-compliance with this rule.

(h) Listing of the Texas Department on Aging as primary funding source by Area Agencies on Aging. All area agencies on aging designated under Title III of the Older Americans Act, as amended, will cite the Texas Department on Aging as its primary funding source.

(1) The phrase "Funded by the Texas Department on Aging" will appear in all news releases, public service announcements, pamphlets, displays, signs, brochures, reports, stationery, and other means of public communication media.

(2) Use of this phrase in all public communication media is effective upon adoption of this rule. Existing stocks of information items may be expended, and once expended, reorders will fall under this requirement. Existing non-expendable items such as signs and displays will be required to adhere to this requirement no later than December, 1994, or the completion of the HSSC restructuring, whichever comes first.

(3) Failure to physically demonstrate adherence to this policy will be considered non-compliance with this rule.

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 March 19, 1993.

TRD-9320588

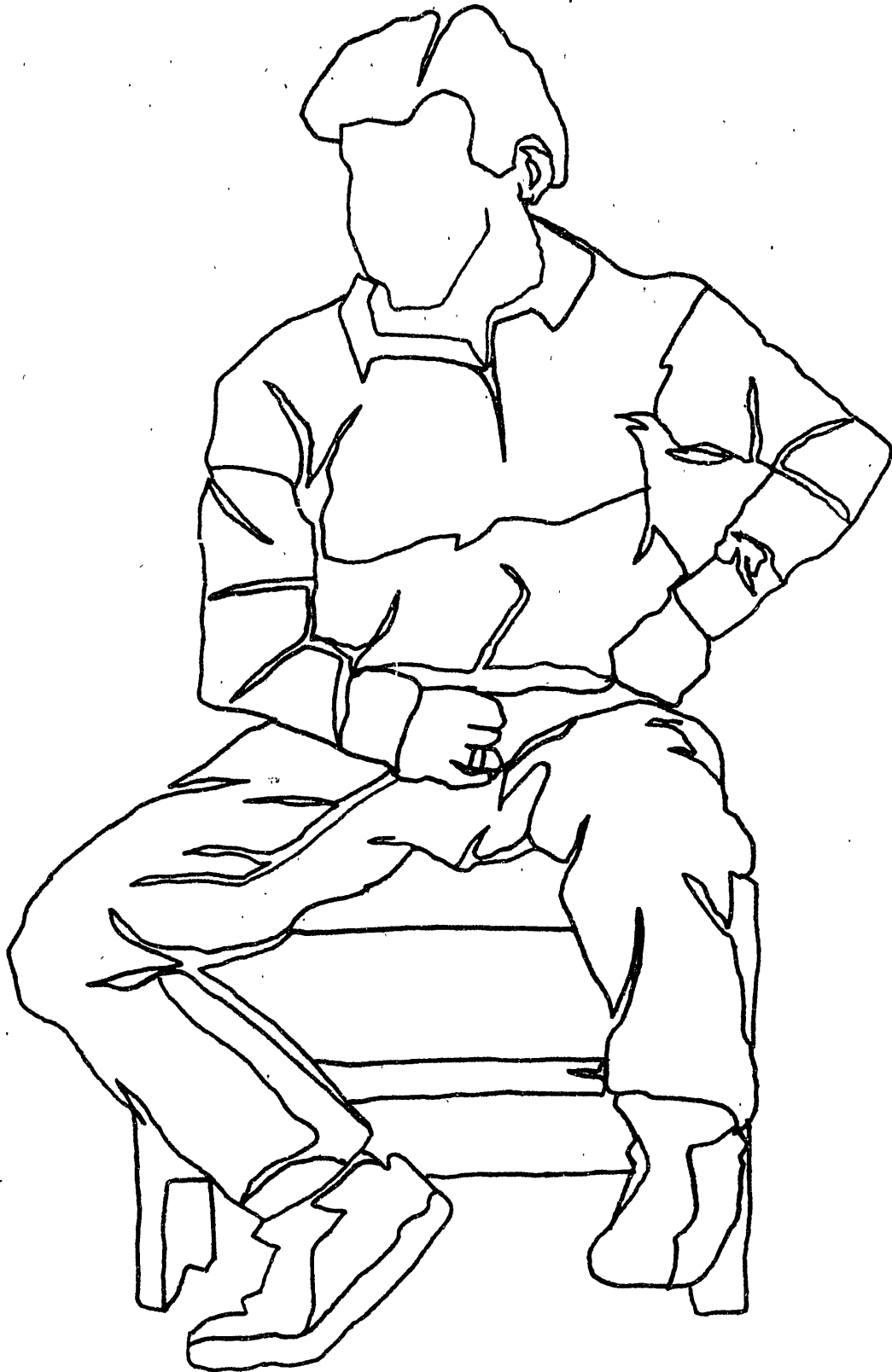
Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: October 1, 1993

Proposal publication date: January 1, 1993

For further information, please call: (512) 444-2727





Name: Stephan Michaler
Grade: 11
School: Plano East Senior High, Plano 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 prior to 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 named 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. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain 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 Department on Aging

Friday, March 26, 1993, 10 a.m. The Texas Board on Aging's Finance Committee and Texas Association of Regional Councils' (TARC'S) of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Large Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order; consider and possibly act on: discuss Texas Department on Aging (TDoA) internal audit report on area agency on aging administration; possible action to follow-up TDoA's report; discuss TARC's indirect cost study; possible action to follow-up TARC's study; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: March 18, 1993, 2:04 p.m.

TRD-9320519

Texas Air Control Board

Tuesday, March 30, 1993, 10 a.m. The Hearings Oversight Committee's Contested Case Hearing Workshop of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 201S, Austin. According to the complete agenda, the board will discuss workshop on development of procedures and criteria for the executive director's decision on whether to grant hearing requests and procedures for appeal to the board of that decision, and the processing and disposition of requests for contested case hearing; consider and act on the procedures and criteria for the executive director's on whether to grant hearing requests and procedures for appeal to the board of that decision and on the processing

and disposition of requests for contested case hearing.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: March 22, 1993, 3:39 p.m.

TRD-9320668

Texas Commission on Alcohol and Drug Abuse

Tuesday, March 23, 1993, 8:30 a.m. The Board of Commissioners of the Texas Commission on Alcohol and Drug Abuse held an emergency revised agenda in the Eighth Floor Conference Room, Perry Brooks Building, 720 Brazos, Suite 800, Austin. According to the emergency revised summary agenda, the board acted on substance abuse felony punishment facilities admissions policy. The emergency status was necessary due to action needed on item within 30 days by Board of Commissioners.

Contact: Becky Davis or David Tatum, 720 Brazos, Suite 403, Austin, Texas 78701, (512) 867-8700.

Filed: March 19, 1993, 11:22 a.m.

TRD-9320583

Texas Alcoholic Beverage Commission

Monday, April 5, 1993, 1:30 p.m. The Texas Alcoholic Beverage Commission will meet at the University of Texas at El Paso, Tomas Rivera Conference Center, Union Building East, Third Floor, El Paso. According to the agenda summary, the commission will take public comments on pro-

posed 16 TAC §§55.542-55.549; 16 TAC §§55.552-55.554; 16 TAC §55.558; 16 TAC §§55.561-55.562 and 16 TAC §55.565, all dealing with bingo regulation and tax as published in the (18 TexReg 523).

Contact: Dick Durbin, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: March 22, 1993, 12:35 p.m.

TRD-9320652

Texas School for the Blind and Visually Impaired

Friday, March 26, 1993, 9 a.m. The Board of Trustees-Curriculum Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Administration Building, Room 150, Austin. According to the agenda summary, the committee will call the meeting to order; report on curriculum development in career education; discuss the curriculum design; plan to blur the lines between the Visually Handicapped ("VH") and Life Skills programs; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

Filed: March 18, 1993, 11:41 a.m.

TRD-9320508

Friday, March 26, 1993, 9 a.m. The Board of Trustees-Personnel/Policy Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Administration Building, Room 116, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss policies to be presented at board meeting; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

Filed: March 18, 1993, 11:42 a.m.

TRD-9320509

Friday, March 26, 1993, 9 a.m. The Board of Trustees-Finance/Audit Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Administration Building, Room 110, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of the minutes of January 29, 1993, committee meeting; legislative update; review of investment policy; hear report by internal auditor; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

Filed: March 18, 1993, 11:42 a.m.

TRD-9320510

Friday, March 26, 1993, 1 p.m. The Board of Trustees of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Administration Building, Room 116, Austin. According to the agenda summary, the committee will call the meeting to order; hear public comments/open forum; discuss new business; reports from board committees; approval of January 29, 1993, meeting minutes; consultation with school attorney concerning litigation; proposed contract renewals and nonrenewals; superintendent's job description; consideration of the grievance of Etta Ferguson (teacher); policy changes; textbook committee recommendations; 1993-1994 school calendar, and request to approve application for waiver; superintendent's evaluation; superintendent's report; hear comments from board members; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

Filed: March 18, 1993, 11:42 a.m.

TRD-9320511

Court Reporters Certification Board

Saturday, April 3, 1993, 9 a.m. The Court Reporters Certification Board will meet at 1414 Colorado Street, Suite 204, Texas Law Center, Austin. According to the complete agenda, the board will call the meeting to order; take attendance; hear progress report on the pilot program; review prior meeting minutes; consider definition of unprofessional conduct; conduct preliminary reviews in Cause Numbers 93089606 and 93298607; consider applications of applicants convicted of a criminal offense; legis-

lative update from staff; consider newspaper clipping of March 17, 1993; consider general correspondence, appointments to 1993-1994 subcommittees; expenditures year-to-date; review remaining 1993 exam and meeting dates; and adjourn.

Contact: Peg Liedtke, 3000 South IH-35, Suite 120, Austin, Texas 78704, (512) 463-1630.

Filed: March 22, 1993, 1:55 p.m.

TRD-9320654

Credit Union Department

Monday, March 29, 1993, 1 p.m. The Credit Union Commission of the Credit Union Department will meet at the Credit Union Department Building, 914 East Anderson Lane, Austin. According to the complete agenda, the commission will invite public input for future consideration; receive minutes of March 5-9, 1993, meeting; communications reported by the commissioner; reports from the Commissioner Evaluation Committee, Texas Share Guaranty Credit Union (TSGCU) Oversight Committee, Senate Rider Committee, and Task Force Advisory Committee; and reports on legislation, requested independent legal opinion, and requested research of member eligibility; consider pending appeal of decision on hearing, request for a hearing and review of follow-up action report; and conduct an executive session to discuss credit unions and problem cases; consultation with legal counsel regarding contemplated legal action, existing litigation and administrative actions; evaluate the commissioner's handling of the TSGCU conservatorship, the TSGCU member share deposit refunds, and the commission's continued confidence in the commissioner's job performance; and to consider the evaluation, duties, discipline, or dismissal of the commissioner unless the commissioner requests a public hearing.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752, (512) 837-9236.

Filed: March 19, 1993, 3:49 p.m.

TRD-9320624

Texas State Board of Dental Examiners

Saturday, March 27, 1993, 9 a.m. The Texas State Board of Dental Examiners will hold a revised agenda at the TSBDE Offices, 333 Guadalupe, Tower Three, Suite 800, William Hobby Building, Austin. According to the revised complete agenda, the board will call the meeting to order; take roll call; discuss approval of Nitrous/Anesthesia permits; appearance before the board,

Dr. Gus Derrick, reactivate retired license; discuss Rule 101.1(b)(3), Foreign Trained Dentists; Rule 101.1(8)(B), Proof of Training in Specialty; criteria for credentialing; make announcements; and adjourn.

Contact: C. Thomas Camp, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: March 19, 1993, 7:40 a.m.

TRD-9320552

Texas Education Agency

Friday, March 26, 1993, 9 a.m. The Committee on Student Learning of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Room 1-104, Austin. According to the complete agenda, the committee will make introductions and comments; discuss status of education reform in Kentucky-Paula Miller, Keystone Office of the Fort Worth School District and former teacher in Kentucky public schools will report on the status of education reform in Kentucky; legislative update-Camilla Bordie will give an update on recent legislation of the 73rd Texas Legislature; determining student results to meet real world needs-Cynthia Levinson will discuss the process; technical advisory committee on developmentally appropriate instruction-Melody Johnson will provide a report on the status of the committee; and committee work session will hold a work session to give committee members an opportunity to discuss issues of concern.

Contact: Marvin Veselka, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9533.

Filed: March 18, 1993, 10:37 a.m.

TRD-9320498

Monday, March 29, 1993, 10 a.m. The Texas Environmental Education Advisory Committee Communications Subcommittee of the Texas Education Agency will meet at the Texas Department of Health, 1100 West 49th Street, Room T-600, Austin. According to the complete agenda, the subcommittee will plan the upcoming press conference, review articles for the newsletter, and discuss the development of bi-lingual TEEAC materials.

Contact: Sally C. Gutierrez, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7541.

Filed: March 18, 1993, 2:04 p.m.

TRD-9320518

Texas Employment Commission

Tuesday, March 30, 1993, 9 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; meet in executive session to discuss relocation of agency headquarters; take actions, if any, resulting from executive session; consider proposed or pending legislation and possibly act with respect thereto; internal procedures of commission appeals; consider and act on higher level appeals in unemployment compensation cases listed on Commission Docket 13; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: March 22, 1993, 4:07 p.m.

TRD-9320670

Finance Commission of Texas

Tuesday, March 30, 1993, 9:15 a.m. The Finance Commission of Texas will meet at the Finance Commission Building, 2601 North Lamar Boulevard, Austin. According to the agenda summary, the commission will review and discuss approval of the minutes of the previous meeting; finance commission matters; hear report from the Office of the Consumer Credit Commissioner; report from the Savings and Loan Department; report from the Banking Department; and meet in executive session to discuss supervisory, litigation, and personnel matters.

Contact: Ann Graham, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: March 18, 1993, 2:58 p.m.

TRD-9320523

General Services Commission

Tuesday, March 30, 1993, 9:30 a.m. The General Services Commission will meet at the Central Services Building, Room 402, 1711 San Jacinto Street, Austin. According to the agenda summary, the commission will consider lease with option to purchase guidelines; lease with option to purchase amendment to Lease #601-6431-El Austin, Texas Department of Transportation; consider final adoption of amendments to §§123.31-123.34 concerning prevailing wages; consider final adoption of amendments to purchasing Rules §§113.1-113.19; consider real property acquisition in Houston; consider and discuss change orders;

consider final adoption of amendments to §111.4 concerning ethical standards; consider proposed amendments to §115.32 concerning emergency leases; consider and discuss naming of various insurance buildings; monthly division issues; meet in executive session to receive a report from counsel concerning the status of all pending litigation; and to consider personnel matters.

Contact: Judith M. Porras, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: March 19, 1993, 2:26 p.m.

TRD-9320592

Office of the Governor

Friday, March 26, 1993, 10:30 a.m. The Automobile Theft Prevention Authority of the Office of the Governor will meet at the John H. Reagan Building, 105 West 15th Street, Room 104, Austin. According to the complete agenda, the authority will call the meeting to order; make introductions; hear report by Department of Public Safety on status of Statewide Registration Program; discuss approval of subcommittee to coordinate marketing and advertising campaign; discuss approval of annual report to Lieutenant Governor and House Speaker; and adjourn.

Contact: Linda Young, 221 East 11th Street, Austin, Texas 78701, (512) 463-1919.

Filed: March 18, 1993, 2:37 p.m.

TRD-9320520

Monday, March 29, 1993, 8 a.m. The Texas Crime Stoppers Advisory Council Criminal Justice Division of the Office of the Governor will meet at the Capitol La Quinta Inn, 300 East 11th Street, Room 310, Austin. According to the complete agenda, the division will call the meeting to order; discuss approval of the minutes; State Conference Committee report; State Director's report; review and select the 1992 State Conference Media and Program Award winners; and adjourn.

Contact: David Cobos, P.O. Box 12428, Austin, Texas 78701, (512) 463-1784.

Filed: March 18, 1993, 4:38 p.m.

TRD-9320534

Texas Department of Human Services

Tuesday, March 30, 1993, 10 a.m. The Religious Community Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, Sixth Floor, West Tower, Commissioner's

Conference Room 6 W, Austin. According to the complete agenda, the committee will make introductions and welcome guests; discuss consumer access; legislative update; training initiative; hear report on Abilene client meeting; member concerns; and adjourn.

Contact: Susan Smith, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3135.

Filed: March 19, 1993, 10:46 a.m.

TRD-9320569

Thursday, April 1, 1993, 9:30 a.m. The Client Self-Support Services Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, Second Floor, Classroom Two, Austin. According to the complete agenda, the council will call the meeting to order; discuss approval of minutes; hear deputy commissioner's remarks; reports from subcommittees; budget update; transfer of resources in the medical program; report on advocacy efforts; enabling legislation update; lead screening update; APPAC final report; agenda planning for June 3, 1993 meeting; and adjourn.

Contact: Lucretia Dennis-Small, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4921.

Filed: March 22, 1993, 12:19 p.m.

TRD-9320649

Texas Department of Insurance

Tuesday, March 30, 1993, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at Hobby II, Fourth Floor, 333 Guadalupe Street, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application for amendment of the Articles of Incorporation of Windsor Life Insurance Company, Dallas, increasing the authorized capital stock.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: March 22, 1993, 2:45 p.m.

TRD-9320659

Tuesday, March 30, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at Hobby II, Fourth Floor, 333 Guadalupe Street, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of Mel Neese, of Austin, for an Adjuster's license. Docket Number 11703.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: March 22, 1993, 2:45 p.m.

TRD-9320660

Wednesday, March 31, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; litigation; commissioner's orders; solvency; budget; hear staff reports; consider filings by Westchester Fire Insurance Company, Liberty Mutual Insurance Company, Hartford Casualty Insurance Company, CU Lloyds of Texas; consider excess of loss policies; workers' compensation negotiated deductible endorsements filed by Gulf Insurance Company, and Republic Western Insurance Company; withdrawal of proposed 28 TAC §1.413 and republication of proposed new 28 TAC §1.413 concerning maintenance tax assessments and maintenance tax surcharges; consider possible action on report on retrospective review of medically necessity and related utilization review processes and on the feasibility of accepting utilization review certificates by an national review accreditation organization as required by Article 21.58A; and consider legislative update.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: March 19, 1993, 11:07 a.m.

TRD-9320581

Wednesday, March 31, 1993, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at Hobby II, Fourth Floor, 333 Guadalupe Street, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Marlowe Clark Dimmitt, of San Antonio, who holds a Group I, Legal Reserve Life Insurance Agent's license and Solicitor's license. Docket Number 11699.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: March 22, 1993, 2:45 p.m.

TRD-9320661

Wednesday, March 31, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at Hobby II, Fourth Floor, 333 Guadalupe Street, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application for amendment of the Articles of Incorporation of Group Life and

Health Insurance Company, Dallas, increasing the authorized capital stock. Docket Number 11695.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: March 22, 1993, 2:46 p.m.

TRD-9320662

Thursday, April 1, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:20 a.m.

TRD-9320507

Thursday, April 1, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at Hobby II, Fourth Floor, 333 Guadalupe Street, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application for amendment of the Articles of Incorporation of National Family Care Life Insurance Company, Dallas, increasing the authorized capital. Docket Number 11722.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: March 22, 1993, 2:45 p.m.

TRD-9320658

Friday, April 2, 1993, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at Hobby II, Fourth Floor, 333 Guadalupe Street, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Donald Jack Coontz, of Pearland, who holds a Variable Contract Agent's license and to consider his applications for a Group I, Legal Reserve Life Insurance Agent's license and Local Recording Agent's license issued by the Texas Department of Insurance. Docket Number 11706.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: March 22, 1993, 2:46 p.m.

TRD-9320663

Friday, April 2, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at Hobby II, Fourth Floor, 333 Guadalupe Street, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Maria I. Chapa, of Houston, who holds a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: March 22, 1993, 2:46 p.m.

TRD-9320664

Tuesday, April 6, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:19 a.m.

TRD-9320506

Thursday, April 8, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:19 a.m.

TRD-9320505

Tuesday, April 13, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:19 a.m.

TRD-9320504

Thursday, April 15, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:19 a.m.

TRD-9320503

Tuesday, April 20, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:19 a.m.

TRD-9320502

Thursday, April 22, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof and the 103rd Congress.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:19 a.m.

TRD-9320501

Tuesday, April 27, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:18 a.m.

TRD-9320500

Thursday, April 29, 1993, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 13501, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider any necessary response to actions, requests, or other occurrences from the 73rd Legislative Session and from committees and members thereof and the 103rd Congress.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-3A, Austin, Texas 78701, (512) 463-6651.

Filed: March 18, 1993, 11:18 a.m.

TRD-9320499

Lamar University System, Board of Regents

Thursday, March 25, 1993, 4:30 p.m. The Board of Regents of Lamar University System met at Scrappin Valley (4.5 miles of 255 intersection), Highway 87, Jasper. According to the agenda summary, the board began formal training for regents as recommended in the management control audit of the Lamar University System dated March 1993, Office of the State Auditor; met in executive session, pursuant to Article 6252-17, §2(g) to consider a contract for president-designate Dr. Rex Cottle; considered the continued services of interim vice chancellor for finance and management John Olsen; and reconvened in open meeting to review items discussed in executive session.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: March 22, 1993, 11:40 a.m.

TRD-9320648

Friday, March 26, 1993, 8 a.m. The Board of Regents of Lamar University System met at Scrappin Valley (4.5 miles of 255 intersection), Highway 87, Jasper. According to the agenda summary, the board began formal training for regents as recommended in the management control audit of the Lamar University System dated March 1993, Office of the State Auditor; met in executive session, pursuant to Article 6252-17, §2(g) to consider a contract for president-designate Dr. Rex Cottle; considered the continued services of interim vice chancellor for finance and management John Olsen; and reconvened in open meeting to review items discussed in executive session.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: March 22, 1993, 11:40 a.m.

TRD-9320647

Board of Nurse Examiners

Tuesday-Wednesday, March 23-24, 1993, 8 a.m. The Board of Nurse Examiners met at 1812 Centre Creek Drive, Room 203, Austin. According to the emergency revised agenda summary, the board took action on an additional advanced nurse practitioner request; considered an additional 12 consent orders, four agreed orders, 10 ALJ proposals for decisions and two voluntary surrenders. The emergency status was necessary as action was required on these items prior to the next regularly scheduled meeting to be held in May.

Contact: Erlene Fisher, P.O. Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: March 22, 1993, 9:35 a.m.

TRD-9320636

Texas Board of Licensure for Nursing Home Admin- istrators

Friday, March 19, 1993, 1:30 p.m. The Texas Board of Licensure for Nursing Home Administrators met at the Criss Cole Building, Staff Development Room, 4800 North Lamar Boulevard, Austin. According to the emergency revised agenda summary, the board called the meeting to order; took roll call; discussed agenda approval; minutes approval; heard disciplinary report; heard report from the board of pharmacy; appearance by former employee; heard and possibly took action on education committee report; advisory committee report; received public comment; heard finance report; staff reports; report from the Texas Department of Health; met in executive session under Texas Revised Civil Statutes, Article 6252-17, §2(g) and (e); set next meeting date, time and place; and adjourned. The emergency status was necessary as the board needed to receive information from public and staff before acting on matters effecting the health and welfare of Texas citizens.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: March 18, 1993, 3:58 p.m.

TRD-9320531

Friday, March 19, 1993, 1:30 p.m. The Texas Board of Licensure for Nursing Home Administrators held an emergency revised agenda at the Criss Cole Building, Staff Development Room, 4800 North Lamar Boulevard, Austin. According to the emergency revised agenda summary, the board called the meeting to order; took roll call; discussed agenda approval; minutes approval; heard disciplinary report and

acted on licensee; heard report from the board of pharmacy; appearance by former employee and possible executive session under Texas Revised Civil Statutes, Article 6252.17, §2(g); possibly took action on education committee report; heard and possibly took action on advisory committee report; received public comment; heard finance report; staff reports; report from the Texas Department of Health; met in executive session under Texas Civil Statutes, Article 6252-17, §2(g) and (e); set next meeting date, time, and place; and adjourned. The emergency status was necessary due to Finances and Personnel and Staffing issues.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: March 19, 1993, 10:38 a.m.

TRD-9320564

Texas Board of Pardons and Paroles

Wednesday, March 31, 1993, 9 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 103, Angleton. According to the agenda summary, a panel (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: March 19, 1993, 3:07 p.m.

TRD-9320603

Monday-Friday, March 29-April 2, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite 2, Huntsville. According to the agenda summary, a panel (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: March 19, 1993, 3:08 p.m.

TRD-9320607

Wednesday-Thursday, March 31-April 1, 1993, 1 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the agenda summary, a panel (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: March 19, 1993, 3:08 p.m.

TRD-9320606

Wednesday-Thursday, March 31, 1993, 1:30 p.m. and 9 a.m. respectively. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1515 East Palestine, Suite 100, Palestine. According to the agenda summary, a panel (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: March 19, 1993, 3:07 p.m.

TRD-9320604

Thursday-Friday, April 1-2, 1993, 12:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at Route 5, Box 258-A, Gatesville. According to the agenda summary, a panel (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: March 19, 1993, 3:07 p.m.

TRD-9320605

State Pension Review Board

April 6, 1993, 9:15 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Pension Review Conference Room, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for which actuarial information is available by meeting time, and for which request have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

TRD-9320567

April 13, 1993, 9:15 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Pension Review Conference Room, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for 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.

TRD-9320566

April 20, 1993, 9:15 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Pension Review Conference Room, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for 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.

TRD-9320565

April 27, 1993, 9:15 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet at the William P. Clements Building, 300 West 15th Street, Pension Review Conference Room, Fourth Floor, Room 406, Austin. According to the complete agenda, the committee will make preparation of actuarial impact statements on bills for which actuarial information is available by meeting time, and for which request have been received from legislative committees.

Contact: Lynda Baker, P.O. Box 13498,
Austin, Texas 78711, (512) 463-1736.

TRD-9320564

Public Utility Commission of Texas

Monday, March 29, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11824-application for an agreement for the sale of electricity between Southwestern Public Service Company and Union Oil Company of California ("UNOCAL").

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 19, 1993, 3:43 p.m.

TRD-9320618

Tuesday, March 30, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Numbers 11843-petition of Jackson Electric Cooperative, Inc. for authority to implement economic incentive rider; 11844-petition of Karnes Electric Cooperative, Inc. for authority to implement economic incentive rider; 11845-petition of Nueces Electric Cooperative, Inc. for authority to implement economic incentive rider; 11846-petition of San Patricio Electric Cooperative, Inc. for authority to implement economic incentive rider; 11847-petition of Victoria Electric Cooperative, Inc. for authority to implement economic incentive rider; and 11848-petition of Wharton County Electric Cooperative, Inc. for authority to implement economic incentive rider.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 19, 1993, 3:43 p.m.

TRD-9320619

Wednesday, March 31, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11384-application of Northeast Texas Cooperative, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 22, 1993, 3:32 p.m.

TRD-9320666

Thursday, April 1, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a status conference in Docket Number 7952-complaint of Metro-Link Telecommunications, Inc. against Southwestern Bell Telephone Company, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 22, 1993, 3:33 p.m.

TRD-9320667

Monday, May 24, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11784-application of Sugar Land Telephone Company for approval of new service-All Star.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 19, 1993, 3:44 p.m.

TRD-9320620

Railroad Commission of Texas

Monday, March 29, 1993, 9:30 a.m. The Railroad Commission of Texas will meet in the First Floor Conference Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the administrative services division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: March 19, 1993, 11:02 a.m.

TRD-9320573

The commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters. The commission will 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, (512) 463-6710.

Filed: March 19, 1993, 11:04 a.m.

TRD-9320579

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss a proposed training agreement for the Gas Utilities Section of the Legal Division. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel, and pending litigation. Consideration of a contract for public information services.

Contact: Walter H. Washington Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: March 19, 1993, 11:03 a.m.

TRD-9320575

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.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: March 19, 1993, 11:02 a.m.

TRD-9320572

The commission will meet in consideration of category determinations under sections 102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: March 19, 1993, 11:03 a.m.

TRD-9320578

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 78711, (512) 463-6710.

Filed: March 19, 1993, 11:03 a.m.

TRD-9320576

The commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

Contact: Marcelo R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: March 19, 1993, 11:03 a.m.

TRD-9320577

The commission will consider and act on the various applications and other matters within the jurisdiction of the agency includ-

ing oral arguments at the time specified. The commission 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 will meet in executive session authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: March 19, 1993, 11:04 a.m.

TRD-9320580

The commission will consider and act on the Division Director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: March 19, 1993, 11:02 a.m.

TRD-9320574

Tuesday, March 30, 1993, 10 a.m. The Railroad Commission of Texas will meet at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen. According to the complete agenda, the commissioners will meet with area citizens and may discuss matters relating to the commission. No deliberation will be held and no decisions will be taken by the commission on any pending cases or regular business.

Contact: Brenda Loudermilk, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: March 22, 1993, 10:42 a.m.

TRD-9320646

Tuesday, March 30, 1993, noon. The Railroad Commission of Texas will meet at the Atlas and Hall Law Firm, Atrium, 818 Pecan Boulevard, McAllen. According to the complete agenda, the commissioners will meet with area citizens and may discuss matters relating to the commission. No deliberation will be held and no decisions will be taken by the commission on any pending cases or regular business.

Contact: Brenda Loudermilk, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: March 22, 1993, 10:41 a.m.

TRD-9320645

Texas National Research Laboratory Commission

Tuesday, March 30, 1993, 11 a.m. The Commission of the Texas National Research Laboratory Commission will meet at the Dallas Love Field Airport, Main Termi-

nal Southwest Airlines, University for People Mezzanine Level, Training Room Four, Dallas. According to the agenda summary, the commission will convene meeting and take roll call of members; hear chairman's report from Charles R. Perry; discuss approval of the minutes; committee appointments; discuss and act on National SSC information effort; medical research structure at LINAC; hear public comment; and adjourn.

Contact: Karen L. Chrestay, 1801 North Hampton Road, Suite 400, DeSoto, Texas 75115, (214) 709-3800.

Filed: March 22, 1993, 4:24 p.m.

TRD-9320672

Texas Surplus Property Agency

Thursday, April 1, 1993, 1:30 p.m. The Governing Board of the Texas Surplus Property Agency will meet at the General Services Commission, 1711 San Jacinto Street, Room 402 (Board Room), Austin. According to the complete agenda, the board will discuss approval of the minutes of November 17, 1992, board meeting; general public presentations; State Audit discussion, management consultant report; discuss internal audit function; meet in executive session with Assistant Attorney General to seek legal advice with respect to pending or contemplated litigation, or settlement offers regarding State of Texas vs. Paul Quinn College Cause Number 92-4280 pursuant to Texas Civil Statutes, Article 6252-17, §2(e); open session to consider and possibly act on legal advice; and discuss approval of completion of Houston district warehouse expansion.

Contact: Marvin J. Titzman, Box 8120, San Antonio, Texas 78208, (210) 661-2381.

Filed: March 19, 1993, 10:10 a.m.

TRD-9320562

Texas Appraiser Licensing and Certification Board

Friday, March 26, 1993, 9 a.m. The Executive Committee of the Texas Appraiser Licensing and Certification Board held an emergency meeting at the TREC Headquarters, Conference Room 235 (Second Floor), 1101 Camino La Costa, Austin. According to the complete agenda, the committee called the meeting to order; discussed and possibly made recommendations to the Texas Appraiser Licensing and Certification Board concerning House Bill 2644, possible amendments to House Bill 2644, and other legislative matters; and adjourn. For ADA assistance, call Nancy Guevremont at (512)

465-3923 at least two days prior to meeting. The emergency status was necessary as the committee had to discuss pending (continued) legislation affecting the agency and proposed amendments of that legislation.

Contact: Renil C. Liner, 1101 Camino La Costa, Austin, Texas 78752, (512) 465-3950.

Filed: March 22, 1993, 12:31 p.m.

TRD-9320651

Texas Southern University

Thursday, March 25, 1993, 3:30 p.m. The Finance Committee, Board of Regents of the Texas Southern University met at the Texas Southern University, 3715 Blodgett, Houston. According to the complete agenda, the board considered matters relating to financial reporting systems and budgets; fiscal reports from the administration; investments; and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: March 22, 1993, 2:52 p.m.

TRD-9320665

Texas Title Insurance Guaranty Association

Tuesday, March 30, 1993, 11 a.m. The Board of Directors of the Texas Title Insurance Guaranty Association will meet at the Texas Department of Insurance, 333 Guadalupe Street, Tower One, 12th Floor, Austin. According to the complete agenda, the board will discuss proposed legislation.

Contact: Burnie Burner, 100 Congress Avenue, #1600, Austin, Texas 78701, (512) 474-1587.

Filed: March 19, 1993, 4:25 p.m.

TRD-9320626

University Interscholastic League

Tuesday-Wednesday, March 23-24, 1993, 10 a.m. The Off-Season Committee of the University Interscholastic League met at the Red Lion Hotel, Salon D, Highway 290 at IH-35 North, Austin. According to the agenda summary, the committee held a business meeting; held a public hearing-speakers and unscheduled to speak on off season activities; heard staff reports; and business meeting.

Contact: Charles Breithaupt, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: March 18, 1993, 3:36 p.m.

TRD-9320526

University of Texas System

Thursday, April 1, 1993, 10 a.m. The Board of Regents and Standing Committees of the University of Texas System will meet at the U. T. Health Science Center-San Antonio, Room 1.220, Nursing School Building, 7703 Floyd Curl Drive, San Antonio. According to the agenda summary, the board will consider Chancellor's Docket (submitted by System Administration); discuss foundation matters; appointments to standing committees; special committees and other liaison groups; AUF spending policy; amend guidelines governing administration of revenue financing system; housing rates; UT system-insurance matters; fees; degree programs; agreements; differential tuition rates; UT Austin-amend admissions program; appointments to endowed academic positions; buildings and grounds matters including preliminary plans, final plans and award of contracts; acceptance of gifts, bequests and estates, establishment of endowed positions and funds; intellectual property matter; real estate matters; personnel matters; and potential litigation.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: March 22, 1993, 1:12 p.m.

TRD-9320653

Texas Water Commission

Wednesday, March 24, 1993, 9 a.m. The Texas Water Commission met at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the revised agenda summary, the commissioners met in executive session to discuss their duties, roles, and responsibilities as commissioners of the Texas Water Commission.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 18, 1993, 1:08 p.m.

TRD-9320513

Wednesday, March 24, 1993, 9 a.m. The Texas Water Commission met at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the emergency revised agenda summary, the commission discussed emergency order to authorize discharge of approximately 2,000,000 gallons of neutralized water to a railroad bar ditch, thence to the Navidad River in segment 1605 of the

Lavaca River Basin. The emergency status was required due to imminent danger to surface and ground water.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 22, 1993, 3:40 p.m.

TRD-9320669

Friday, March 26, 1993, 8:30 a.m. The Texas Water Commission will meet at the Four Seasons Hotel, San Jacinto West Room, 98 San Jacinto Boulevard, Austin. According to the agenda summary, the commissioners will meet with the Permit Hearings Task Force, in a workshop-type setting to identify improvements and enhancements to the permit hearings process.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 18, 1993, 1:08 p.m.

TRD-9320514

Wednesday, March 31, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will meet to consider approving the following matters: new water quality permits, amendments to permits, renewal of water quality permits, water right permits, petitions to regulate on-site sewage facilities, district matters, rate matters, Examiner's Memorandum and Order, in addition to 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.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 18, 1993, 3:49 p.m.

TRD-9320527

Wednesday, March 31, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will meet to consider approving the following matters: enforcement orders, emergency order, Examiner's Proposal for Decision, 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.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 18, 1993, 3:50 p.m.

TRD-9320528

Wednesday, April 28, 1993, 2 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Environmental Pollution Control Building-Auditorium, 7411 Park Place, Houston. According to the agenda summary, the commission will meet to consider application for permit to authorize discharge of treated domestic wastewater effluent by Jones Road Development Corporation, Proposed Permit Number 13623-01 before a Hearings Examiner of the Texas Water Commission.

Contact: Debra Thomas, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: March 18, 1993, 3:51 p.m.

TRD-9320529

Texas Workers' Compensation Commission

Thursday, March 25, 1993, 1 p.m. The Texas Workers' Compensation Commission met at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the commission called the meeting to order; discussed approval of minutes; rules for adoption: Chapter 126; rules for repeal: Chapter 126 and Chapter 180; rules for amendment: Chapter 164, Chapter 128 and 140; rules for proposal: Chapter 145; action on applications for self-insurance; action on members to serve on the Texas Certified Self-Insurer guaranty Association; action on members to serve on the Medical Advisory Committee; action on alternate members to serve on the Medical Advisory Committee; action on Volume IV on risk management, liability exposures; action on reorganization issues; action on rule-making petition; discussion and staff direction on any issues regarding policy or rules; met in executive session; acted on matters considered in executive session; heard general reports and action; planned future public meetings; and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3592.

Filed: March 19, 1993, 9:07 a.m.

TRD-9320553

Regional Meetings

Meetings Filed March 18, 1993

The Ark-Tex Council of Governments Board of Directors met at the Barnstomer

Restaurant, Mt. Vernon, March 25, 1993, at 5:30 p.m. Information may be obtained from Pam Koelling, P.O. Box 5307, Texarkana, Texas 75505-5307, (903) 832-8636. TRD-9320522.

The Carson County Appraisal District Agricultural Advisory Committee met at 102 Main Street, Panhandle, March 23, 1993, at 9 a.m. Information may be obtained from Donita Herber, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9320532.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees met in the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, March 23, 1993, at 3 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9320521.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, March 31, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9320533.

The Panhandle Mental Health Authority Board of Trustees met at 7120 I-40 West, Suite 150, Amarillo, March 25, 1993, at 9 a.m. Information may be obtained from Tammy Suddeath, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-3699. TRD-9320551.

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**Meetings Filed March 19,
1993**

The Austin-Travis County Mental Health and Mental Retardation Center Planning and Operations Committee met at 1430 Collier Street, Board Room, Austin, March 24, 1993, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9320599.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors met at 1124A Regal Row, Austin, March 25, 1993, at 5:30 p.m. Information may be obtained from William Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9320563.

The Burnet County Appraisal District Board of Directors met at 110 Avenue H, Suite 106, Marble Falls, March 25, 1993, at noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78610, (512) 756-8291. TRD-9320628.

The Callahan County Appraisal District Board of Directors will meet at the Appraisal District Offices, 130-A West Fourth

Street, Baird, March 29, 1993, at 7 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9320593.

The Capital Area Rural Transportation System (CARTS) CARTS Board of Directors met at 5111 East First Street, Austin, March 25, 1993, at 9 a.m. Information may be obtained from Edna M. Burroughs, 5111 East First Street, Austin, Texas 78702, (512) 478-7433. TRD-9320608.

The Dallas Area Rapid Transit (DART) Finance and Audit Committee met at 1401 Pacific Avenue, DART Headquarters, Board Conference Room C, Dallas, March 23, 1993, at 1 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9320570.

The Dallas Area Rapid Transit (DART) Board of Directors met at 1401 Pacific Avenue, DART Headquarters, Board Room, Dallas, March 23, 1993, at 3 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9320571.

The Edwards County Appraisal District Board of Directors will meet at the New County Annex Building, Rocksprings, March 29, 1993, at 10 a.m. Information may be obtained from Natalie McNealy, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9320560.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, March 24, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9320600.

The Johnson County Rural Water Supply Corporation met at the JCRWSC Office, Highway 171 South, Cleburne, March 25, 1993, at 1 p.m. Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9320598.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, March 25, 1993, at 7 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9320594.

The Lower Rio Grande Valley Development Council Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler Street, Harlingen, March 25, 1993, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9320554.

The Mental Health and Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, March 25, 1993, at 1:30 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77803, (409) 822-6467. TRD-9320596.

The Middle Rio Grande Development Council Board of Directors met at the Fort Clark Springs Restaurant (Upstairs), Highway 90, Brackettville, March 22, 1993, at 1 p.m. The emergency status was necessary as the board needed to amend dollar amount in order to get approval prior to the end of the month, and in order to meet deadline requirements. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9320627.

The North Central Texas Interlink, Inc. Board will meet at the Infomart, 1950 Stemmons, Dallas, April 14, 1993, at 2 p.m. Information may be obtained from Candy Slocum, P.O. Box 610246, DFW Airport, Texas 75261, (214) 621-0400. TRD-9320561.

The North Texas Private Industry Council of Nortex Regional Planning Commission will meet at the Nortex Regional Planning Commission, 4309 Jacksboro Highway, Wichita Falls, March 31, 1993, at 12:15 p.m. Information may be obtained from Tom O'Neil, First State Bank, Drawer A, Archer City, Texas 76351, (817) 574-4507. TRD-9320559.

The Panhandle Regional Planning Commission Board of Directors met at 2736 West 10th Street, PRPC Board Room, Amarillo, March 25, 1993, 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381. TRD-9320582.

The Sharon Water Supply Corporation Board of Directors met at the Office of the Sharon Water Supply, Route 5, Box 25-C-10, Winnsboro, March 22, 1993, at 7 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 25-C-10, Winnsboro, Texas 75494, (903) 342-3525. TRD-9320597.

The West Central Texas Council of Governments Executive Committee met at 1025 East North 10th Street, Abilene, March 24, 1993, at 12:45 p.m. (Revised agenda). Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9320601.

**Meetings Filed March 22,
1993**

The Bosque Central Appraisal District Board of Directors will meet at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridan, March 31, 1993, at 10 a.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665, (817) 435-2304. TRD-9320671.

The Burnet County Appraisal District Appraisal Review Board will meet at 223 South Pierce Street, Burnet, March 26, 1993, at 11 a.m. Information may be obtained from Barbara Ratliff, P.O. Box 63, Burnet, Texas 78611, (512) 756-8291. TRD-9320674.

The Carson County Appraisal District Appraisal Review Board held an emergency meeting at 102 Main Street, Panhandle, March 25, 1993, at 9:30 a. m. The emergency status was necessary to organize and elect new officers prior to seminar on Monday. Information may be obtained from Donita Herber, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9320650.

The Concho Valley Council of Governments Private Industry Council met at 5014 Knickerbocker Road, San Angelo, March 25, 1993, at 3 p.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666. TRD-9320635.

The Deep East Texas Council of Governments Solid Waste Task Force held an emergency meeting at Cape Royale, FM 224, San Jacinto County, Coldspring, March 25, 1993, at 10 a.m. The emergency status was necessary as Texas Water Commission interpretation was received February 21, 1993, and emergency discussion was necessary. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9320673.

The Jack County Appraisal District Agriculture Advisory Committee met at 210 North Church Street, Jacksboro, March 25, 1993, at 6:30 p. m. (Rescheduled from March 23, 1993). Information may be obtained from Gary L. Zeitler or Vicky Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9320656.

The North Central Texas Council of Governments for the North Central Texas Job Training Consortium Private Industry Council will meet at 616 Six Flags Drive, Centerpoint Two, Arlington, April 6, 1993, at 10 a.m. (Rescheduled from March 18, 1993). Information may be obtained from Mike Gilmore, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300, Extension 162. TRD-9320633.

The Region 18 Education Service Center Board of Directors will meet at 2811 LaForce Boulevard, Midland, April 1, 1993, at 7 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Mid-

land, Texas 79711, (915) 563-2380. TRD-9320634.

The South Texas Development Council Board of Directors met at the Commissioners Courtroom, Courthouse Annex, Zapata, March 25, 1993, at 11 a. m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9320631.

The STED Corporation Board of Trustees met at the Commissioners Courtroom, Courthouse Annex, Zapata, March 25, 1993, at 10 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9320632.

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**Meetings Filed March 23,
1993**

The Brazos Valley Development Council Family Self-Sufficiency Coordinating Body will meet at the Council's Office, 3006 East 29th Street, Bryan, March 26, 1993, at noon. Information may be obtained from Laura Klesel, P.O. Box 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9320679.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, March 31, 1993, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9320678.

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Name: Kim Brandon
Grade: 12
School: Plano East Senior High, Plano 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 Department on Aging Extension of Comment Period

The Texas Department on Aging announces that the comment period for the following proposed new rules has been extended to April 29, 1993.

40 TAC §255.41, concerning Targeting of Services, published in the March 5, 1993, issue of the *Texas Register* (18 TexReg 1402).

40 TAC §262.1, concerning General Service Standards, published in the February 16, 1993, issue of the *Texas Register* (18 TexReg 1008).

40 TAC Chapter 267, concerning Title III Nutrition Services Standards, published in the February 16, 1993, issue of the *Texas Register* (18 TexReg 1011).

40 TAC §269.1, concerning Health Services Standards, published in the February 16, 1993, issue of the *Texas Register* (18 TexReg 1020).

40 TAC §270.1, concerning Adult Day-Care Service Standards, published in the February 2, 1993, issue of the *Texas Register* (18 TexReg 636).

40 TAC Chapter 273, concerning Transportation Service Standards, published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1671).

40 TAC Chapter 274, concerning Emergency Response Service Standards, published in the February 5, 1993, issue of the *Texas Register* (18 TexReg 736).

40 TAC Chapter 276, concerning Guidelines for Residential Repair, published in the February 16, 1993, issue of the *Texas Register* (18 TexReg 1022).

We encourage all interested and concerned parties to forward their comments as instructed in the *Texas Register*.

Issued in Austin, Texas, on March 19, 1993.

TRD-9320602

Mary Sapp
Executive Director
Texas Department on Aging

Filed: March 19, 1993

Texas Air Control Board Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act (TCAA), §382.017(a); the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; the Procedural Rules of the Texas Air Control Board (TACB), §103.11(4), and 40 Code of Federal Regulation 51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans, the Texas Air Control Board

(TACB) will conduct a public hearing to receive testimony concerning a revision to the State Implementation Plan (SIP).

A portion of Collin County has been designated by the United States Environmental Protection Agency (EPA) as "nonattainment" for the National Ambient Air Quality Standard (NAAQS) for lead. The state must submit an attainment demonstration by early July, 1993, which involves adding new controls on processes and the reduction of fugitive emissions from the GNB facility in Frisco. TACB proposes a plan to demonstrate attainment of the lead standard to satisfy federal requirements.

A public hearing will be held at 7 p.m. on April 21, 1993, in the Frisco High School Auditoria, 6927 Coon Lane, Frisco. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted, however, TACB staff members will discuss the proposal and answer questions at 6 p.m., prior to the hearing.

Written comments not presented at the hearing may be submitted to the TACB central office in Austin through April 23, 1993.

Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the Board prior to any final action on the proposed rules. Copies of the proposal are available at the TACB central office Air Quality Planning Annex, located at 12118 North HI 35, Park 35 Technology Center, Building A, Austin, Texas 78753 and at the TACB regional office in Fort Worth. For further information, contact Alan Henderson at (512) 908-1510.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on March 17, 1993.

TRD-9320595

Lane Hartssock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: March 19, 1993

Texas Cosmetology Commission Building Dedication

There will be a dedication ceremony to dedicate the new Cosmetology Commission building at 11 a.m., Monday, March 29, 1993. The ceremony will be held at Frank Joseph Cosmetology Building, 5717 Balcones Drive, Austin, Texas 78731.

For additional information, call Alicia Ayers, (512) 454-4674.

Issued in Austin, Texas, on March 16, 1993.

TRD-9320423 Ron Resech
Executive Director
Texas Cosmetology Commission

Filed: March 17, 1993

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Chairperson's Advisory Committee

The Chairperson's Advisory Committee will meet at 9 a.m., Sunday, March 28, 1993, at the Omni Austin Hotel (formerly Radisson Plaza), 700 San Jacinto, Austin, Texas 78701.

For additional information, call Ron Resech, (512) 454-4674.

Issued in Austin, Texas, on March 16, 1993.

TRD-9320422 Ron Resech
Executive Director
Texas Cosmetology Commission

Filed: March 17, 1993

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Search Committee for Executive Director

The Search Committee for Executive Director will meet at 2 p.m., Saturday, March 27, 1993, at the Omni Austin Hotel (formerly Radisson Plaza), 700 San Jacinto, Austin, Texas 78701. The purpose of the meeting is to narrow down the list of applicants for the position of Executive Director of the Texas Cosmetology Commission.

For additional information, call Vivian Rico, (512) 454-0470.

Issued in Austin, Texas, on March 16, 1993.

TRD-9320424 Ron Resech
Executive Director
Texas Cosmetology Commission

Filed: March 17, 1993

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**Interagency Council on Early
Childhood Intervention**

Request for Proposals

The Texas Interagency Council on Early Childhood Intervention (ECI) announces the availability of emergency funding for issues related to the loss of local funds and other program needs which negatively impact the equalization and continuance of services below the minimum cost per child level approved by Council on December 16, 1992. Funding is for comprehensive services for children with developmental delay or who are at risk of developmental delay, ages birth to three.

The awarding of these dollars are only available to current providers who have documented the need for additional dollars based on their inability to continue services at their current level of service delivery through the end of August 31, 1993. All requests should be submitted to the Early Childhood Intervention Program, 1100 West 49th Street, Austin, Texas 78756. For information or questions contact Mary Elder, ECI Administrator, Early Childhood Intervention Administrative Office at (512) 458-7673.

Issued in Austin, Texas, on March 16, 1993.

TRD-9320487 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 18, 1993

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**Texas Employment Commission
Request for Proposals**

I. Introduction. This packet is designed to assist eligible applicant organizations in applying to the Texas Employment Commission (hereinafter TEC or the Agency) for Dependent Care Development Grant Program (DCDGP) funds.

Authorization of Funding. The funds are authorized by Public Law 98-558, the Human Services Reauthorization Act of 1984, as amended by Public Law 101-105, the Augustus F. Hawkins Human Services Reauthorization Act of 1990. The funds are administered by the United States Department of Health and Human Services (hereinafter the Department).

Scope of Work. The Agency is seeking proposals for a special project (or projects) to be funded with DCDGP funds. Proposals which will be considered for funding under this request may be proposals such as the following: a newsletter for employers that presents information about options for positive work/family policies, model programs, demographic trends, and legislative initiatives. At least two issues of the newsletter will be printed and distributed to a minimum of 5,000 employers; the re-design of an existing Agency exhibit display (48" X 120" tabletop display); to research to update, revise, edit, print, and disseminate a minimum of 5,000 copies of publications originally developed by the University of Texas under DCDGP funding; to plan, develop, and design a research project addressing a work and family issue; the plan would identify research questions, the method of gathering data, strategies for recruiting subjects, a plan for data analysis, timeline for conducting research, the principal investigator, potential funding sources; to plan and present a state-wide or regional conference for employers on work/family issues; the plan must address the program, lists of participants, facilities, site arrangements, resources, materials, mailing lists, evaluations, conference programs, conference brochure, marketing strategies, and the publication of conference findings; research, write, publish, and disseminate monographs about specific work/family options; and other original projects related to work and family issues.

Proposals addressing the needs of families with dependent elders are encouraged. Proposals may address single or multiple projects, and performing agencies may identify subcontractors with unique and specialized experience who will perform some of the content work. However, the funding agency reserves the right to fund a portion of the proposal activities, subject to availability of funds and contract negotiations satisfactory to the funding agency and the performing agency.

Length of Contract. The anticipated length of the contract is five months, from May 1, 1993, to October 1, 1993. The contract may be extended by mutual agreement between the State, the Texas Employment Commission, and the Vendor.

Selection, Notification, and Negotiation Process. The Texas Employment Commission anticipates completing

the selection process by no later than April 30, 1993. Any negotiations deemed necessary by TEC will be conducted prior to the first day of the contract period. TEC reserves the right to vary all provisions of this RFP prior to execution of a contract and to execute amendments to contracts when the Agency deems such variances and/or amendments are in the best interest of the State of Texas.

Agency Contact. Any questions or clarification requests pertaining to the contents of the RFP packet are to be directed to Carol McDaniel (512) 502-3772 or Terry Ramsey (512) 502-3774.

II. Application Information.

Due Date. The deadline for receipt and consideration of a proposal is the close of business (5 p.m.) April 19, 1993. Applications postmarked on or before April 19, 1993, and mailed through the United States Postal Service will be considered to be timely. In order to be eligible mailed proposals must include a legible United States Postal Service postmark showing a date and time on or before the deadline. Metered mail is not acceptable unless it also includes an acceptable United States Postal Service postmark.

Applications delivered by any other type of mail service or hand delivered must arrive at TEC at the specified date and time. Applications may be mailed or delivered in person or by special delivery to one of the following addresses: Texas Employment Commission, Public/Private Sector Initiatives, 101 East 15th Street, Travis Building #209, Austin, Texas 78778; Texas Employment Commission, Public/Private Sector Initiatives, 3520 Executive Center Drive, Suite 209, Austin, Texas 78731.

Eligible Applicants. Eligible applicant organizations for these funds include local governments; regional councils; public or nonprofit private education institutions; and private nonprofit organizations. Applications from minority individuals and women are encouraged.

All applicants selected must meet the Certification of Eligibility requirements prior to contract execution. See TEC Contracting Policies in Section II: Proposal Application Packet.

Format for Submission. Proposals must be typed-double spaced-on standard 8-1/2" x 11" paper, and have consecutively numbered pages. The Face Page should be attached to the front of the proposal, followed by the Table of Contents. All pages should be numbered.

Proposals should be limited to 25 pages including the required performance statement and budget forms, but excluding the certification of eligibility documents and assurances. Proposals which exceed the page limitations will be disqualified. Proposals should not be elaborately bound but should be stapled or clipped at the top.

An original and five complete copies of each applications must be submitted.

See also Section II: Proposal Application Packet for additional information on program narrative and proposal format.

Budget Information. The total funding available for this request is approximately \$25,000. Each proposal must include a 25% matching share from the applicant organization. The minimum matching share shall not be less than 25% of the combined total of Federal and match funds. To calculate the minimum amount of matching funds required

for this grant, divide the total Federal funds requested in the proposal by three.

Department's prior written approval for purchase or lease of equipment with acquisition cost of \$500 and more per unit is required. Approval of a completed proposal or contract budget does not constitute prior approval. Title to items with an acquisition cost of \$1,000 or more shall be retained by the Texas Employment Commission.

Examples of allowable and non-allowable costs are outlined below: Allowable: meeting/conference room expenses, staff travel directly associated with grant purposes, salary/fringe benefit costs for assigned project staff, prorated telephone costs, printing/reproduction costs, prorated rental/or purchase costs for visual aids or other office equipment, program advertising, auditing costs, indirect costs-if in accordance with currently approved indirect cost rate plan, purchase of equipment, supplies or materials directly related to grant activities; Non-Allowable: client/recipient payments, construction costs, renovation costs, matching for Federal funds, lobbying costs, food/entertainment costs, consultant costs for proposal development.

Federal funds made available under the Act will be used to supplement and increase the level of State, local and other non-Federal funds that would, in the absence of such Federal funds, be made available for the programs and activities for which funds are provided and will in no event supplant such State, local, and other non-Federal funds.

Assurances. Any eligible organization applying for and accepting Dependent Care Development Grant Program (DCDGP) funds shall: assure that funds allotted under Section 670B shall be used in accordance with the requirements of the Dependent Care Development Grant Act, Public Law 98-588, as amended by Public Law 101-501; assure that fiscal control and fund accounting exists as may be necessary to assure the proper disbursement of and accounting for federal funds received under the Act; assure that audits of this program shall be conducted in accordance with the provisions of the 45 Code of Federal Regulations Part 74.62. Audits shall be conducted annually by independent auditors based on generally accepted government auditing standards. Results shall be submitted to the Texas Employment Commission; assure compliance with reporting requirements as required by the United States Department of Health and Human Services and TEC.

Review and Rating of Proposals. Information on planned performances in each proposal will be significant in proposal grading and ranking. Also significant for continuing contractors are new or innovative approaches to a component already undertaken, the expansion of a component into a larger or different geographical area or different target group, or acceptable justification for refunding the same approach to a component already undertaken.

No review of a proposal will be initiated unless all applicant information and documentation specified in this RFP is submitted. See Section II: Proposal Application Packet for more information on rating criteria.

Issued in Austin, Texas, on March 19, 1993.

TRD-9320558

C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission

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I. Introduction. This packet is designed to assist eligible applicant organizations in applying to the Texas Employment Commission (hereinafter TEC or the Agency) for Texas Work and Family (W&F) funds.

Authorization of Funding. The funds are authorized by Senate Bill 610, amending §1, Article 5221g-1 to create the Work and Family Fund in the state treasury. The fund is administered by the Texas Employment Agency.

Scope of Work. The Agency is seeking proposals for a special project (or projects) to be funded with W&F funds. Proposals which will be considered for funding under this request may address the following projects: plan the redesign of an existing Agency exhibit display (48" X 120" tabletop display); plan to update, revise, edit, print, and disseminate a minimum of 5,000 copies of publications originally developed by the University of Texas under DCDGP funding; plan, develop, and design a research project addressing a work and family issue. The plan would identify research questions, the method of gathering data, strategies for recruiting subjects, a plan for data analysis, timeline for conducting research, the principal investigator, potential funding sources. plan and present a state-wide or regional conference for employers on work/family issues. The plan must address program, content, list of participants, facilities, site arrangements, resources, materials, mailing and invitations, evaluations, conference programs, conference brochures, marketing strategies, and the publication of conference findings. research, write, publish, and disseminate monographs about specific work/family options; and/or a plan that addresses other original projects relating to work and family issues.

Proposals addressing the needs of families with dependent elders are encouraged. Proposals may address single or multiple projects, and performing agencies may identify subcontractors with unique and specialized experience who will perform some of the content work. However, the funding agency reserves the right to fund a portion of the proposal activities, subject to availability of funds and contract negotiations satisfactory to the funding agency and the performing agency.

Length of Contract. The anticipated length of the contract is four months, from May 1, 1993, to August 1, 1993. The contract may be extended by mutual agreement between the State, the Texas Employment Commission, and the Vendor.

Selection, Notification, and Negotiation Process. The Texas Employment Commission anticipates completing the selection process by no later than April 30, 1993. Any negotiations deemed necessary by TEC will be conducted prior to the first day of the contract period. TEC reserves the right to vary all provisions of this RFP prior to execution of a contract and to execute amendments to contracts when the Agency deems such variances and/or amendments are in the best interest of the State of Texas.

Agency Contact. Any questions or clarification requests pertaining to the contents of the RFP packet are to be directed to Carol McDaniel (512) 502-3772 or Terry Ramsey (512) 502-3774.

II. Application Information.

Due Date. The deadline for receipt and consideration of a proposal is the close of business (5 p.m.) April 19, 1993.

Applications postmarked on or before April 19, 1993, and mailed through the United States Postal Service will be considered to be timely. In order to be eligible mailed proposals must include a legible United States Postal Service postmark showing a date and time on or before the deadline. Metered mail is not acceptable unless it also includes an acceptable United States Postal Service postmark.

Applications delivered by any other type of mail service or hand delivered must arrive at TEC at the specified date and time. Applications may be mailed or delivered in person or by special delivery to one of the following addresses: Mailing Address: Texas Employment Commission, Public/Private Sector Initiatives, 101 East 15th Street, Travis Building #209, Austin, Texas 78778; Street Address: Texas Employment Commission, Public/Private Sector Initiatives, 3520 Executive Center Drive, Suite 209, Austin, Texas 78731.

Eligible Applicants. Eligible applicant organizations for these funds include local governments; regional councils; public or nonprofit private education institutions; and private nonprofit organizations. Applications from minority individuals and women are encouraged.

All applicants selected must meet the Certification of Eligibility requirements prior to contract execution. See TEC Contracting Policies in Section II: Proposal Application Packet.

Format for Submission. Proposals must be typed-double spaced-on standard 8-1/2" x 11" paper, and have consecutively numbered pages. The Face Page should be attached to the front of the proposal, followed by the Table of Contents. All pages should be numbered.

Proposals should be limited to 25 pages including the required performance statement and budget forms, but excluding the certification of eligibility documents and assurances. Proposals which exceed the page limitations will be disqualified. Proposals should not be elaborately bound but should be stapled or clipped at the top.

An original and five complete copies of each applications must be submitted.

See also Section II: Proposal Application Packet for additional information on program narrative and proposal format.

Budget Information. The total funding available for this request is approximately \$35,000. Each proposal must include a 25% matching share from the applicant organization. The minimum matching share shall not be less than 25% of the combined total of State and match funds. To calculate the minimum amount of matching funds required for this grant, divide the total State funds requested in the proposal by three.

The Texas Employment Commission's prior written approval for purchase or lease of equipment with acquisition cost of \$500 and more per unit is required. Approval of a completed proposal or contract budget does not constitute prior approval. Title to items with an acquisition cost of \$1,000 or more shall be retained by the Texas Employment Commission.

Examples of allowable and non-allowable costs are outlined below: Allowable: meeting/conference room expenses, staff travel directly associated with grant purposes, salary/fringe benefit costs for assigned project staff, prorated telephone costs, printing/reproduction costs, prorated rental/or purchase costs for visual aids or other office

equipment, program advertising, auditing costs, indirect costs-if in accordance with currently approved indirect cost rate plan, purchase of equipment, supplies or materials directly related to grant activities; Non-Allowable: client/recipient payments, construction costs, renovation costs, matching for Federal or State funds, lobbying costs, food/entertainment costs, consultant costs for proposal development.

Assurances. Any eligible organization applying for and accepting W&F funds shall: assure that fiscal control and fund accounting exists as may be necessary to assure the proper disbursement of and accounting for state funds received; assure that appropriate audits of this program shall be conducted. Audits shall be conducted annually by independent auditors based on generally accepted government auditing standards. Results shall be submitted to the Texas Employment Commission; assure compliance with reporting requirements as required by the Texas Employment Commission.

Review and Rating of Proposals. Information on planned performances in each proposal will be significant in proposal grading and ranking. Also significant for continuing contractors are new or innovative approaches to a component already undertaken, the expansion of a component into a larger or different geographical area or different target group, or acceptable justification for refunding the same approach to a component already undertaken.

No review of a proposal will be initiated unless all applicant information and documentation specified in this RFP is submitted. See Section II: Proposal Application Packet for more information on rating criteria.

Issued in Austin, Texas, on March 19, 1993.

TRD-9320557 C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission

Filed: March 19, 1993

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General Land Office

Correction of Error

The General Land Office adopted new 31 TAC §§15.1-15.10, concerning identification of critical dune areas, dune preservation, and the preservation and enhancement of public beach access. The rules appeared in the February 2, 1993, *Texas Register* (18 TexReg 661). A correction of error notice was published in the February 26, 1993, *Texas Register* (18 TexReg 661). A second correction of error notice was published in the March 5, 1993, *Texas Register* (18 TexReg 1449).

Due to editing errors by the *Texas Register* the cite for both references to the Open Beaches Act in §15.7(j) were printed incorrectly. The cite should read "Open Beaches Act, §61.022."

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Texas Department of Health

Notice of Emergency Cease and Desist Orders

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Nuclear Technologies International-Tracer Group Division (licensee-L02975) of Midland to

cease and desist from operating and/or using any source of radiation at any location in Texas; to cease from accepting, disposing, or transferring any source or sources of radiation; and to surrender to the bureau for impoundment all radioactive material in its possession in Texas. The order was issued because the licensee did not have an authorized radiation safety officer and approved users of radioactive materials.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on March 16, 1993.

TRD-9320481 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

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Notice is hereby given that the Bureau of Radiation Control (bureau) ordered W. M. Avent, M.D. (registrant-R02203) of Waco to cease and desist using any sources of radiation in his possession at this facility until all health-related violations found during a recent inspection have been corrected. The bureau determined that the continued use of radiation sources at this facility constitutes an immediate threat to public health and safety. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to reduce entrance exposures for diagnostic chest x-rays to within regulatory limits, correct the health-related violations, and the methods to prevent the recurrence of these violations.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on March 16, 1993.

TRD-9320485 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 18, 1993

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Notice is hereby given that the Bureau of Radiation Control (bureau) ordered R/A Services (licensee-L03010 and L03879) of Midland County to cease and desist all operations at all locations under its control; impound all sources of radiation in place; cease from accepting, disposing of, or transferring any source or sources of radiation; and maintain security as specified. The order was issued because the licensee did not have an authorized radiation safety officer, approved users of radioactive materials, and an established radiation safety program. In addition, the licensee had refused to comply with the Texas Health and Safety Code, Chapter 401, and the Texas Regulations for Control of Radiation.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on March 16, 1993.

TRD-9320480 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 18, 1993.

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Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Chris A. Mangold, D.D.S. (registrant-R12691) of El Paso to cease and desist using any sources of radiation at the registrant's facility until all health-related violations found during a recent inspection have been corrected. The bureau determined that the continued use of radiation sources at this facility constitutes an immediate threat to public health and safety. The registrant is further required to provide written evidence satisfactory to the bureau regarding the actions taken to correct the violations and the methods to prevent the recurrence of the violations.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on March 16, 1993.

TRD-9320484 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 18, 1993.

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Notice of Intent to Revoke a Certificate of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: Stat Portable X-ray Service, Inc., Dallas, R06867.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid and the items in the complaint are corrected within 30 days of the date of complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on March 16, 1993.

TRD-9320486 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 18, 1993

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and assessed an administrative penalty to Alan J. Lobel, D.C., doing business as Lobel Chiropractic and Nutrition, Dallas, holder of Certificate of Registration Number R-15755. A penalty of \$10,500 was assessed the individual for violations of the Texas Regulations for Control of Radiation, the repetitive nature of certain violations and the failure to correct the violations as indicated in correspondence to the bureau.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on March 16, 1993.

TRD-9320482 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 18, 1993

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Notice of Rescission of Orders

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following orders: Cease and Desist Order issued February 1, 1993, to John G. Kephart, D.C., doing business as Chiropractic Care Center, 740 North Fielder, Arlington, Texas 76012, holder of Certificate of Registration Number R19511; Cease and Desist Order issued January 21, 1993, to Robert B. Hames, D.O., 6613 Jacksboro Highway, Fort Worth, Texas 76135, holder of Certificate of Registration Number R17234; Cease and Desist Order issued January 6, 1993, to Luis Alvarez, M.D., 96 Berry Road, Houston, Texas 77022, holder of Certificate of Registration Number 15851; Cease and Desist Order issued January 21, 1993, to Francis E. McIntyre, M.D., 2301 North Loop, Austin, Texas 78756, holder of Certificate of Registration Number R04597.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on March 16, 1993.

TRD-9320483 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 18, 1993.

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Texas Parks and Wildlife Department Notice of Public Hearing

Notice is hereby given that Parker Lafarge, Incorporated, whose address is P.O. Box 4608, Houston, Texas 77210, on March 18, 1993, filed an application with the Texas Parks and Wildlife Department for a permit to continue operations:

To remove 30,000 cubic yards of sand per month from the San Jacinto River approximately 7.5 miles north of the mouth of the river in a 900 inches by 1,500 inch area adjacent to the properties of Lyondell Petro-Chemical Company and the residents of Clear Lake Road in Highlands, Texas, and Johnson Clothilde.

Parker Lafarge, Inc. currently is operating pursuant to Sand, Shell, Gravel, and Marl Permit Number SR91-004. Sand is collected using a hydraulic suction dredge. Materials are separated on site and unwanted materials are returned to the water. Sand is collected in barges and transported downstream for sale.

This permit is protested by the San Jacinto River Association and a contested case hearing pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252.13a, §18(a) has been set. The hearing is scheduled to begin: April 5, 1993, 9 a.m., State Office of Administrative Hearings, 300 West 15th Street, Suite 408, Austin, Texas 78701.

Persons wishing to participate in the hearing should appear at the time and place previously listed. This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in the Parks and Wildlife Code, Chapter 86 and 31. Texas Administrative Code, §57.61 et seq and will not authorize the crossing of any private property.

The San Jacinto River Association asserts several grounds for opposition to this permit application. These include a 1971 Parks and Wildlife Department study concluding that surplus materials had been removed from the area, the loss of wetlands in the San Jacinto area, concern for resuspension of toxic contaminants in the river, concern about the potential for erosion and subsidence, and interference with navigation and recreation.

Persons interested in this case may contact Catherine Livingston at the following address and phone number, or may contact Sheila Bailey, State Office of Administrative Hearings, 300 West 15th Street, Suite 408, Austin, Texas 78701, (512) 475-4993 (Fax: (512) 475-4994). Catherine Livingston, SBN 12437375, Legal Services, 4200 Smith School Road, Austin, Texas 78744, (512) 444-0160 or (512) 444-0274, Fax: (512) 448-4766.

Issued in Austin, Texas, on March 22, 1993.

TRD-9320644 Paul M. Shinkawa
General Counsel
Texas Parks and Wildlife Department

Filed: March 22, 1993

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Public Utility Commission of Texas
Notices of Intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Huntsville ISD, Huntsville.

Docket Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for Huntsville ISD pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11859.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Huntsville ISD. The geographic service market for this specific service is the Huntsville 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 Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on March 17, 1993.

TRD-9320462 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 17, 1993

◆ ◆ ◆
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Prairie View A & M University, Prairie View.

Docket Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for Prairie View A & M University pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11855.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Prairie View A & M University. The geographic service market for this specific service is the Prairie View 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 Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

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TRD-9320463 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 17, 1993

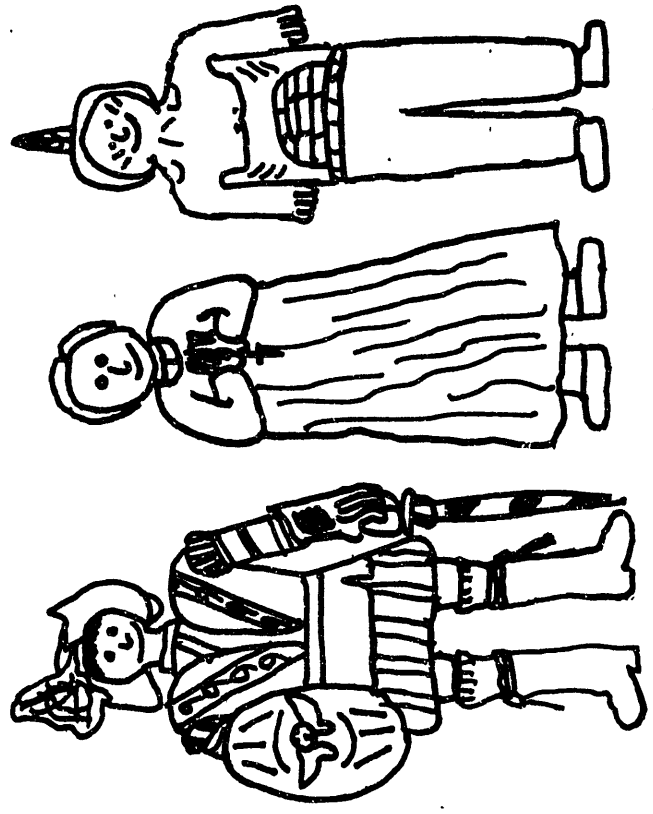
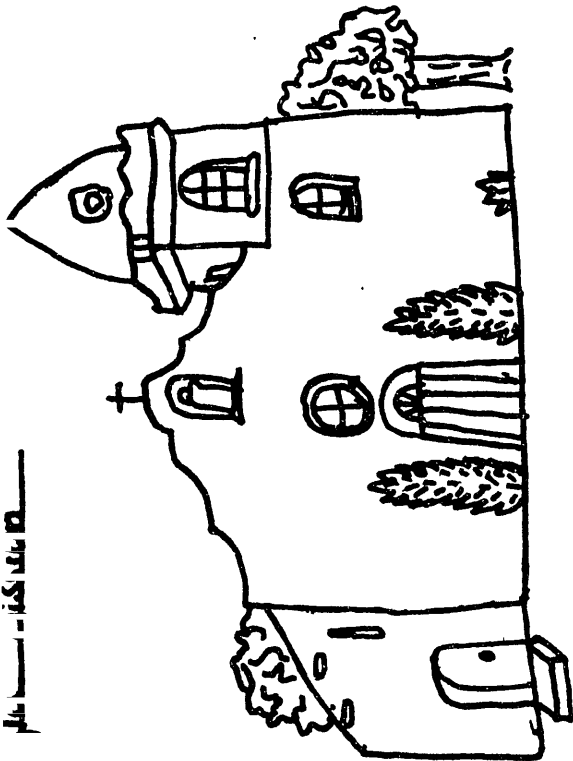
◆ ◆ ◆
Texas Department of Transportation,
Division of Aviation
Notice of Contract Awards

Under the provisions of the Texas Civil Statutes, Article 664-4, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services.

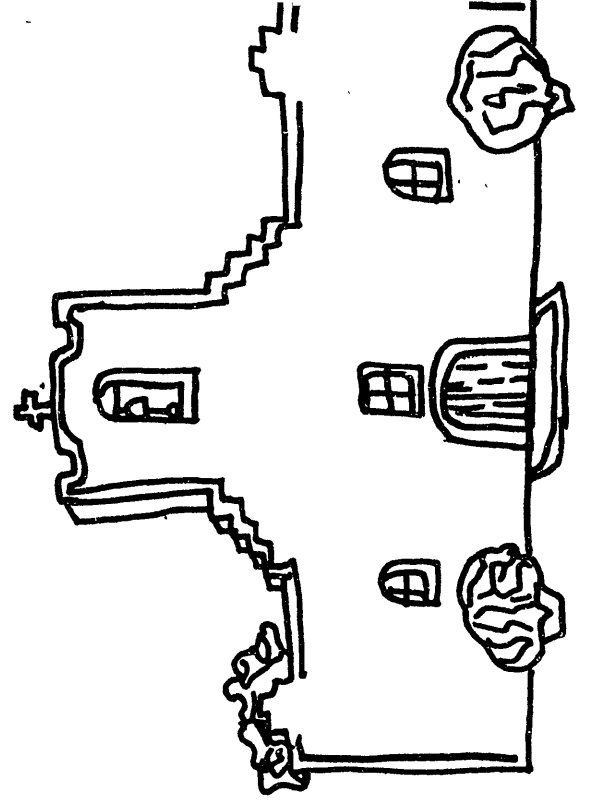
The request for qualifications for professional engineering services was published in the *Texas Register* on September 4, 1992, (17 TexReg 6115)

The consultant will provide professional engineering services for the design and construction administration phases for the following TxDOT Project: 94-01-031, McMahon-Wrinkle Airport, Big Spring.

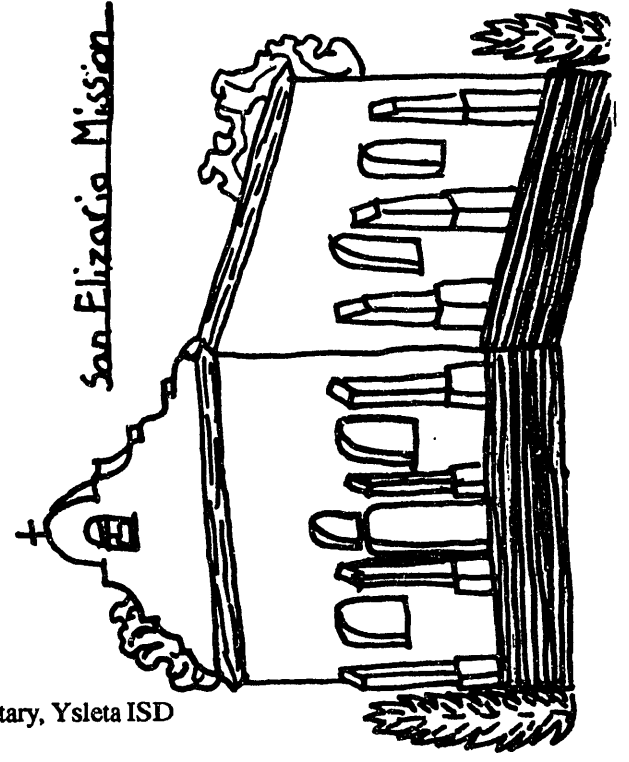
The engineering firm for these services is: Parkhill, Smith and Cooper, Inc., 4010 Avenue R, Lubbock, Texas 79412.



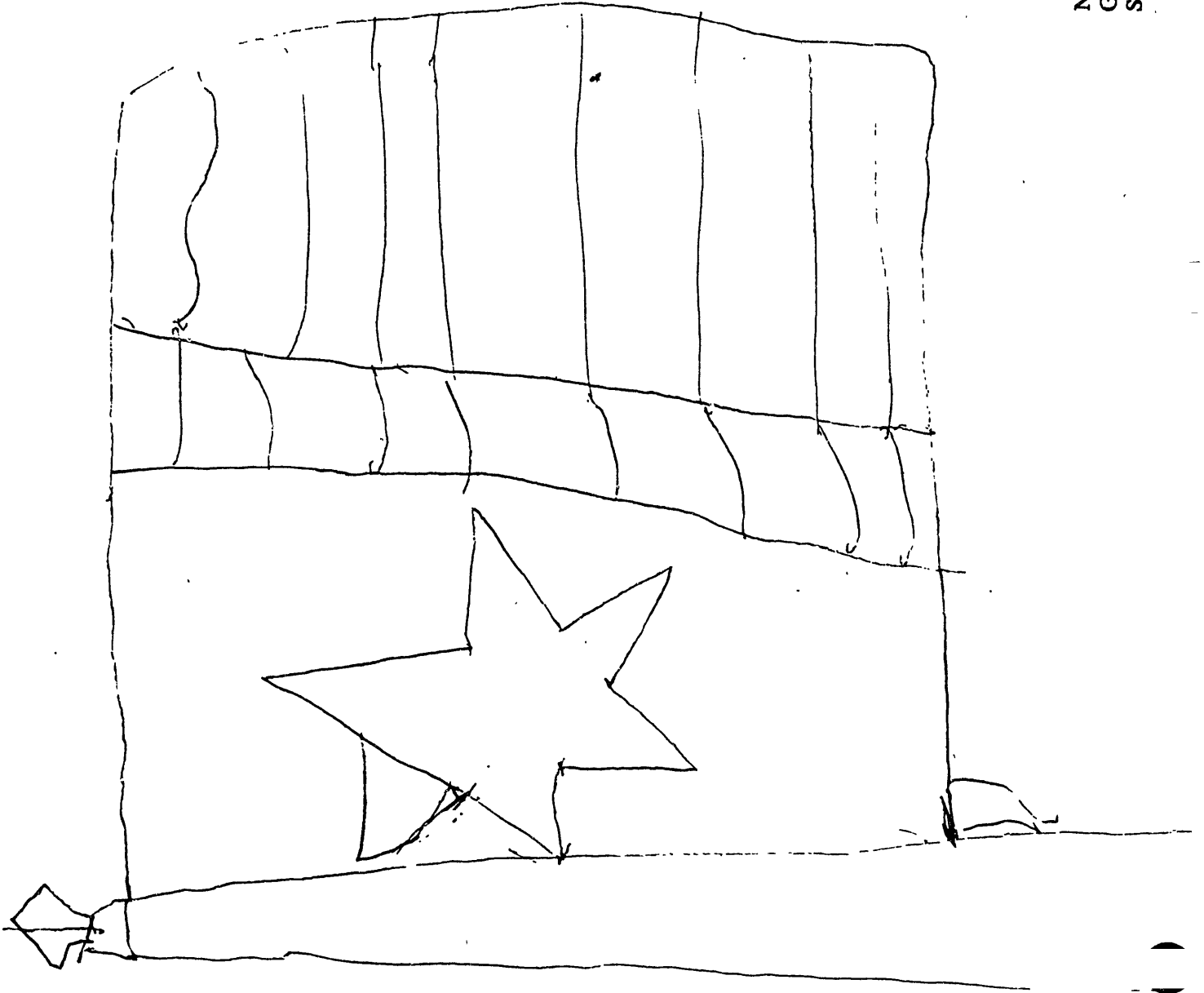
Soledad Mission



San Elizario Mission

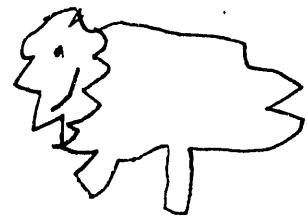
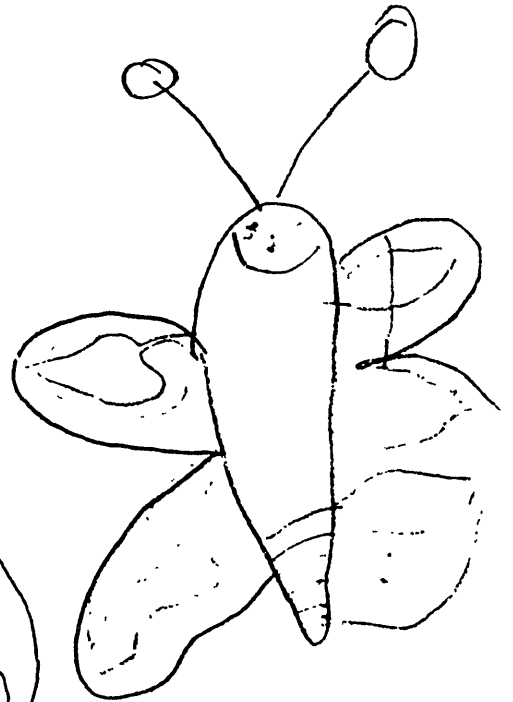
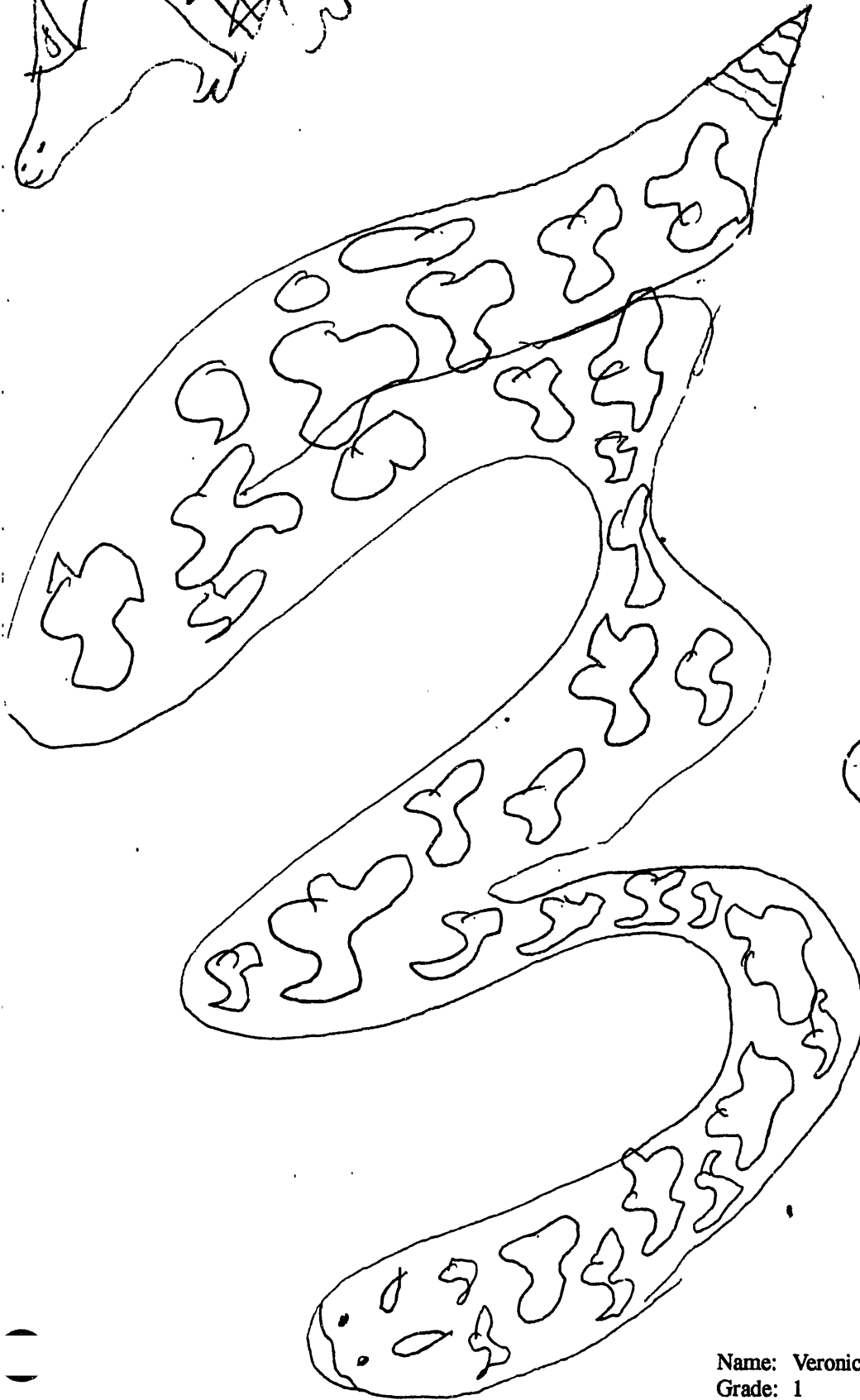
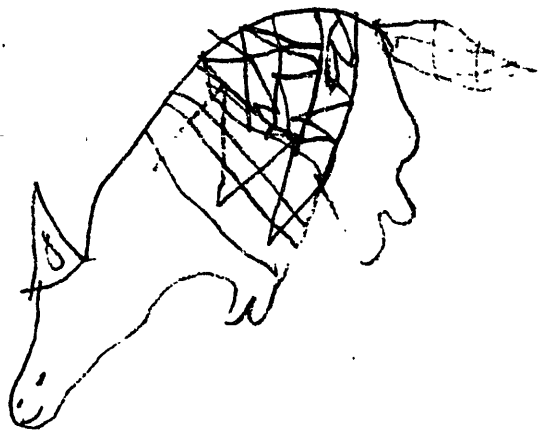


Name: Marie Villa
Grade: 3
School: North Loop Elementary, Ysleta ISD



Name: Alma Blea
Grade: 1

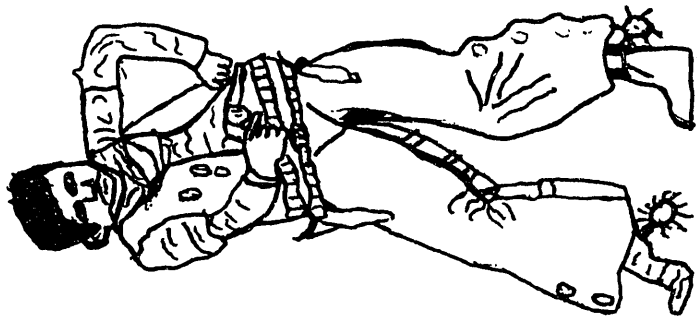
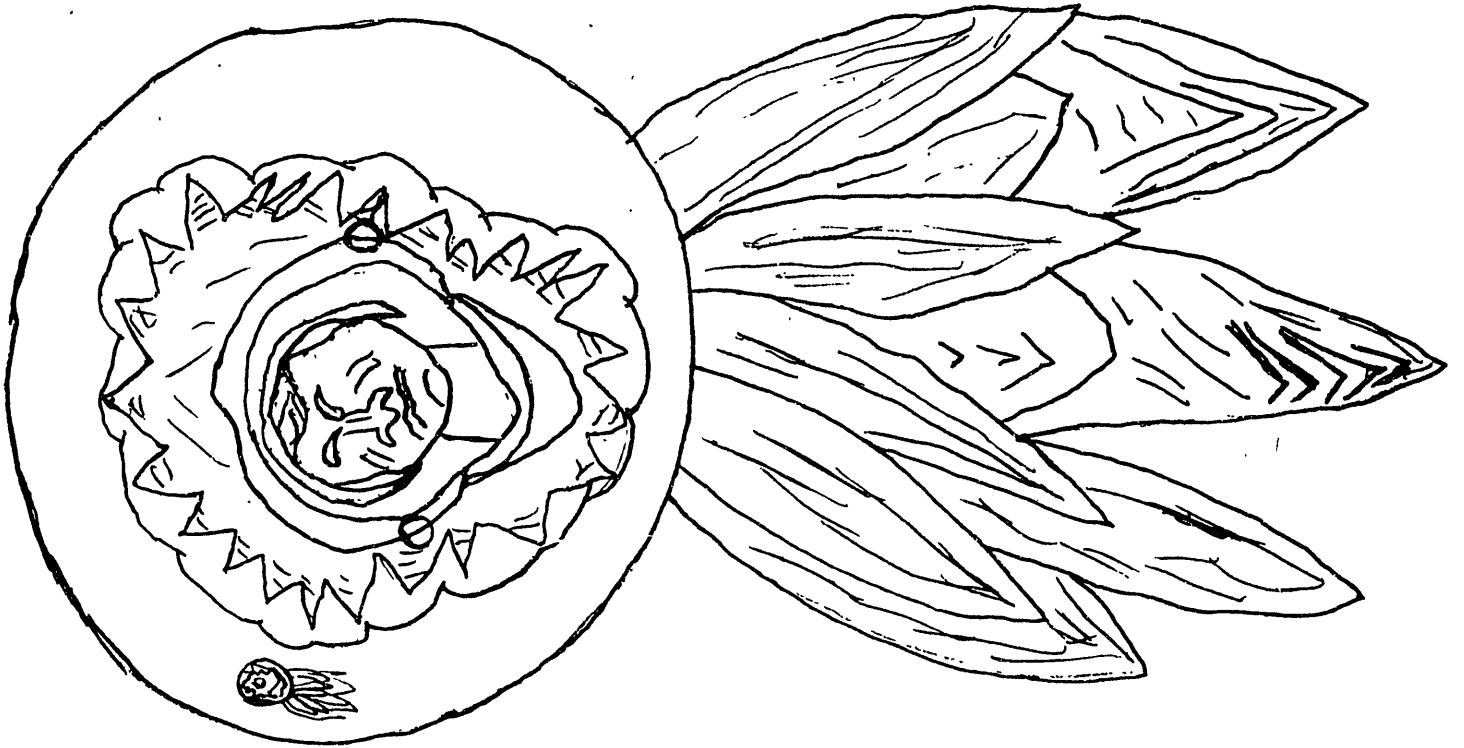
School: North Loop Elementary, Ysleta ISD



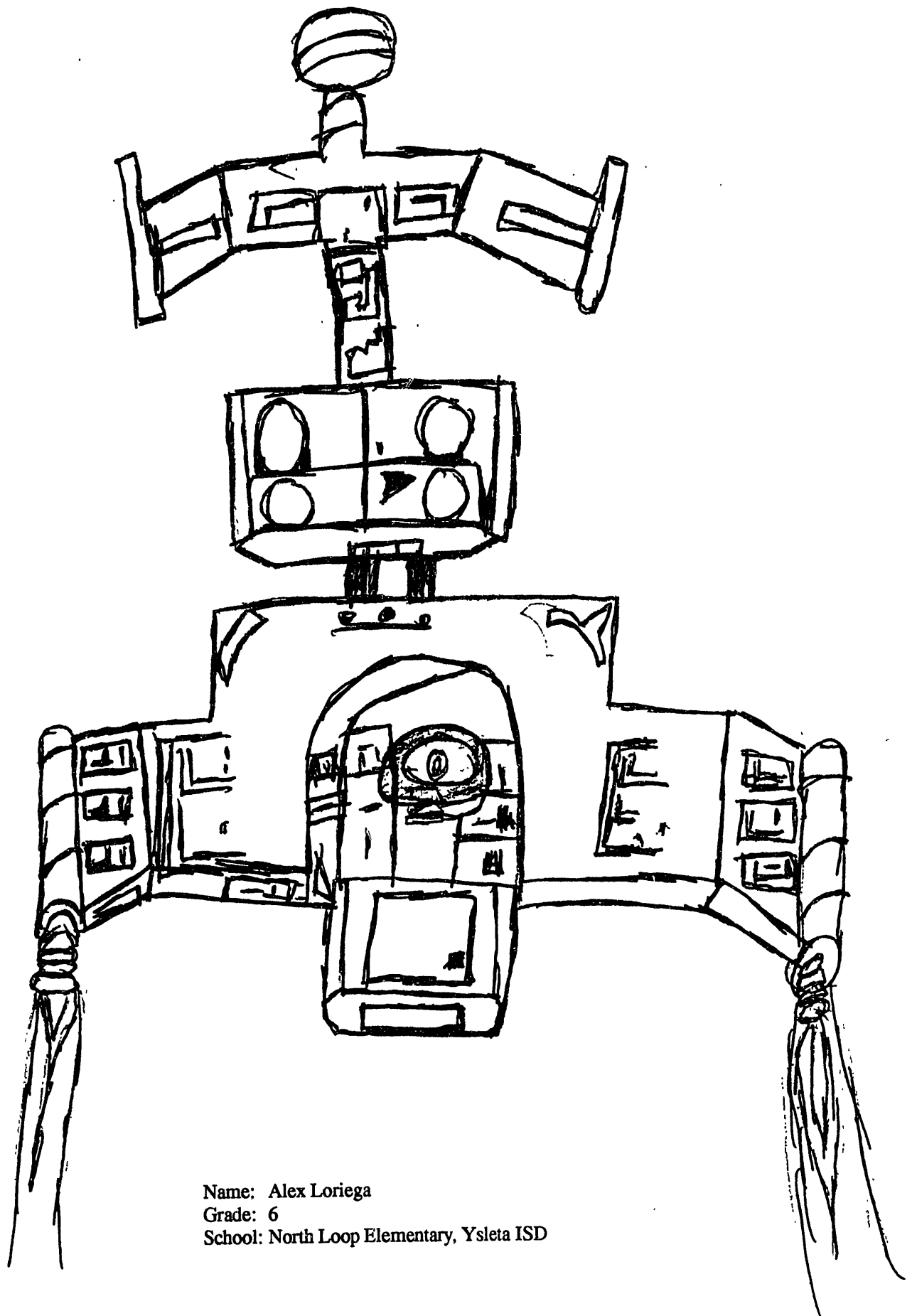
Name: Veronica Melendes
Grade: 1
School: North Loop Elementary, Ysleta ISD



Name: Veronica Melendes
Grade: 1
School: North Loop Elementary, Ysleta ISD



Name: Yadir Isarra
Grade: 6
School: North Loop Elementary, Ysleta ISD



Name: Alex Loriga
Grade: 6
School: North Loop Elementary, Ysleta ISD

1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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