

Texas Register

Volume 18, Number 78, October 15, 1993

Page 6973-7077

In This Issue...

Office of the Governor

Appointments Made September 30, 1993

Gulf States Marine Fisheries Commission	6983
Gulf Coast Waste Disposal Authority Board of Directors	6983
Department of Information Resources Board of Directors	6983
Board for Lease-Texas Parks and Wildlife Department	6983
Southern Regional Education Board.....	6983

Appointments Made October 1, 1993

East Texas State University Board of Regents	6983
Texas Health Benefits Purchasing Cooperative Board of Trustees	6983

Texas Ethics Commission

Opinions

AOR-198.....	6985
AOR-199.....	6985

Emergency Sections

Texas Department of Health

Purchased Health Services

25 TAC §§29.1104, 29.1126, 29.1127.....	6987
---	------

Texas Department of Transportation

Administration

43 TAC §§1.80-1.82, 1.84	6987
43 TAC §1.83	6989
43 TAC §1.83, §1.85	6989

Proposed Sections

Texas Ethics Commission

Internal Operations

1 TAC §§6.1-6.12, 6.31-6.35, 6.71, 6.81	6995
1 TAC §§6.1, 6.3, 6.5, 6.7, 6.9	6995
1 TAC §§6.21, 6.23, 6.25	6997
1 TAC §§6.31, 6.33, 6.35, 6.37, 6.39, 6.41, 6.43, 6.45, 6.47	6998
1 TAC §6.61, §6.63	6999
1 TAC §§6.81, 6.83, 6.85, 6.87	6999

Legislative Per Diem

1 TAC §8.1	7000
------------------	------

Advisory Opinions

1 TAC §§8.1, 8.3, 8.5, 8.7, 8.9, 8.11, 8.13, 8.15, 8.17, 8.19, 8.21	7000
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CONTENTS CONTINUED INSIDE



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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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 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
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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

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

Advisory Opinions

1 TAC §§9.1, 9.3, 9.5, 9.7 7001

Ethics Training Programs

TAC §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33, 10.335, 10.37, 10.39, 10.41, 10.43 7002

1 TAC §10.1, §10.3 7002

1 TAC §§10.111, 10.113, 10.115, 10.117, 10.119, 10.131, 10.133, 10.135, 10.137 7003

1 TAC §10.311, §10.313 7003

Speaker of the House of Representatives

1 TAC §§11.1, 11.3, 11.5, 11.7, 11.9 7004

Sworn Complaints

1 TAC §§12.1, 12.3, 12.5, 12.7, 12.9, 12.11, 12.13, 12.15, 12.17, 12.19, 12.21, 12.23, 12.25, 12.27, 12.29, 12.31, 12.33, 12.35, 12.37, 12.39 7004

1 TAC §§12.51, 12.53, 12.55, 12.57, 12.59, 12.61, 12.63, 12.65, 12.67, 12.69, 12.71 7007

1 TAC §§12.81, 12.83, 12.85, 12.87, 12.89 7009

1 TAC §§12.101, 12.103, 12.105 7010

1 TAC §§12.111, 12.113, 12.115, 12.117, 12.119, 12.121, 12.123 7011

General Rules Concerning Reports

1 TAC §§18.1, 18.3, 18.5, 18.7, 18.9, 18.11, 18.13, 18.15, 18.17, 18.19, 18.21, 18.23, 18.25 7012

1 TAC §§18.41, 18.43, 18.45, 18.47, 18.49 7014

1 TAC §§18.61, 18.63, 18.65, 18.67, 18.69 7015

1 TAC §§18.81, 18.83, 18.85, 18.87, 18.89, 18.91, 18.93, 18.95, 18.97 7016

1 TAC §§18.111, 18.113, 18.115 7017

Campaign Financing

1 TAC §20.1 7018

Reporting Political Contributions and Expenditures

1 TAC §§20.1, 20.3, 20.5, 20.7, 20.9, 20.11, 20.13, 20.15, 20.17, 20.19, 20.21, 20.23, 20.25 7019

1 TAC §§20.27, 20.29, 20.31, 20.33, 20.35, 20.111, 20.113, 20.115, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20.137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, 20.161 7022

1 TAC §§20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, 20.67 7023

1 TAC §§20.201, 20.203, 20.205, 20.207, 20.209, 20.211, 20.213, 20.215, 20.217, 20.219, 20.221, 20.223, 20.225, 20.227, 20.229, 20.231, 20.233, 20.235, 20.237, 20.239, 20.241, 20.243 7025

1 TAC §§20.271, 20.273, 20.275, 20.277, 20.279, 20.281, 20.283, 20.285, 20.287, 20.289, 20.291, 20.293, 20.295 7030

1 TAC §§20.301, 20.303, 20.305, 20.307, 20.309, 20.311, 20.313, 20.315, 20.317, 20.319, 20.321, 20.323, 20.325, 20.327, 20.329, 20.331, 20.335, 20.337, 20.339, 20.341, 20.343 7034

1 TAC §§20.401, 20.403, 20.405, 20.407, 20.409, 20.411, 20.413, 20.415, 20.417, 20.419, 20.421, 20.423, 20.425, 20.427, 20.429, 20.431, 20.433, 20.435, 20.437, 20.439, 20.441 7040

1 TAC §20.501, §20.503 7046

1 TAC §§20.521, 20.523, 20.525, 20.527, 20.529, 20.531 7046

1 TAC §§20.551, 20.553, 20.555, 20.557, 20.559, 20.561 7046

1 TAC §§20.571, 20.573, 20.575, 20.577 7049

1 TAC §§20.591, 20.593, 20.595 7050

Restrictions on Contributions and Expenditures

1 TAC §§22.1, 22.3, 22.5, 22.7, 22.9, 22.11, 22.13, 22.15, 22.17, 22.19, 22.21, 22.23, 22.25, 22.27, 22.29, 22.31 7051

Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations

1 TAC §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19 7055

Political and Legislative Advertising

1 TAC §§26.1, 26.3, 26.5, 26.7, 26.9, 26.11, 26.13, 26.15, 26.17 7056

Reports by a Candidate for Speaker of the House of Representatives

1 TAC §§28.1, 28.3, 28.5, 28.7, 28.9 7058

Lobbyists Registration

1 TAC §30.1, 30.3, 30.5 7058

Personal Financial Disclosure

1 TAC §30.3 7059

1 TAC §§30.11, 30.13, 30.15, 30.17, 30.19 7060

1 TAC §§30.31, 30.33, 30.35, 30.37, 30.39, 30.41 7061

1 TAC §§30.51, 30.53, 30.55, 30.57, 30.59, 30.61, 30.63, 30.65, 30.67 7062

1 TAC §§30.119, 30.121, 30.123, 30.127, 30.131, 30.133, 30.135, 30.137 7065

Activity Reports by a Lobbyist

1 TAC §§32.1, 32.3, 32.5 7065

1 TAC §§32.21, 32.23, 32.25, 32.27, 32.29, 32.31	7066
1 TAC §§32.51, 32.53, 32.55, 32.57, 32.59, 32.61	7067

Conduct of Lobbyists

1 TAC §§34.1, 34.3, 34.5, 34.7, 34.9, 34.11, 34.13	7069
1 TAC §§34.31, 34.33, 34.35	7070

Registration and Regulation of Lobbyists

1 TAC §§40.1, 40.3, 40.5, 40.7, 40.9, 40.11, 40.13, 40.15, 40.19, 40.21, 40.23, 40.25, 40.27, 40.31, 40.33, 40.119, 40.121, 40.123, 40.127, 40.131, 40.133, 40.135, 40.137	7071
--	------

Financial Disclosure for Public Officers

1 TAC §40.1, §40.3	7071
--------------------	------

Legislative Salaries and Per Diem

1 TAC §50.1	7072
-------------	------

Texas Department of Agriculture

Texas Agricultural Finance Authority: Loan Guaranty Program

4 TAC §§28.1-28.3, 28.6-28.11, 28.13, 28.14	7072
---	------

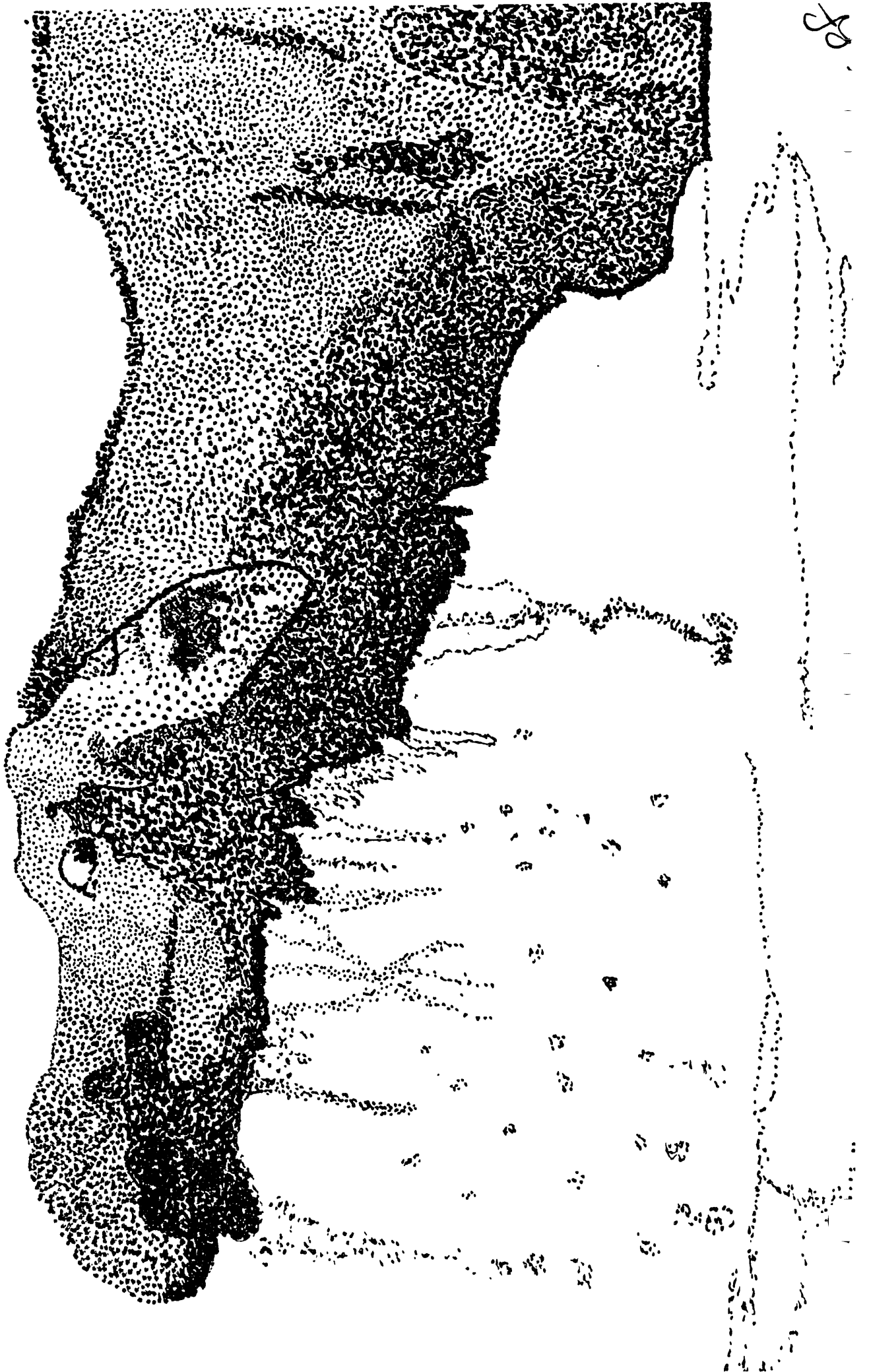
Texas Animal Health Commission

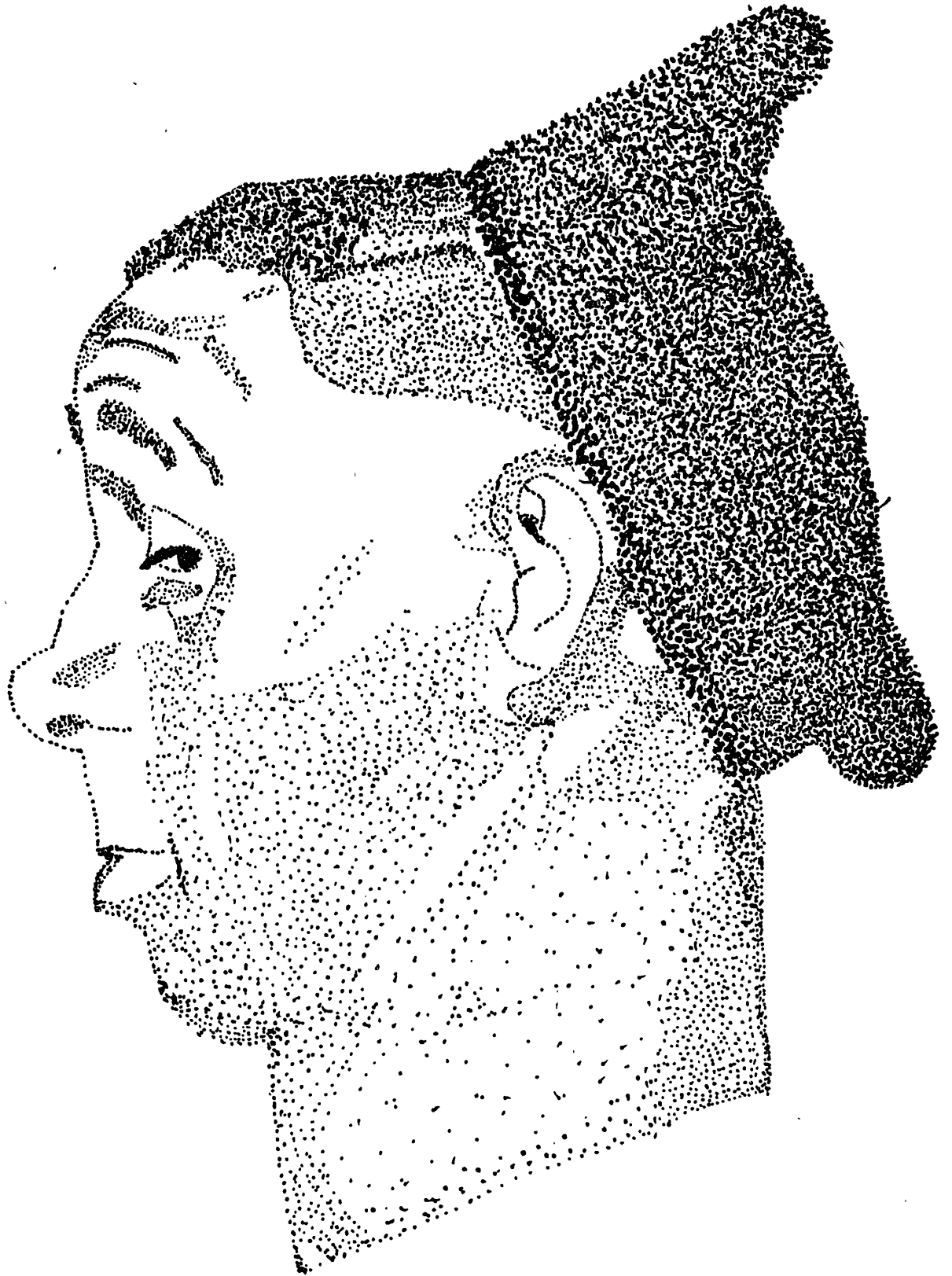
Tuberculosis

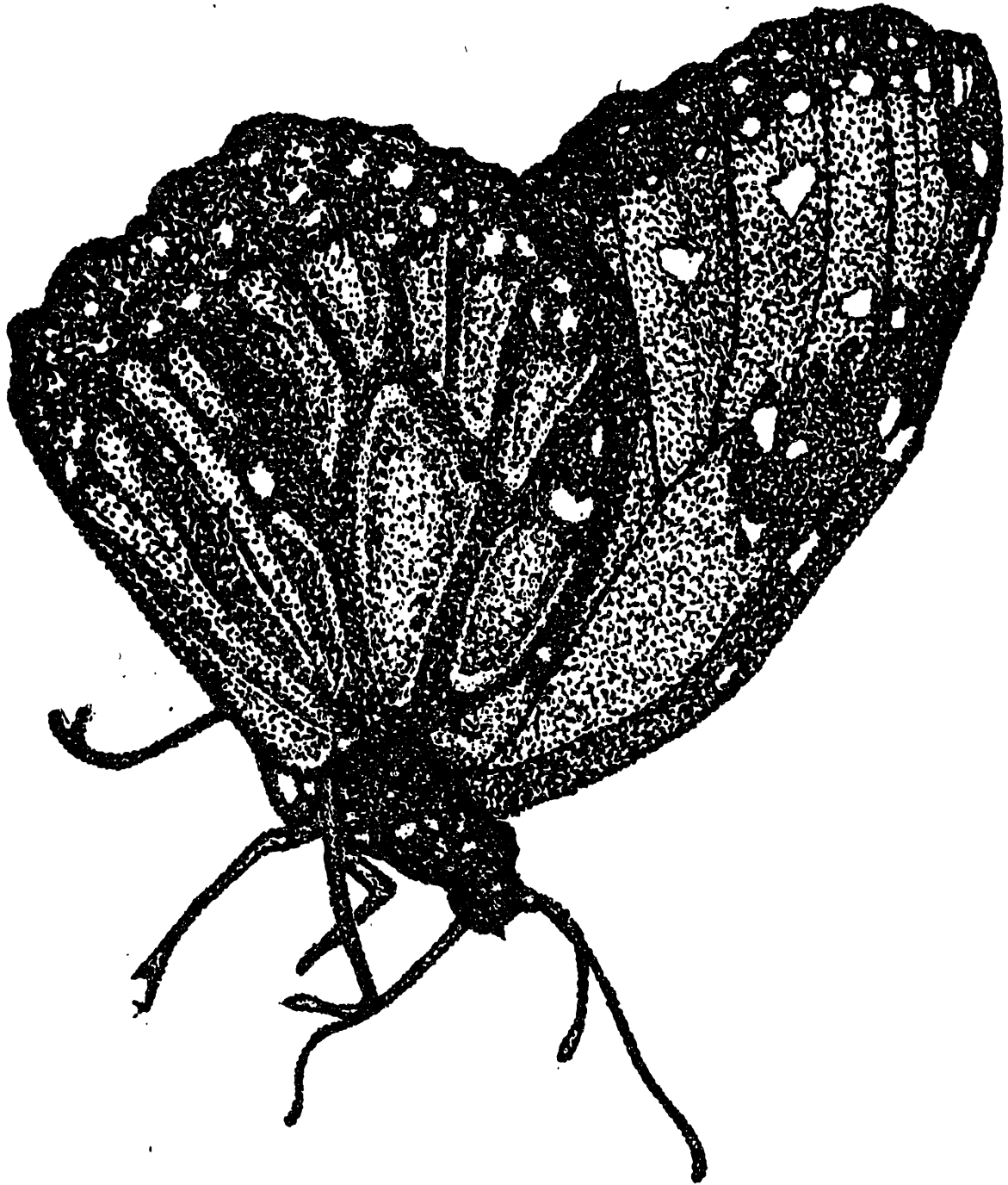
4 TAC §43.2	7075
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Swine

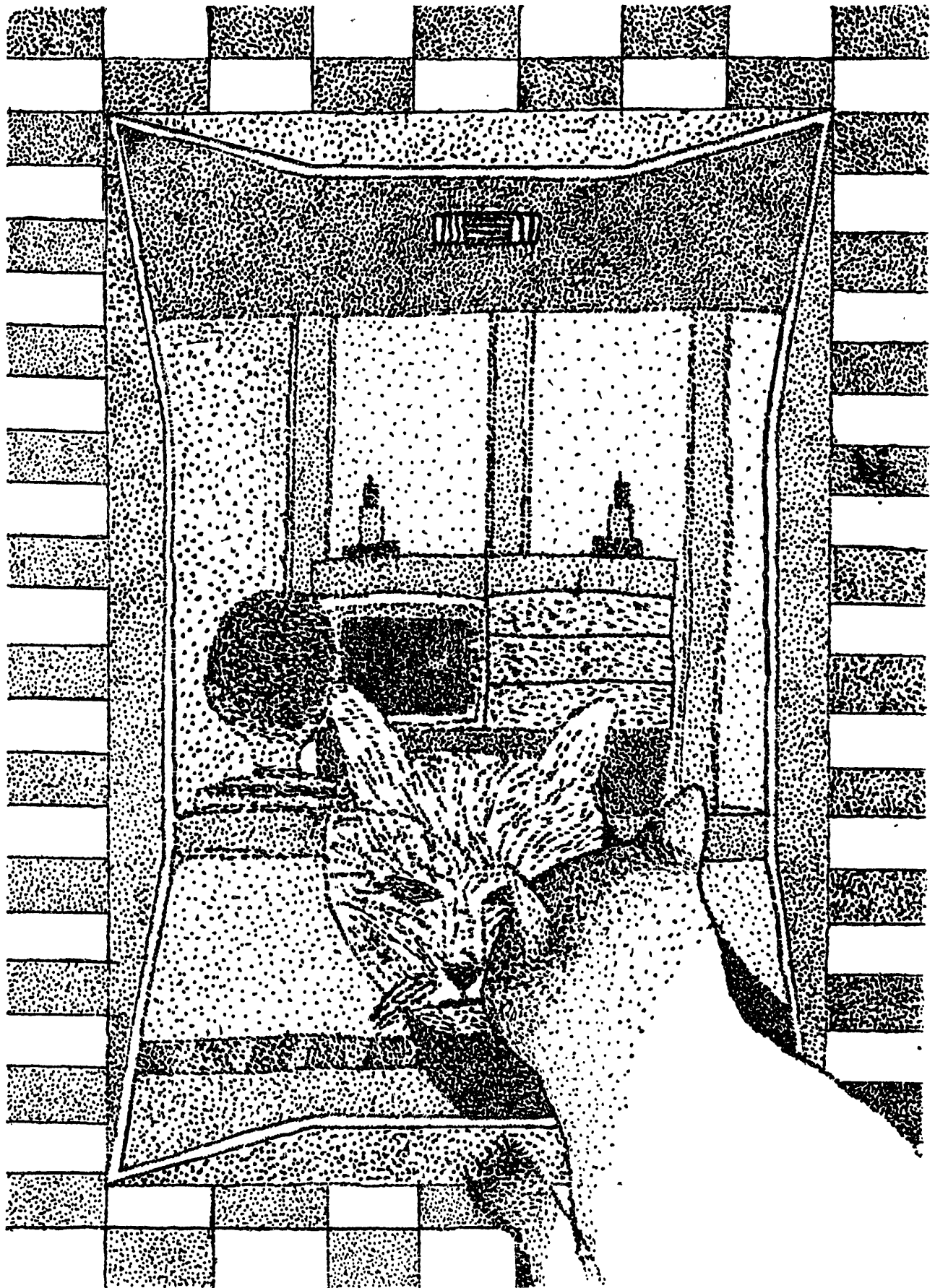
4 TAC §55.6	7076
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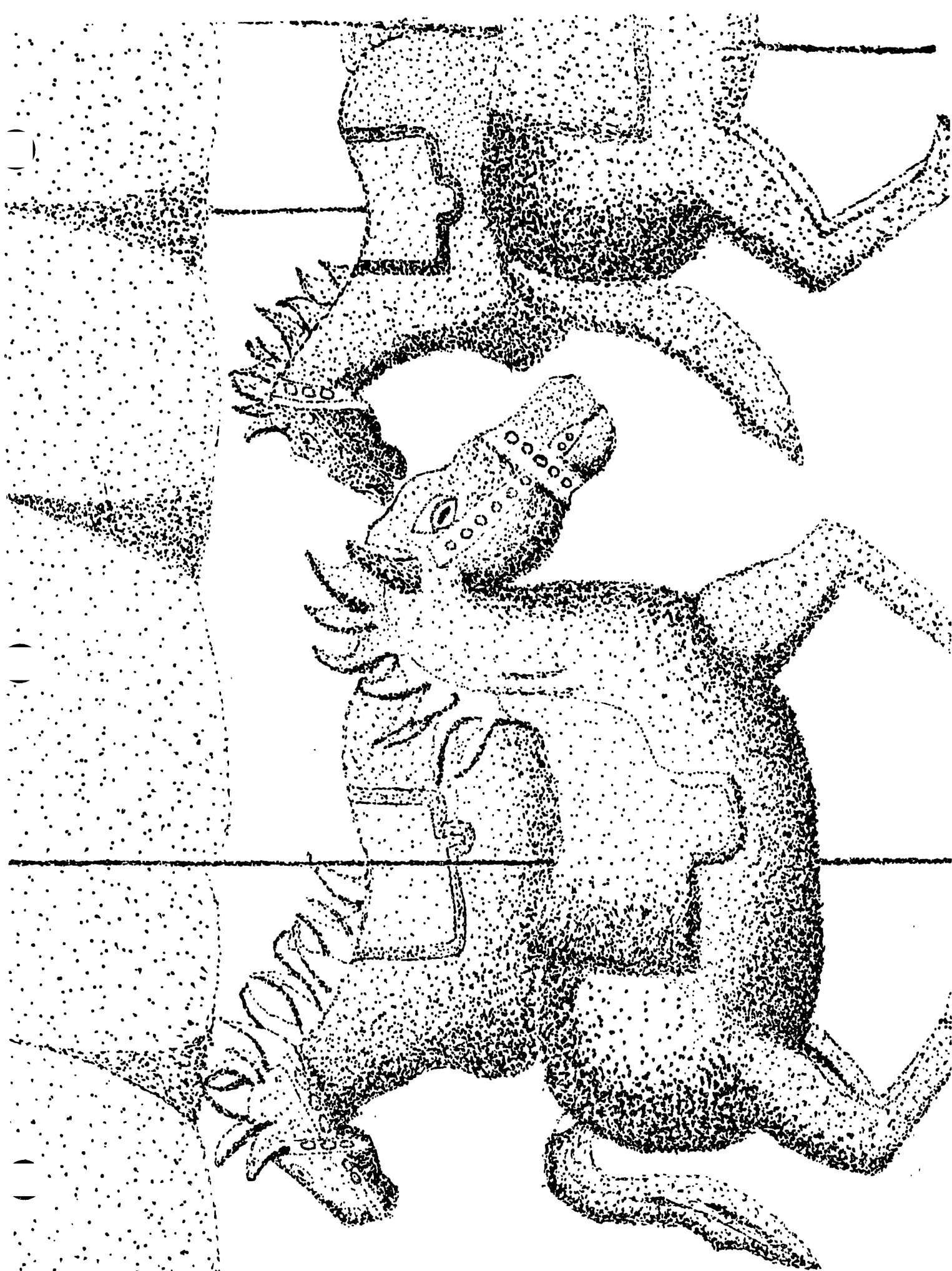












The Governor

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 September 30, 1993

To be a member of the Gulf States Marine Fisheries Commission for a term to expire March 17, 1996: Mr. Jan J. Harper, 950 Bayou Road, Lake Jackson, Texas 77566. Mr. Harper will be replacing Charles E. Beldaire of Fulton whose term expired.

To be a member of the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 1995: Jerome J. Pennington, 3511 Craighurst Court, Houston, Texas 75059. Mr. Pennington is being reappointed.

To be a member of the Department of Information Resources Board of Directors for a term to expire February 1, 1999: Jim C. Brunjes, Vice President for Administration, Texas Tech University, Lubbock, Texas 79409-2013. Mr. Brunjes was nominated by Lieutenant Governor Bullock and will be replacing Dr. Donald L. Hardcastle of Waco, whose term expired.

To be a member of the Department of Information Resources Board of Directors for a term to expire February 1, 1999: The Honorable Elton Bomer, State Representative, P.O. Box 2910, Austin, Texas 78769. Representative Bomer was nominated by Speaker Laney and will be replacing Representative Ric Williamson of Weatherford, whose term expired.

To be a member of the Department of Information Resources Board of Directors for a term to expire February 1, 1995: The Honorable Robert Junell, State Representative, P.O. Box 2910, Austin, Texas 78769. Representative Junell was nominated by Speaker Laney and will be replacing William D. Stotesbery of Austin, whose term expired.

To be a member of the Board For Lease-Texas Parks and Wildlife Department for

a term to expire September 1, 1995: Mickey Fulwiler Burleson, Route 1, Box 214, Temple, Texas 76501. Ms. Burleson will be replacing Walter Umphrey of Beaumont, whose term expired.

To be a member of the Southern Regional Education Board for a term to expire June 30, 1997: The Honorable Libby Linebarger, State Representative, P.O. Box 2910, Austin, Texas 78768-2910. Representative Linebarger is replacing Representative Kent Grusendorf of Arlington, whose term expired.

Appointments Made October 1, 1993

To be a member of the East Texas State University Board of Regents for a term to expire February 15, 1999: Cynthia A. Gonzalez, 2530 Inverness, Garland, Texas 75040. Ms. Gonzalez will be replacing Sally Lancaster of Dallas, whose term expired.

To be a member of the East Texas State University Board of Regents for a term to expire February 15, 1995: R. Jay Phillips, 410 Cape Cod, Corpus Christi, Texas 78412. Mr. Phillips will be filling the unexpired term of Martha Whitehead of Longview, who resigned.

To be a member of the East Texas State University Board of Regents for a term to expire February 15, 1999: Nelda Grigsby Strong, 3503 Native Dancer, Austin, Texas 78746. Ms. Strong will be replacing Robert Campbell of Dallas, whose term expired.

To be a member of the East Texas State University Board of Regents for a term to expire February 15, 1997: Reuben R. McDaniel, III, 1107 Meadow Ridge Drive, Duncanville, Texas 75137. Mr. McDaniel will be filling the unexpired term of William J. Taylor, III of Houston, who resigned.

To be a member of the Texas Health Benefits Purchasing Cooperative Board of Trustees for a term to expire February 1, 1995: Matrice Ellis-Kirk, 6342 Mercedes, Dallas, Texas 75214. Ms. Ellis-Kirk is being appointed to a new position pursuant to House Bill Number 2055, 73rd Legislature.

To be a member of the Texas Health Benefits Purchasing Cooperative Board of Trustees for a term to expire February 1, 1999: Cappy R. McGarr, 5338 Wenonah, Dallas, Texas 75209. Mr. McGarr is being appointed to a new position pursuant to House Bill Number 2055, 73rd Legislature.

To be a member of the Texas Health Benefits Purchasing Cooperative Board of Trustees for a term to expire February 1, 1999: Joseph F. Phillips, 809 Rio Grande Drive, Mission, Texas 78572. Mr. Phillips is being appointed to a new position pursuant to House Bill Number 2055, 73rd Legislature.

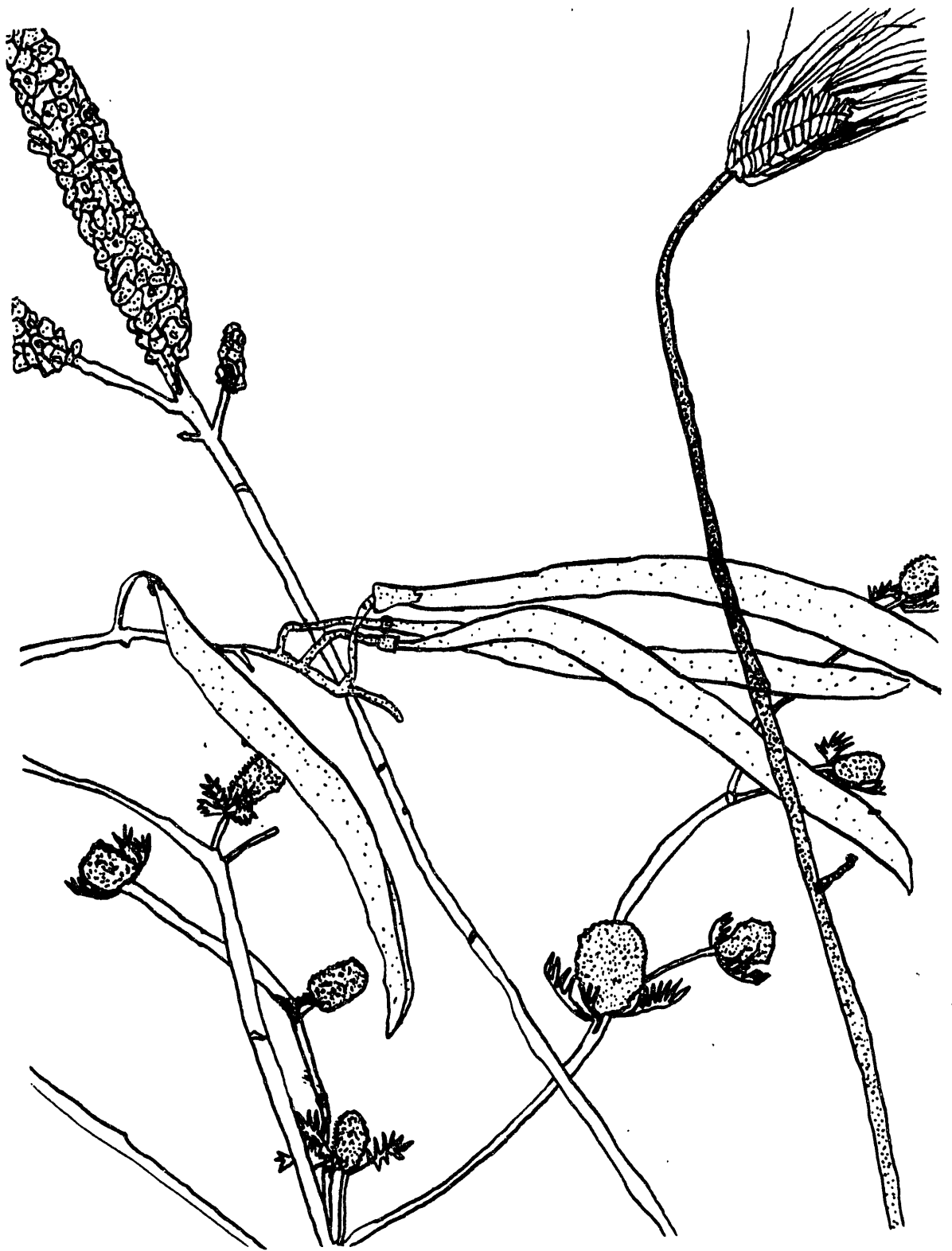
To be a member of the Texas Health Benefits Purchasing Cooperative Board of Trustees for a term to expire February 1, 1997: Philip Patrick Sun, 3039 Lake Estates Court, Missouri City, Texas 77459. Mr. Sun is being appointed to a new position pursuant to House Bill Number 2055, 73rd Legislature.

Issued in Austin, Texas on October 7, 1993.

TRD-9329934

Ann W. Richards
Governor of Texas





Texas Ethics Commission

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

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

Texas Ethics Commission Opinions

AOR-198. A general-purpose political committee has asked whether expenditures for a brochure describing the nature of the committee are political expenditures subject to the 60-day waiting period set out in the Election Code, §253.037. The committee has also asked whether an individual may donate such brochures as an in-kind contribution to the committee.

AOR-199. The Texas Ethics Commission has been asked to consider whether a legislator may represent a client before a metropolitan transit authority.

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

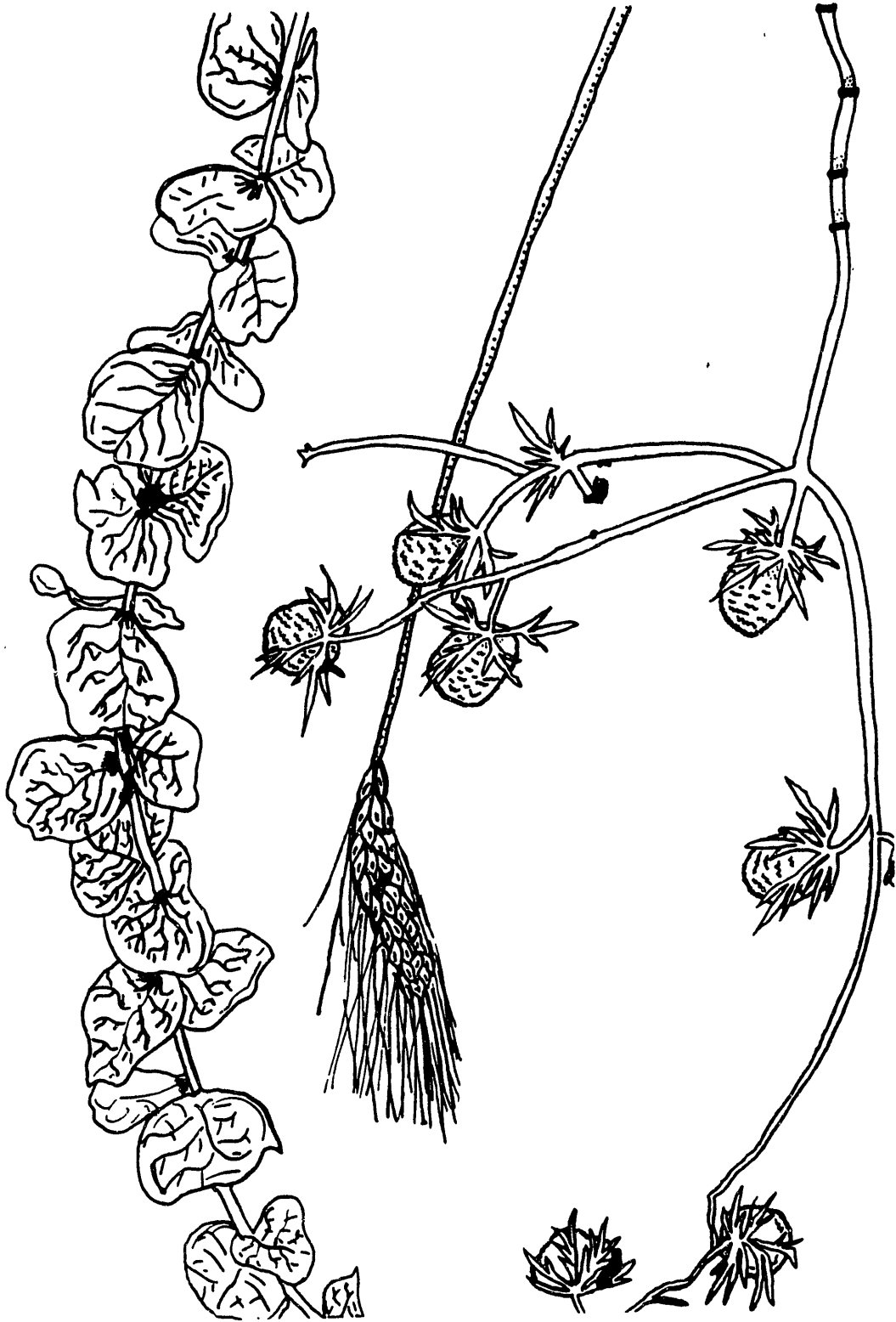
Issued in Austin, Texas, on October 6, 1993.

TRD-9329858

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: October 6, 1993





Emergency Sections

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

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter L. General Administration

- 25 TAC §§29.1104, 29.1126, 29.1127

The Texas Department of Health is renewing the effectiveness of the emergency adoption of amended §§29.1104, 29.1126, and 29.1127 for a 60-day period effective October 17, 1993. The text of amended §§ 29.1104, 29.1126, and 29.1127 was originally published in the August 20, 1993, issue of the *Texas Register* (18 TexReg 5543).

Issued in Austin, Texas, on October 6, 1993.

TRD-9329890 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: October 17, 1993

Expiration date: February 28, 1994

For further information, please call: (512) 458-7236

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Administration

Advisory Committees

The Texas Department of Transportation adopts on an emergency basis amendments to §§1.80-1.82 and 1.84, new §1.83 and §1.85, and the repeal of §1.83, concerning Advisory Committees.

The repeal of §1.83 is necessary because of the contemporaneous emergency adoption of new §1.83, which incorporates the provisions of the repealed section as rewritten and expanded. Section 1.80 is amended to include advisory committees created by the department. Section 1.81 is amended by deleting some unnecessary terms and also by adding definitions of department advisory committee,

district engineer, and statutory advisory committee. Section 1.82 is amended to clarify that the section only applies to statutory advisory committees; remove the requirement that the commission designate the chair of the aviation and bicycle rules committees and allow those committees to elect a chair and vice-chair; remove provisions concerning the frequency of meetings; lower the advance notice of meetings from 14 to 10 days; and require the department to report advice of statutory advisory committees to the commission and to invite the committee chair to appear before the commission. Section 1.84 is amended by adding a provision for the department to submit emergency rules to the commission without prior review by the advisory committee; by authorizing the committee to waive preliminary or final review of draft rules; and by authorizing the committee to defer the committee's review of rules until the public comment period.

New §1.83 replaces the existing section and outlines the duties of the statutorily appointed advisory committees, the frequency of meetings, and the expiration date of each committee. New §1.85 lists certain committees created by the department, and states their purpose, duties, and manner of reporting; membership requirements; frequency of meetings; requisites for formal committee action, election of officers, and duration of existence of committees.

Senate Bill 383, 73rd Legislature, 1993, added Texas Civil Statutes, Article 6252-33, to require the department to adopt rules that state the purpose of each of its advisory committees and describe each committee's task and the manner in which it will report to the agency; and establish a date on which each committee will automatically be abolished unless continued in existence by affirmative vote of the commission. Adoption on an emergency basis is necessary in order to comply with the mandates of Senate Bill 383, which became effective on September 1, 1993, to provide for flexibility in the process for statutory advisory committee review of department rules, to clarify existing provisions, and to assure that critical roles of the advisory committees continue without interruption, thereby protecting the vital interests, safety, and welfare of the taxpayers and the travelling public.

- 43 TAC §§1.80-1.82, 1.84

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation,

and more specifically by Texas Civil Statutes, Articles 46c-3, 6663b, 6673g, and 6673h, which creates four specific advisory committees and authorizes the commission to adopt rules to govern the operations of those committees. Texas Civil Statutes, Article 6252-33, directing state agencies to adopt rules concerning the operation of advisory committees, is the statute affected by the rules.

§1.80. Scope and Purpose. The sections under this undesignated head prescribe the uniform procedures governing the operation of[, and responsibilities for, advisory] committees created to advise [by] the Texas Transportation Commission or [by statute to advise] the Texas Department of Transportation [Commission].

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

[Advisory committee—Any committee created by the commission or created by statute for the purpose of providing advice or recommendations in a purely advisory manner regarding certain matters within the jurisdiction of the commission.]

[Aviation Advisory Committee—The advisory committee created pursuant to Texas Civil Statutes, Article 46c-3, to advise the commission and the department on aviation matters.]

[Bicycle Rules Advisory Committee—The advisory committee created pursuant to Texas Civil Statutes, Article 6673h, to advise the commission on the adoption of rules regarding bicycle road use on the state highway system.]

Commission—The Texas Transportation Commission.

Department—The Texas Department of Transportation.

Department advisory committee—Any committee created by the department or the commission for the purpose of providing advice or recommendations in a purely advisory manner regarding certain matters within the jurisdiction of the department or the commission.

District engineer—The chief administrative officer in charge of a district of the department.

[Environmental Advisory Committee—The advisory committee created pursuant to Texas Civil Statutes, Article 6673g, to advise the commission on rules of the department that may affect the environment.]

Executive director—The chief executive [administrative] officer of the Texas Department of Transportation.

[Public Transportation Advisory Committee—The advisory committee created pursuant to Texas Civil Statutes, Article 6663b, to advise the commission on public transportation matters.]

Statutory advisory committee—A committee expressly created by statute for the purpose of providing advice or recommendations in a purely advisory manner regarding certain matters within the jurisdiction of the commission.

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) **Applicability.** This section applies to statutory advisory committees.

(b)[(a)] **Membership.**

(1) Except as provided in paragraphs (2) and (3) of this subsection, the commission will:

(A) appoint advisory committee members for a two-year term[, and will designate one member to serve as chair]; and

(B) appoint members to serve the balance of any term upon the occurrence of a vacancy.

(2) Members of the Environmental and Public Transportation Advisory Committees shall be appointed and shall serve pursuant to Texas Civil Statutes, Article 6663b and Texas Civil Statutes, Article 6673g, respectively.

(3) Members of the Bicycle Rules Advisory Committee shall serve until the committee is abolished as provided by Texas Civil Statutes, Article 6673h.

(4) Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c)[(b)] **Meetings.**

(1) **Open meeting requirements.** Advisory committees shall post and hold all meetings in accordance with the provisions applicable to meetings of the commission under the Texas Open Meetings Act, the Government Code, Chapter 551 [Texas Civil Statutes, Article 6252-17]. Filing of notice of open meetings with the Secretary of State shall be coordinated through the department's [Office of the] General Counsel.

(2) **Regular meetings.** [Advisory committees shall meet annually except that the Public Transportation Committee shall meet quarterly. Advisory committees shall also meet at the request of the commission and as required by §1.84 of this title (relating to Rulemaking).] The chair of the committee shall provide notice of time, date, place, and purpose of regular meetings to the members and the executive director, by mail or telephone or both, at least ten [14] calendar days in advance of each meeting.

(3) **Quorum.** A majority of the membership of an advisory committee constitutes a quorum. The committee may act only by majority vote of its membership.

(4) **Attendance.** A record of attendance at each meeting shall be made. If a member of a committee appointed by the commission misses two consecutive meetings, written notice shall be given to the member. A third consecutive absence from a regular meeting will be sufficient grounds for removal of that member by the commission.

(5) **Parliamentary procedure.** Parliamentary procedures for all committee meetings shall be in accordance with the latest edition of *Roberts Rules of Order*, except that the chair [chairperson] may vote on any action as any other member of the committee.

(6) **Record.** Minutes of all committee meetings shall be prepared and filed with the commission. The complete proceedings of all committee meetings must also be recorded by electronic means.

(7) **Open records.** All minutes, transcripts, and other records of the advisory committees are records of the commission and as such are subject to disclosure under the provisions of the Government Code, Chapter 552 [Texas Civil Statutes, Article 6252-17a].

(d)[(c)] **Reimbursement.** Advisory committee members are not entitled to receive compensation for serving as members, but will be reimbursed for reasonable and necessary expenses for performing their duties. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement for expenses of advisory committee members.

(e)[(d)] **Conflict of interest.** Advisory committee members are subject to the same laws and policies governing ethical standards of conduct as those for commission members and employees of the department.

(f)[(e)] **Administrative support.** For each advisory committee, the executive director will designate an office of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee.

(g)[(f)] **Advisory committee recommendations.** In developing department policies, the commission will consider the recommendations submitted by advisory committees.

(h) **Manner of reporting.**

(1) The office designated under subsection (f) of this section shall, in writing, report to the commission an official action of a statutory advisory committee, including any advice and recommendations, prior to commission action on the issue. The chair of the advisory committee or his or her designee will also be invited by the department to appear before the commission prior to commission action on a posted agenda item to present the committee's advice and recommendations.

(2) In the event a written report cannot be furnished to the commission prior to commission action, the report may be given orally, provided that a written report is furnished within ten days of commission action.

§1.84. Rulemaking.

(a) **Purpose.** This section governs the role of a statutory [an] advisory committee in the adoption of new or amended rules pursuant to the Administrative Procedure [and Texas Register] Act, the Government Code, Chapter 2001 [Texas Civil Statutes, Article 6252-13a].

(b) **Preliminary review.** When the department determines that it is necessary or desirable for the commission to adopt new or amended rules, the department will:

(1) notify the relevant advisory committee, if any, of the nature of the rulemaking, including the reasons for the rules and the general subjects to be covered; and

(2) request the chair of the committee to call a meeting of the relevant advisory committee for the purpose of providing advice and recommendations prior to completing the final draft [drafting the text] of the proposed rules.

(c) **Final Review.** Upon completing a final draft of proposed rules that are subject to this section and prior to submitting the draft to the commission for proposed adoption, the department will request the chair to call a meeting of the relevant advisory committee to review and comment on the rules as drafted.

(d) **Comment.** Prior to commission adoption of rules that are subject to this section, the commission will provide the advisory committee and department staff an opportunity to appear before it for the purpose of advising the commission of its recommendations regarding the proposed rules.

(e) Emergency rules. If the department submits to the commission emergency rules under the Government Code, Chapter 2001, §2001.034, it is not required to comply with subsections (b) and (c) of this section. The members of the committee shall be so notified in writing within ten days of commission action.

(f) Waiver. A committee may elect to waive preliminary or final review of rules presented under this section.

(g) Deferral. A committee may elect to defer review of rules under this section until the public comment period.

Issued in Austin, Texas, on October 6, 1993.

TRD-9329884 Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: October 6, 1993

Expiration date: February 4, 1994

For further information, please call: (512) 463-8630

◆ ◆ ◆
• 43 TAC §1.83

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 6666, which provide the Texas Department of Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically by Texas Civil Statutes, Articles 46c-3, 6663b, 6673g, and 6673h, which create four specific advisory committees and authorize the commission to adopt rules to govern the operations of those committees. Texas Civil Statutes, Article 6252-33, directing state agencies to adopt rules concerning the operation of advisory committees, is the statute affected by the repeal.

Issued in Austin, Texas, on October 6, 1993.

TRD-9329886 Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: October 6, 1993

Expiration date: February 4, 1994

For further information, please call: (512) 463-8630

◆ ◆ ◆
• 43 TAC §1.83, §1.85

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6666, which provide the Texas Department of Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically by Texas Civil Statutes, Articles 46c-3, 6663b, 6673g, and 6673h, which create four specific advisory committees and authorize the com-

mission to adopt rules to govern the operations of those committees. Texas Civil Statutes, Article 6252-33, directing state agencies to adopt rules concerning the operation of advisory committees, is the statute affected by the new rules

§1.83. Statutory Advisory Committees.

(a) Bicycle Rules Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6673h, the Bicycle Rules Advisory Committee seeks to provide the commission with insight from the perspective of bicyclists. The primary mission of the committee is to advise the commission on the development of rules for bicyclists use of the state highway system. By involving representatives of the public and of bicyclists, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be fully considered in the development of bicycles road use rules.

(2) Duties. The committee shall:

(A) advise the commission on the adoption of rules regarding bicycle road use on the state highway system; and

(B) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet annually and as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee shall be abolished upon final adoption of bicycle road use rules by the commission.

(b) Environmental Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6673g, the Environmental Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the general public and the environmental community. Advice and recommendations expressed by the committee provide the department and the commission with greater insight with regard to environmental issues, thus facilitating the department's and the commission's goal of ensuring that environmental considerations are fully integrated into department and commission rules and policies.

(2) Duties. The committee shall:

(A) advise the commission on rules of the department that may affect the environment;

(B) become informed and knowledgeable of the department's environmental activities, environmental policies, and rules which govern the department's operations;

(C) communicate to the department any views or recommendations of the committee regarding the department's environmental policies, rules, and procedures;

(D) communicate the roles, mission, and environmental policies of the department in order to promote a better understanding of the department throughout the general public and environmental community; and

(E) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet:

(A) as necessary, at the call of its chair, but not exceeding once each month;

(B) at the request by the commission; and

(C) as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

(c) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 46c-3, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

(d) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6663b, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission; and

(C) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet:

(A) as necessary, at the call of its chair, but not exceeding once each month;

(B) at the request of the commission; and

(C) as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

§1.85. Department Advisory Committees.

(a) Creation. The following committees are established as department advisory committees.

(1) Quality Control/Quality Assurance Specification Development Committee.

(A) Purpose. The Quality Control/Quality Assurance Specification Development Committee is created for the purpose of developing a quality control/quality assurance specification for hot-mix asphaltic concrete pavement. Through a formalized review process, the committee provides a forum for the exchange of information through a committee composed of the department engineering staff, highway industry material suppliers, and contractor representatives. Advice and recommendations expressed by the committee provide the department and the commission with increased insight in material and construction methods for quality control and quality assurance, thus aiding the department and the commission's goals of ensuring industry input into design standards and practices.

(B) Duties. The committee shall advise the department and the commission concerning the development of a quality control/quality assurance hot-mix asphaltic concrete pavement specification.

(C) Manner of reporting. The committee shall report its advice and recommendations to the Pavement Engineer of the Design Division.

(D) Duration. Upon completion of the quality control/quality assurance hot-mix asphaltic concrete specification, the committee is abolished.

(2) Specialist Certification Advisory Committee.

(A) Purpose. The purpose of the Specialist Certification Advisory Committee is to review the Specialist Certifica-

tion Program and to maintain a forum for the exchange of information between the department and the paving industry. Advice and recommendations expressed by the committee provide the department and the commission greater insight into pavement technology, testing, and specialist training, thus facilitating the department's and the commission's goals of ensuring safe, efficient, and economical pavement design, construction, and maintenance practices for increased pavement life and performance.

(B) Duties. The committee shall provide advice and recommendations concerning:

(i) modifications and improvements to the training program curriculum and operations;

(ii) decertification claims;

(iii) recertification refresher courses; and

(iv) other matters as required to successfully implement and continue the Specialist Certification Program.

(C) Manner of reporting. The committee shall report its advice and recommendations to the Assistant Executive Director for Field Operations.

(3) Consultant Engineering Advisory Committee.

(A) Purpose. The purpose of the Consultant Engineering Advisory Committee is to coordinate and facilitate the use of the consultant engineering community in department operations.

(B) Duties. The committee shall review, discuss, and recommend items of mutual concern between the department and the consultant engineering community.

(C) Manner of Reporting. The committee shall report its advice and recommendations to the Deputy Executive Director for Transportation Planning and Development.

(4) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environ-

mental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a highway improvement project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

- (i) maintain community and local government communication; and
- (ii) respond in a timely fashion to affected parties' concerns about project development and construction.

(C) Manner of reporting. A project advisory committee shall report its advice and recommendations to the district engineer.

(D) Duration. A project advisory committee may be abolished at any stage of project development, but in no event may a committee continue beyond completion of the project.

(5) Statewide Transportation Plan External Advisory Panel.

(A) Purpose. Texas Civil Statutes, Article 6663(f) and 23 U.S.C., §135, require the department to develop a statewide multimodal transportation plan that encompasses all modes of transportation. The panel, appointed by the Deputy Executive Director for Transportation Planning and Development and composed of representatives of other governmental agencies concerned with transportation and private transportation providers, thereby ensuring multimodal input as required by federal law, is created to advise the department on its statewide transportation plan. The panel provides a forum for identifying issues to be addressed by the planning process and provides input into the department's planning process. The panel members represent a constituency of interests and in this way broaden input into the process.

(B) Duties. The panel shall:

- (i) review and comment on white papers prepared as part of devel-

oping recommended goals for Texas' transportation system;

(ii) review and comment on the draft statewide transportation plan; and

(iii) provide logistical assistance such as furnishing data and existing planning materials.

(C) Manner of reporting. The panel shall report its advice and recommendations to the department's Multimodal Planning Team.

(6) Transit Operators' Advisory Committee.

(A) Purpose. Through an open communication process the Transit Operators' Advisory Committee provides a forum for the exchange of information between transit operators and the Public Transportation Division.

(B) Duties. The committee shall:

(i) provide input to the Public Transportation Division on procedures that are developed for the routine management of grant programs;

(ii) provide input to the Public Transportation Division in the development of the Rural Transit Assistance Program as recommended in the Federal Transit Administration's Circular 9040.1C, which stipulates that operators should be given maximum opportunity to participate in the development process; and

(iii) perform other duties as determined by the Public Transportation Division Director.

(C) Manner of reporting. The committee shall report its advice and recommendations to the Public Transportation Division Director.

(7) Transit Vehicle Specification Committee.

(A) Purpose. To provide a forum for the exchange of information with the Public Transportation Division on the availability of certain vehicles and vehicle components to be used in the field of public transportation in Texas and more specifically the Federal Transit Act, §16 and §18 programs.

(B) Duties. The committee shall periodically review and recommend updates of vehicles' specifications used in the Federal Transit Act, §16 and §18 grant programs.

(C) Manner of reporting. The committee shall report its advice and recommendations to the Public Transportation Division Director.

(8) Ad hoc transit advisory panels.

(A) Purpose. In order to provide for effective and timely input from affected public transportation providers and riders, the commission, by minute order, may create an ad hoc transit advisory panel.

(B) Duties. An ad hoc advisory panel shall advise the Public Transportation Division on a single issue or program that only affects a specific segment of the public transportation industry or of the public. An example of an ad hoc panel would be a committee created to advise the division on the funding allocation rules for a particular grant program.

(C) Manner of reporting. An ad hoc advisory panel shall report its advice and recommendations to the Public Transportation Division Director.

(D) Duration. An ad hoc advisory panel shall be abolished no later than 90 days after its creation.

(9) Registration and Title System (RTS) Liaison Committee and Dealer System Advisory Board.

(A) Purpose. The Registration and Title System (RTS) Liaison Committee and Dealer System Advisory Board provide forums to aid in the implementation of the RTS. The purpose of the committee and board is to obtain feedback from the primary users of the system, and to seek solutions to potential impediments before the system is put in daily use.

(B) Duties. The committee and board shall:

- (i) identify RTS user requirements;
- (ii) convey system status information to the users and obtain the input of users; and
- (iii) obtain system acceptance approval from the users.

(C) Manner of reporting. The committee and board shall report their advice and recommendations to the Vehicle Titles and Registration Division Director.

(10) County Tax Assessor-Collector Review Team.

(A) The County Tax Assessor-Collector Review Team provides a forum for the review of proposed motor vehicle title and registration-related policies and procedures prior to implementation. The review team advises the department of the potential impact of such policies and procedures on the offices of Texas' County Tax Assessor-Collectors, who are the department's statutorily designated agents for motor vehicle title and registration matters. By establishing formal two-way communication, the review team provides an opportunity for partnering, thus allowing for the smoothest possible operation of Texas' motor vehicle title and registration system.

(B) Duties. The team shall:

(i) advise the department of the potential impact of proposed policies and procedures; and

(ii) suggest changes or improvements to the department's title and registration operations.

(C) Manner of reporting. The team shall report its advice and recommendations to the Vehicle Titles and Registration Division Director.

(11) Texas Department of Transportation-Texas Natural Resources Conservation Council-Tax Assessor-Collector Working Group.

(A) Purpose. The working group provides a forum for the implementation of the Federal Clean Air Act and House Bill 1969, 73rd Legislature, 1993, provisions concerning a motor vehicle inspection and maintenance program. By partnering in this effort, the three entities will make the implementation of the program as smooth as possible.

(B) Duties. The working group shall provide advice with respect to:

(i) strategies for the complete implementation of the program;

(ii) the design and modifications of necessary forms;

(iii) establishing methods for the collection of fees prescribed by House Bill 1969; and

(iv) public awareness programs.

(C) Manner of reporting. The working group shall report its advice and recommendations to the Vehicle Titles and Registration Division Director.

(12) Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to the Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(13) Hydraulics and Erosion Control Laboratory Industry Advisory Committee (IAC).

(A) Purpose. The IAC provides a forum through which affected industry groups and personnel may comment on and participate in the formal evaluation program for erosion control products undertaken by the Texas Department of Transportation/Texas Transportation Institute Hydraulic and Erosion Control Laboratory. Through the IAC, the department is assured that open lines of communication with affected industries are maintained. In this way, the department assures product evaluation takes place with substantive industry comment and that any erosion control materials used by the department will be of the highest possible quality.

(B) Duties. The IAC shall provide advice and recommendations concerning the:

(i) results of the current product evaluation cycle; and

(ii) product evaluation procedures for the next available evaluation cycle.

(C) Manner of reporting. The IAC shall report its advice and recommendations to the Assistant Executive Director for Field Operations.

(14) Traffic Records Council (TRC).

(A) Purpose. The TRC coordinates and guides the planning and implementation of various Texas traffic records systems. The overall goal of the TRC is to share information regarding the various state data bases related to traffic records, establish a mutual understanding of the overall state goal of increasing the safety and efficiency of the roadway system, and to develop strategies for continued cooperation among all state and local participants with an interest in the traffic records process.

(B) Duties. The TRC shall:

(i) assist the department in the coordination and guidance of the planning and implementation of the various Texas traffic records systems to improve information quality and quantity;

(ii) provide recommendations concerning the implementation of a strategic plan for the improvement of the state's record systems;

(iii) help transfer related information on technology and systems through meetings and forums; and

(iv) provide recommendations to the various agencies on system enhancements and linkages.

(C) Manner of reporting. The TRC shall report its advice and recommendations to the various participating agencies, including the department and its Traffic Operations Division.

(15) Federal Highway Administration (FHWA) Electronic Data-Sharing Task Force.

(A) Purpose. In cooperation with the Federal Highway Administration, the FHWA Electronic Data-Sharing Task Force is created to address opportunities for information sharing. Information-sharing is a crucial aspect of the federal-aid Highway and Motor Carrier programs for both parties, and an increasing amount of information is now being exchanged electronically.

(B) Duties. The task force shall:

(i) identify opportunities for information sharing between the organization;

(ii) enhance electronic communication; and

(iii) streamline reporting processes.

(C) Manner of reporting. The task force shall report its advice and recommendations to the department's Information Resource Manager.

(16) Local IVHS steering committees.

(A) Purpose. Federal law encourages the expenditure of federal transportation funds to achieve improvements in the efficiency of transportation operations. A portion of these funds are specifically designated for the planning and testing of Intelligent Vehicle Highway Systems (IVHS) technologies. As part of the development and implementation of these projects, a district engineer, in conjunction with local officials, may create a steering committee to provide support for IVHS activities. Advice and recommendations expressed by a committee will foster the coordination of state and local benefit in the design, maintenance, and operation of IVHS facilities.

(B) Duties. A committee shall provide advice and recommendations with respect to:

(i) IVHS project priorities;

(ii) the approval of projects;

(iii) seeking project funding;

(iv) coordinating public and private ventures; and

(v) promoting IVHS at local, state, and national levels.

(C) Manner of reporting. A committee shall report its advice and recommendations to the local district engineer, or his or her designee.

(b) Operating procedures.

(1) Membership. An advisory committee shall be composed of not more than 24 members to be appointed by the office or official to whom the committee is to report. When applicable to the purpose and duties of the committee, the membership shall provide a balanced representation between:

(A) industries or occupations regulated or directly affected by the department; and

(B) consumers of services provided either by the department or by industries or occupations regulated by the department.

(2) Meetings.

(A) An advisory committee shall meet once a calendar year and such other times as requested by the office to which it reports.

(B) A majority of the membership of an advisory committee constitutes a quorum. A committee may take formal action only by majority vote of its membership.

(3) Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Duration. Except as otherwise specified in this subsection, a committee created under this section is abolished September 1, 1995, unless continued in existence by affirmative vote of the commission.

Issued in Austin, Texas, on October 6, 1993.

TRD-9329888

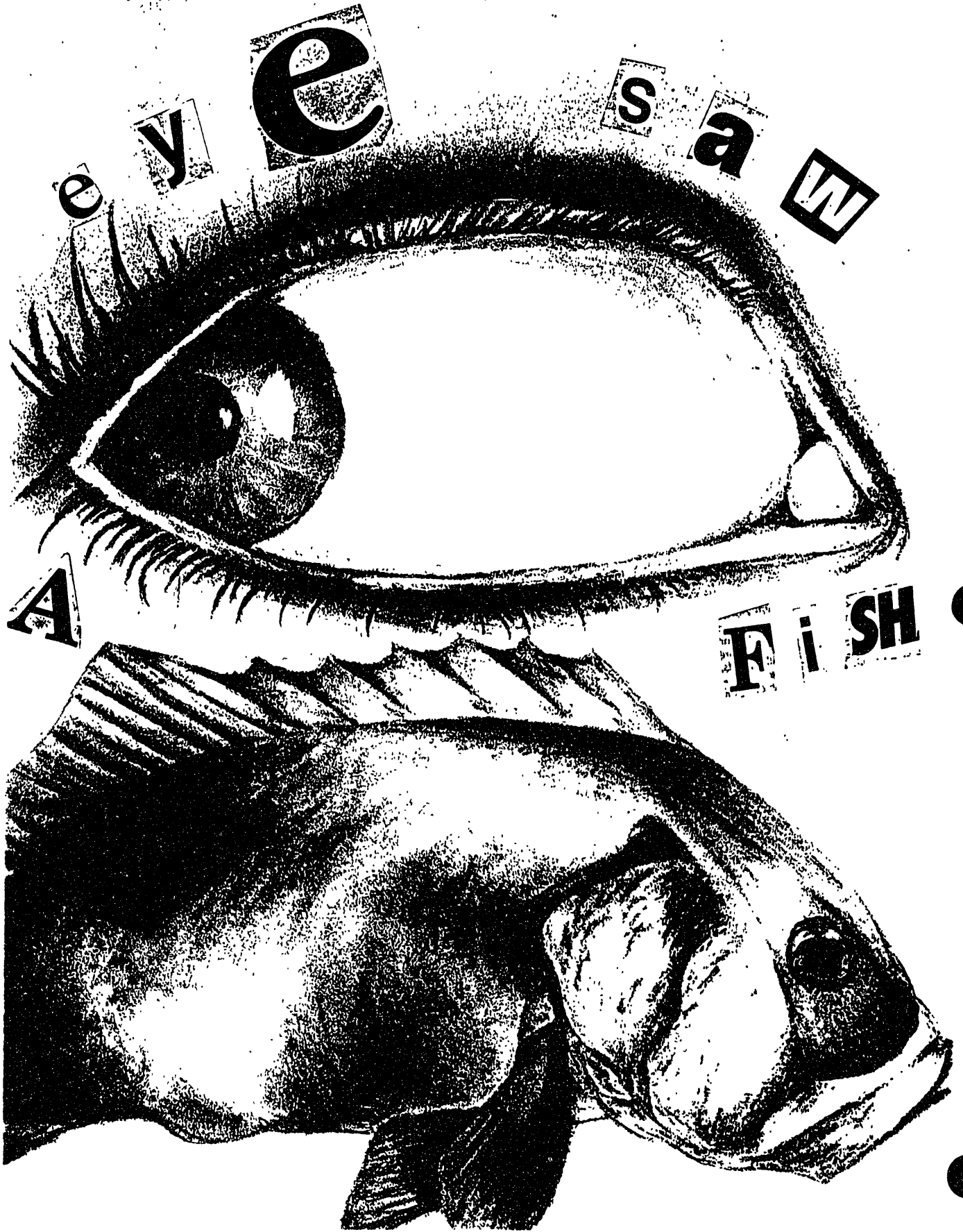
Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: October 6, 1993

Expiration date: February 4, 1994

For further information, please call: (512) 463-8630

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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 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 6. Internal Operations

Subchapter A. Commission Meeting Rules

- 1 TAC §§6.1-6.12, 6.31-6.35, 6.71, 6.81

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

The Texas Ethics Commission proposes the repeal of §§6.1-6.12, 6.31-6.35, 6.71, and 6.81, concerning internal operations and commission meeting rules. The sections are being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers.

Jim Mathieson, assistant general counsel, 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. Mathieson 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 is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800, or toll free in Texas, (800) 325-8506.

The repeals are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the

Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§6.1. *Officers of the Commission.*

§6.2. *Chairperson and Vice-Chairperson.*

§6.3. *Executive Director.*

§6.4. *General Counsel.*

§6.5. *Meetings, Application of the Open Meetings Act, the Open Records Act, Opportunities to Appear, and Access.*

§6.6. *Called Meetings.*

§6.7. *Transcripts and Minutes.*

§6.8. *Agenda.*

§6.9. *Conduct and Decorum.*

§6.10. *Registration Form.*

§6.11. *Quorum.*

§6.12. *Request for Action by the Commission.*

§6.31. *Placing Matters on the Agenda.*

§6.32. *Public Hearing.*

§6.33. *Submission to the Commission without Prior Public Hearing.*

§6.34. *Public Appearance.*

§6.35. *Order of Commission Meetings.*

§6.71. *Voting at Commission Meetings.*

§6.81. *Appeal of a Ruling from the Chair.*

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 September 30, 1993.

TRD-9329973

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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- 1 TAC §§6.1, 6.3, 6.5, 6.7, 6.9

The Texas Ethics Commission (the commission) proposes new §§6.1, 6.3, 6.5, 6.7, and 6.9, concerning the organization and administration of the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 6 define words and phrases used in the proposed rules; generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings; establish procedures for public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

Andrew Martin, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed.

Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be trans-

mitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a, and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provide the commission with the authority to govern its operations.

§ 6.1. *Definitions.* The following words and terms, when used in this Part II, shall have the following meanings, unless the context clearly indicates otherwise.

Act—Government Code, Chapter 571 (relating to Texas Ethics Commission).

Administrative Procedure Act—Government Code, Chapter 2001 (relating to Administrative Procedure).

Agency—The state agency governed by the commission, as it functions and operates through the administrative staff hired by the commission and its executive director.

Agency office—The offices of the agency located at 1101 Camino La Costa, Austin, Texas 78752; with a mailing address of P.O. Box 12070, Austin, Texas 78711.

Commission—The Texas Ethics Commission, as constituted and described in the Texas Constitution, Article 3, §24a.

Document—A report, complaint, response, letter, or any other written material.

Executive director—The person employed by the commission to serve as the agency's chief administrative officer, or any other employee of the commission acting as the designee of the executive director.

Family member or relative—An individual who is related within the second degree of affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity).

Filer—A person required to file a report with the commission or a local filing authority in accordance with this title.

Individual—A human being who has been born and is alive.

Local filing authority—A public servant other than the Texas Ethics Commission

with whom a filer must file a report in accordance with this title, as identified in §20.5 of this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title (relating to Reports Filed with Other Local Filing Authority).

Open Meetings Law—Government Code, Chapter 551 (relating to Open Meetings).

Open Records Law—Government Code, Chapter 552 (relating to Open Records).

Person—An individual, representative, corporation, association, or other entity, including any non-profit corporation, or any agency or instrumentality of federal, state, or local government.

Postmark—A postal cancellation by the United States Postal Service that contains the post office name, state, and zip code and the month, day, and year the canceling post office accepted custody of the material.

Presiding officer—The person elected to serve as the commission's chairman or chairwoman under §6.21 of this title (relating to Officers of the Commission).

Report—Any document or other information required to be filed under this title.

Staff—Employees of the commission, hired by the commission or the executive director.

Title 15—Election Code, Title 15 (relating to Regulating Political Funds and Campaigns).

§6.3. *Purpose and Construction of Rules.*

(a) This title is adopted for the following purposes:

(1) to establish and explain the practice and procedures followed by the commission and its employees performing its duties under the law; and

(2) to provide specific guidance necessary to encourage and ensure full compliance with all laws administered and enforced by the commission.

(b) A person's obligation to comply with a requirement or prohibition established by statute exists even if this title is silent concerning a statutory requirement.

(c) This title shall always be construed in a manner consistent with all applicable constitutional and statutory requirements.

§6.5. *Authority to Adopt Rules.* This title is adopted under the authority granted by the Act, the Administrative Procedure Act, and by any other law administered and enforced by the commission that establishes the commission's authority to adopt rules.

§6.7. *Actions That Require Six Votes.*

(a) The following actions require the affirmative vote of no less than six members of the commission:

(1) to adopt a rule to administer any law administered and enforced by the commission;

(2) to render any decision on a complaint or a report of a violation as provided by Government Code, Chapter 571 (relating to Texas Ethics Commission), other than a final decision after a formal hearing that a violation has not occurred, which requires only five votes;

(3) to prohibit participation by a member of the commission in commission proceedings relating to the investigation, complaint, or motion;

(4) without a sworn complaint, to initiate a preliminary review of an alleged violation of a law administered or enforced by the commission;

(5) to subpoena and examine witnesses and documents that directly relate to a sworn complaint and issue a written request to a peace officer to serve a subpoena of the commission in the manner prescribed for service of a district court subpoena;

(6) to order and perform a complete audit at an informal or formal hearing of a sworn complaint or commission-initiated complaint; and

(7) to initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution.

(b) Any action not listed in subsection (a) of this section that requires a vote of the commission requires the affirmative vote of no less than five members of the commission.

§6.9. *Computation of Time.*

(a) This section states how to compute a period of time prescribed or allowed by this title, by any order of the agency, or by any applicable statute. The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would be a Saturday, a Sunday, or a legal holiday, the period is extended until the next day that is not a Saturday, a Sunday, or a legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the agency is closed for a holiday established by state law.

(b) A time period described by statute or this title to be a certain number of business days is calculated under subsection (a) of this section without including any

Saturday, Sunday, or legal holiday within that time period.

(c) A document required to be filed or served by a deadline established by statute or this title is filed or served when it is actually received. A document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.

(d) A document filed or served by delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

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 September 30, 1993.

TRD-9329990

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter B. Officers and Employees of the Commission

• 1 TAC §§6.21, 6.23, 6.25

The Texas Ethics Commission (the commission) proposes new §§6.21, 6.23, and 6.25, concerning the organization and administration of the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 6 define words and phrases used in the proposed rules; generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings; establish procedures for public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has es-

tablished to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provide the commission with the authority to govern its operations.

§ 6.21. Officers of the Commission.

(a) The commission shall select a presiding officer and a vice-presiding officer.

(b) Commission officers are elected annually by majority vote of the commission. The election shall take place at the first commission meeting scheduled after November 19 of each year. Each officer shall serve until his or her successor is selected.

(c) The presiding officer shall preside at all meetings of the commission. While presiding, the presiding officer shall direct the order of the meeting, appoint subcommittees and persons to chair subcommittees, recognize persons to be heard at hearings, set reasonable and necessary time limits for speakers, and take other actions to clarify issues and preserve order. When the presiding officer is absent, the vice-presiding officer shall perform all duties of the presiding officer.

§6.23. Commission Staff.

(a) The executive director is the chief administrative officer of the agency. The executive director shall attend commis-

sion meetings at the pleasure of the commission and serve as liaison between the commission and the public.

(b) The commission delegates to the executive director all powers conferred on the commission by the Act or other law, except for any power that requires a vote of the commission. Any action taken by the executive director shall conform with all applicable law, including this title and other policies that may be adopted from time to time by the commission.

(c) The executive director shall attend commission meetings unless specifically excused by the commission and shall perform any duties or assignments established by the commission.

(d) The general counsel shall attend commission meetings unless specifically excused by the commission, shall provide legal advice to the commission and executive director, and shall perform any duties delegated by the executive director.

§6.25. Appointment and Operation of Advisory Committees.

(a) The commission by resolution may establish one or more committees to obtain the viewpoints and advice of interested persons with respect to any contemplated rule-making. The membership or method of appointment of members to a committee established under this section shall be specified in the resolution that creates the committee. A committee created under this section is advisory only.

(b) In addition to committees established under subsection (a) of this section, with the consent of other members of the commission the presiding officer may from time to time establish and appoint commission members and others to a special committee to exercise advisory duties specified by the presiding officer.

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

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Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Subchapter C. Commission Meetings

- 1 TAC §§6.31, 6.33, 6.35, 6.37, 6.39, 6.41, 6.43, 6.45, 6.47

The Texas Ethics Commission (the commission) proposes new §§6.31, 6.33, 6.35, 6.37, 6.39, 6.41, 6.43, 6.45, and 6.47, concerning the organization and administration of the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 6 define words and phrases used in the proposed rules; generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings; establish procedures for public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provide the commission with the authority to govern its operations.

§6.31. Quorum. Five commissioners must be present as a quorum to hold a commission meeting.

§6.33. Frequency of Meetings. The commission shall meet at least once a quarter at the call of the presiding officer.

§6.35. Called Meeting. The executive director shall give notice to each commissioner of the date and time of each meeting. Notice under this section shall be provided a reasonable amount of time in advance of the meeting, and may be by telephone, fax, or mail.

§6.37. Open Meetings.

(a) Except as provided by subsection (b) of this section, each meeting of the commission shall be conducted in accordance with the Open Meetings Law.

(b) A commission meeting limited to consideration and action on matters relating to sworn complaints is not subject to the Open Meetings Law.

§6.39. Meeting Agenda.

(a) The agenda shall consist of agenda items proposed by the executive director prior to the meetings for which the agenda is specified. At a reasonable time before filing a copy of the agenda as required by the Open Meetings Law, the executive director shall provide a copy of the proposed agenda to the presiding officer. If the presiding officer is not reasonably available, the executive director shall provide a copy of the proposed agenda to the vice-presiding officer. If the vice-presiding officer is not reasonably available, the executive director shall provide a copy of the proposed agenda to any two commissioners.

(b) The presiding officer, a commission member with the consent of the presiding officer, or any two commissioners may direct the executive director to include an item on the agenda if it complies with the posting requirements specified by law. The presiding officer may direct the executive director to remove an item included on a proposed agenda unless that item is requested by two commission members other than the presiding officer.

(c) A member of the public may ask the executive director to place an item on a proposed agenda. The executive director shall advise the commission of the request and may include the item on a proposed agenda.

§6.41. Public Hearing and Participation.

(a) A public hearing on an agenda item shall be conducted when required by law or requested by a commissioner.

(b) The executive director shall prepare and maintain a plan for providing special assistance (including without limitation translation of the English language) to persons who request such assistance for the purpose of attending, observing, or participating in a commission meeting.

§6.43. Speakers Addressing the Commission.

(a) The executive director shall prescribe a speaker registration form. Each person who wishes to speak at a commission meeting shall provide the following information:

- (1) the speaker's name;
- (2) the person or entity the speaker represents, if any;
- (3) the agenda item the speaker wishes to address; and
- (4) his or her mailing address and telephone number.

(b) Any person who addresses the commission shall state his or her name and the name of the person or entity the speaker represents, if any, for purposes of the tape recording under §6.47 of this title (relating to Tape Recording of Meeting; Minutes).

§6.45. Order and Conduct of Commission Meeting.

(a) The presiding officer shall preside at all meetings of the commission. The presiding officer shall direct the order of the meeting in accordance with its agenda, recognize persons to be heard, set reasonable and necessary time limits for speakers, maintain and enforce appropriate standards of conduct, and take any other action necessary in his or her discretion to clarify issues and preserve order. When the presiding officer is absent, the vice-presiding officer shall perform all duties under this subsection.

(b) Commission meetings shall be conducted in accordance with rules and procedures set forth in the most recently published edition of *Robert's Rules of Order*.

(c) With unanimous consent of all commissioners present, any provision or requirement of this section may be waived.

(d) No action of the commission that otherwise complies with law shall be void or invalid because the action was taken in violation of a rule or procedure established by this section.

§6.47. Tape Recording of Meeting; Minutes.

(a) All meetings of the commission shall be tape recorded. The tape recording shall be the official record of actions taken at the meeting.

(b) The presiding officer shall announce the names of each commissioner who makes or seconds a motion to be voted upon by the commission. After the vote has been taken, the presiding officer shall announce the vote in a manner that identifies how each commissioner voted, if a commissioner abstained, or if a commissioner was not present for the vote.

(c) The executive director shall prepare minutes after each meeting that reflect all commission votes and other actions taken during the meeting. The minutes shall be approved by vote of the commission at a subsequent commission meeting.

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 September 30, 1993.

TRD-9329992

Jim Mathleson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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**Subchapter D. Rulemaking
Procedures**

• 1 TAC §6.61, §6.63

The Texas Ethics Commission (the commission) proposes new §6.61, and §6.63, concerning the organization and administration of the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 6 define words and phrases used in the proposed rules; generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings; establish procedures for public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better un-

derstanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provide the commission with the authority to govern its operations.

§6.61. Comments on Proposed Rules.

(a) Written comments on a proposed rule received at the agency office shall be reviewed by the executive director and made available to each member of the commission before final action to adopt the rule.

(b) Oral or written comments on a proposed rule may also be offered at the public hearing required by §6.63 of this title (relating to Public Hearings on Proposed Rules).

§6.63. Public Hearings on Proposed Rules. The commission will hold a public hearing on each proposed rule before it takes final action to adopt the rule. Unless otherwise scheduled, the public hearing will be held immediately before the commission votes on the proposed rule.

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

Issued in Austin, Texas, on September 30, 1993.

TRD-9329993

Jim Mathleson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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**Subchapter E. Agency Fees
and Charges**

• 1 TAC §§6.81, 6.83, 6.85, 6.87

The Texas Ethics Commission (the commission) proposes new §§6.81, 6.83, 6.85, and 6.87, concerning the organization and administration of the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 6 define words and phrases used in the proposed rules; generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings; establish procedures for public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas

Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provide the commission with the authority to govern its operations.

§6.81. Charges; Payment of Money; Refunds.

(a) Any fee or charge payable to the agency shall be paid in advance, unless satisfactory arrangements for subsequent payment are approved by the executive director.

(b) All payments of money to the agency shall be made in United States specie, money orders, or by certified or personal check. Money orders and checks must be made payable to the "Texas Ethics Commission." Payment sent by mail to the agency is at the risk of the sender.

(c) Money paid by actual mistake or in excess, such as a payment not required by law, may be refunded. A mere change of purpose after the payment of money, as when a party desires to withdraw a filing, will not entitle a party to a refund.

§6.83. Copying Charges. The charge for providing copies of documents shall be in accordance with rules established by the General Services Commission or other applicable law.

§6.85. Charge for FAX Transmittal. On request, the agency will transmit a form or other document by facsimile (FAX) machine to the person making the request. The charge for this service is \$2.00 per page, excluding any cover or transmittal page.

§6.87. Waiver of Fees for Copies or Publications. The executive director may waive or reduce a charge established by this subchapter when, in his or her discretion, a waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

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 September 30, 1993.

TRD-8329994 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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Chapter 8. Legislative Per Diem

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• 1 TAC §8.1

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

The Texas Ethics Commission proposes the repeal of §8.1, concerning legislative per diem. The section is being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained.

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

Mr. Mathieson also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is not applicable

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeal is proposed under the Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered 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 September 30, 1993.

TRD-9329974 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 8. Advisory Opinions

• 1 TAC §§8.1, 8.3, 8.5, 8.7, 8.9, 8.11, 8.13, 8.15, 8.17, 8.19, 8.21

The Texas Ethics Commission (the commission) proposes new §§8.1, 8.3, 8.5, 8.7, 8.9, 8.11, 8.13, 8.15, 8.17, 8.19, and 8.21, concerning advisory opinions by the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 8 generally describe the procedures used by the commission in issuing advisory opinions.

Andrew Martin, general counsel, has determined that for the first five-year period these sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Mr. Martin also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provides the commission with the authority to promulgate rules concerning advisory opinions.

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

AOR Number—An advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter.

§8.3. Subject of an Advisory Opinion.

(a) The commission will issue a written advisory opinion on the following laws to a person qualified to make a request under §8.5 of this title (relating to Persons Eligible to Receive an Advisory Opinion):

(1) Government Code, Chapter 302 (relating to Speaker of the House of Representatives);

(2) Government Code, Chapter 305 (relating to Registration of Lobbyists);

(3) Government Code, Chapter 572 (relating to Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest);

(4) Election Code, Title 15 (relating to Regulating Political Funds and Campaigns);

(5) Penal Code, Chapter 36 (relating to Bribery and Corrupt Influence); and

(6) Penal Code, Chapter 39 (relating to Abuse of Office).

(b) The commission will not issue an advisory opinion that concerns the subject matter of pending litigation known to the commission.

(c) An advisory opinion cannot resolve a disputed question of fact.

§8.5. *Persons Eligible to Receive an Advisory Opinion.* A person who is subject to one of the laws described in §8.3(a) of this title (Subject of Advisory Opinions) may request an opinion that advises how the law applies to that person in a specific real or hypothetical factual situation.

§8.7. Request for an Advisory Opinion.

(a) A request for an advisory opinion shall describe a specified factual situation. The facts specified may be real or hypothetical. The request must provide sufficient detail to permit the commission to provide a response to the request.

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, hand-delivered, or faxed to the commission at the agency office.

§8.9. *Commission Initiated Opinion.* When a majority of the commission determines that an opinion would be in the public interest or in the interest of any person or persons within the jurisdiction of the commission, the commission may on its

own motion issue an advisory opinion.

§8.11. Review and Processing of a Request.

(a) Upon receipt of a request for an advisory opinion, the executive director will determine whether the request is one the commission will answer under §8.3 of this title (relating to Subject of an Advisory Opinion).

(b) If the commission will answer the request, the executive director will assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the request is one the commission can not answer, the executive director shall notify the person making the request of the reason the request will not be answered.

§8.13. Time Period.

(a) The commission shall issue an advisory opinion not later than the 60th day after the date the commission receives the written request.

(b) For purposes of calculating the time period under subsection (a) of this section, an advisory opinion request is deemed to have been received on the date the executive director determines the request complies with §§8.3, 8.5, and 8.7 of this title (relating to Subject of an Advisory Opinion; Persons Eligible to Receive an Advisory Opinion; Request for an Advisory Opinion) and assigns the request an AOR number.

(c) The authority granted by the Act, §1.29(b), is delegated to the staff of the Commission.

§8.15. Publication in Texas Register; Comments.

(a) Each request assigned an AOR number under this chapter shall be published in summary form in the *Texas Register*.

(b) Any interested person may submit written comments concerning an advisory opinion request. Comments submitted should reference the AOR number.

§8.17. *Letter Response.* If the executive director determines a request can be answered by reference to the plain language of a statute or a commission rule, or if the question has already been answered by the commission, then in either case the executive director may provide a written response to the person making the request that cites the language of the statute or rule or the prior determination, as applicable.

§8.19. Confidentiality.

(a) The name of a person who requests an advisory opinion is confidential.

(b) The original request for an advisory opinion shall be placed in a confidential file. No original request or copy of an original request may be removed from the agency office.

(c) Confidentiality under subsection (a) of this section may be waived only if the person making the request for an advisory opinion provides a verified, written waiver of confidentiality to the executive director.

(d) If a request for a copy of an advisory opinion request is received, the executive director shall prepare a redacted version of the advisory opinion request by deleting any information that is likely to identify the person making the request. The redacted version of the request shall be provided to the person who requested a copy of the advisory opinion request.

§8.21. *Compilation of Advisory Opinions.* The executive director shall number and categorize each advisory opinion issued and shall annually compile a summary of advisory opinions in a single reference document. The executive director may publish and provide copies of advisory opinions in other formats as may be in the public interest.

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 September 30, 1993.

TRD-9329995

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 9. Advisory Opinions

• 1 TAC §§9.1, 9.3, 9.5, 9.7

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

The Texas Ethics Commission proposes the repeal of §§9.1, 9.3, 9.5, and 9.7, concerning rules for advisory opinions. These sections are being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained.

Jim Mathieson, assistant general counsel,

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. Mathieson 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 is not applicable.

Comments on the proposed repeals of the rules from any member of the public are solicited. A written comments should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments on the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the Commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under the Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§9.1. Requests For Advisory Opinions.

§9.3. Examination and Referral of Requests.

§9.5. Time Period.

§9.7. Confidentiality.

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 September 30, 1993.

TRD-9329975 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Chapter 10. Ethics Training Programs

Subchapter A. General Provisions

- 1 TAC §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33, 10.35, 10.37, 10.39, 10.41, 10.43

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

The Texas Ethics Commission proposes the repeal of §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33, 10.35, 10.37, 10.39, 10.41, and 10.43, concerning general provisions of practice and procedure rules. The sections are being repealed because a recodification of all commission rules resulting in the assignment of new chapter and section numbers of those sections being retained or replaced.

Jim Mathieson, assistant general counsel, 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. Mathieson 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 is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comments should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (FAX) to (512) 463-5777. A persons who wants to offer spoken comments on the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at the commission meeting final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under the Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§10.1. Definitions.

§10.3. Scope of Chapter.

§10.5. Compliance with "Open Meetings" and Open Records" Laws.

§10.7. Alternative Methods for Taking a Vote of the Commission.

§10.9. Confidentiality.

§10.11. Delegation to Executive Director.

§10.13. Representation by Counsel.

§10.15. Notice of Compliance with Form Requirements.

§10.17. Jurisdiction.

§10.19. Investigation and Preliminary Review.

§10.21. Request for Information.

§10.23. Agreed Disposition.

§10.25. Notice

§10.27. Prehearing Conference.

§10.29. Subpoenas.

§10.31. Conduct of Hearings.

§10.33. Preliminary Review Hearing.

§10.35. Informal Hearing.

§10.37. Formal Hearing.

§10.39. Appointment of Administrative Law Judge.

§10.41. Record in Sworn Complaint Proceeding.

§10.43. Frivolous Complaint.

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

Issued in Austin, Texas, on September 30, 1993.

TRD-9329976 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

• 1 TAC §10.1, §10.3

The Texas Ethics Commission (the commission) proposes new §10.1, and §10.3, concerning training programs offered by the commission. These and other new rules are

proposed to entirely replace the commission's current rules. The sections in this Chapter 10 generally describe the establishment of a training program and authorize the charging of tuition fees.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing the sections will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, 24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provides the commission with the authority to promulgate rules concerning ethics training.

§10.1. Training Programs. Upon approval of the commission, the executive director shall establish a program to provide training relating to the laws administered and enforced by the commission and related laws for:

(1) members and members-elect of the legislature, to be held by January of each odd-numbered year;

(2) state employees, in cooperation with state agencies; and

(3) other persons and officials whose conduct is regulated by laws administered and enforced by the commission and related laws.

§10.3. Tuition Charges to Attendees of Training Programs. Upon approval of the commission, the executive director may establish tuition charges for persons who attend training programs under §10.1(3) of this title (relating to Training Programs) to recover costs of the training.

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

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TRD-9329996 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Subchapter B. Sworn Complaints

- 1 TAC §§10.111, 10.113, 10.115, 10.117, 10.119, 10.131, 10.133, 10.135, 10.137

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

The Texas Ethics Commission proposes the repeal of §§10.111, 10.113, 10.115, 10.117, 10.119, 10.131, 10.133, 10.135, and 10.137, concerning the sworn complaint under practice and procedure rules. The sections are being repealed because of recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

Jim Mathieson, assistant general counsel, 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. Mathieson 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 is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. Written comments should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (FAX) to (512) 463-5777. A persons who wants to offer spoken comments on the commission concerning the proposed rule

may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at the commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under the Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§10.111. Definitions.

§10.113. General requirements of a Sworn Complaint.

§10.115. Availability and Use of Sworn Complaint.

§10.117. Identification of the Complainant.

§10.119. Identification of the Respondent.

§10.131. Nature of Violation.

§10.133. Statement of Facts.

§10.135. Relevant Documents or Other Material.

§10.137. Affidavit.

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

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TRD-9329977 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Subchapter D. Miscellaneous

- 1 TAC §10.311, §10.313

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

The Texas Ethics Commission proposes the repeal of §10.311, and §10.313, concerning miscellaneous provisions under practice and

procedure rules. The sections are being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

Jim Mathieson, assistant general counsel, 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. Mathieson 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 is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. Written comments should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments on the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at the commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under the Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§10.311. Substitution or Replication of Forms.

§10.313. Required Filing of Duplicate 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.

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TRD-9329978 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

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Chapter 11. Speaker of the
House of Representatives
Subchapter A. Campaign Reporting

• 1 TAC §§11.1, 11.3, 11.5, 11.7,
11.9

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

The Texas Ethics Commission proposes the repeal of §§11.1, 11.3, 11.5, 11.7, and 11.9, concerning campaign reporting rules for the speaker of the house of representatives race. The sections are being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

Jim Mathieson, assistant general counsel, 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. Mathieson 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 is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. Written comments should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments on the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at the commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under the Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§11.1. Definitions.

§11.3. Termination of Candidacy.

§11.5. Contents of Sworn Reports of Contributions and Expenditures.

§11.7. Permitted Expenditures

§11.9. Segregation of Campaign Funds.

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 September 30, 1993.

TRD-9329978 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

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Chapter 12. Sworn Complaints
Subchapter A. General Provisions and Procedures

• 1 TAC §§12.1, 12.3, 12.5, 12.7,
12.9, 12.11, 12.13, 12.15, 12.17,
12.19, 12.21, 12.23, 12.25, 12.27,
12.29, 12.31, 12.33, 12.35, 12.37,
12.39

The Texas Ethics Commission (the commission) proposes new §§12.1, 12.3, 12.5, 12.7, 12.9, 12.11, 12.13, 12.15, 12.17, 12.19, 12.21, 12.23, 12.25, 12.27, 12.29, 12.31, 12.33, 12.35, 12.37, and 12.39, concerning the procedures used in the processing of sworn complaints by the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 12 generally describe the general provisions and procedures under which sworn complaints will be processed; describe the procedures in the filing and initial processing of a sworn complaint; provide guidelines in the investigation and preliminary review of a sworn complaint; provide guidelines in the informal hearing stage of a sworn complaint; and provide guidelines in the formal hearing stage of a sworn complaint.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public"

and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8508.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provides the commission with the authority to promulgate rules regulating the orderly processing of sworn complaints affecting those laws, rules, and regulations enforced and administered by the commission.

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

Complainant—An individual who has filed a sworn complaint with the commission.

Respondent—A person identified in a sworn complaint who is alleged to have violated a law administered and enforced or a rule adopted by the commission.

§12.3. Scope of Chapter. This chapter applies to sworn complaint proceedings before the commission. This chapter is intended to more clearly define the procedures required by the Act and shall be construed to ensure the fair and expeditious determination of a sworn complaint.

§12.5. Subject Matter of a Sworn Complaint. The commission will not consider a complaint or vote to investigate:

(1) an allegation that a person has violated any law other than the Government Code, Chapter 302 (relating to Speaker of the House of Representatives), Chapter 305 (relating to Registration of Lobbyists), Chapter 571 (relating to Texas Ethics Commission), or Chapter 572 (relating to Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest); Election Code, Title 15 (relating to Regulating Political Funds and Campaigns); or a commission rule adopted to administer and enforce one of these laws;

(2) an alleged violation that occurred before January 1, 1992;

(3) if the alleged violation is also a criminal offense, an allegation barred from criminal prosecution by operation of

the applicable statute of limitations; or

(4) for any other alleged violation, an allegation based on facts that occurred more than three years before the date the sworn complaint is filed.

§12.7. Confidentiality.

(a) Except as otherwise provided by this section, all information relating to a sworn complaint known to or in the possession of the commission is confidential. The commission and its employees shall not communicate any information about a sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.

(b) Information otherwise confidential under this section may be disclosed by entering it into the record of a formal hearing or a judicial proceeding.

(c) Confidentiality under subsection (a) of this section may be waived only if the complainant and each respondent named in the sworn complaint provides a verified, written waiver of confidentiality to the executive director.

(d) An order or decision issued after a preliminary review or an informal hearing is not confidential under this section if the commission makes the following affirmative findings in the order or decision:

(1) the respondent violated the law; and

(2) the violation of law was not a technical or de minimis violation.

§12.9. Compliance with Open Meetings Law and Open Records Law.

(a) The Open Meetings Law does not apply to a meeting or decision of the commission in connection with a sworn complaint until written notice of a formal hearing on the sworn complaint is sent to the respondent and complainant under §12.105 of this title (relating to Notice of Formal Hearing or Dismissal).

(b) The Open Records Law does not apply to information relating to a sworn complaint until written notice of a formal hearing on the sworn complaint is sent to the respondent and complainant under §12.105 of this title (relating to Notice of Formal Hearing or Dismissal).

§12.11. Delegation to Executive Director. Any duty or power of the commission relating to a sworn complaint that does not require a commission vote is delegated to the executive director.

§12.13. Representation by Counsel. A respondent has the right to be represented by counsel retained by the respondent in any proceeding of a sworn complaint.

§12.15. Complainant Not a Party.

(a) The complainant is not a party to a preliminary review, an informal hearing, or a formal hearing.

(b) The commission may grant a complainant the opportunity to be heard at a hearing.

§12.17. Agreed Disposition.

(a) An agreed disposition resolves and settles a sworn complaint on terms and conditions acceptable to both the commission and the respondent who agrees to the disposition.

(b) A proposed agreed disposition may be presented by the respondent to the commission at any time after a sworn complaint is filed. The commission may propose an agreed disposition to a respondent at any time after it has voted to consider a complaint under §12.69 of this title (relating to Vote to Consider a Sworn Complaint).

(c) The commission will not approve an agreed disposition that imposes a sanction or concludes that a violation occurred if the respondent denies the essential allegations in the complaint. A respondent's refusal to admit an allegation is equivalent to a denial, unless the respondent states that he or she neither admits nor denies the allegation.

(d) The commission has no power or responsibility to institute, conduct, settle, or otherwise dispose of criminal proceedings. A respondent who consents, or agrees to consent, to an agreed disposition, including one that imposes a sanction, does so solely for the purpose of resolving a civil enforcement action under the jurisdiction of the commission. An agreed disposition does not resolve any criminal charges that have been, or might be, brought against a respondent based on allegations in a sworn complaint.

(e) If the commission approves an agreed disposition, notice of that decision and a copy of the agreed disposition shall be given to the complainant and the respondent pursuant to §12.21 of this title (relating to Notice).

§12.19. Agreements to be in Writing.

(a) No stipulation or agreement with respect to any matter in a sworn complaint shall be enforced unless it has been:

(1) reduced to writing and signed by each person making the stipula-

tion or agreement, or that person's authorized representative;

(2) dictated into the record during the course of a hearing; or

(3) incorporated in an order signed by the person making the stipulation or agreement or that person's authorized representative.

(b) This section does not limit a person's right to waive or modify by stipulation or agreement a right or privilege afforded by these sections or by law.

§12.21. Notice.

(a) When required by reference to this section, a notice shall be hand-delivered, with receipt acknowledged, or mailed by certified mail, restricted delivery, return receipt requested, to the recipient's last known mailing address on file with the commission.

(b) A hand-delivered notice is effective when it is received. Notice that is mailed is effective on the date it is deposited into an official repository of the United States Postal Service, properly addressed, with postage prepaid.

(c) If the notice is for a hearing, it must be given at least ten business days before the date of the hearing, and must include:

(1) the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(d) If the notice is of a commission order or decision, the notice shall be given no later than five business days after the date of the order or decision and shall include a copy of the order or decision.

(e) A person entitled to receive notice may waive that right by filing a written waiver with the executive director. That waiver may be withdrawn by written notice received by the executive director no later than five business days before the next day a notice is required under this chapter.

§12.23. Hearing In Respondent's Absence. If a respondent fails to appear at a hearing after notice of the hearing was given pursuant to §12.21 of this title (relating to Notice), the commission may proceed in the respondent's absence and, where appropriate, may decide against the respondent.

§12.25. Waiver of Hearing. The commission may consider and act on a sworn complaint at the preliminary review or informal hearing stage without a hearing if each affected respondent provides a written waiver of his or her right to appear. A respondent may revoke consent to act without a hearing given under this section at any time before the commission announces a final disposition of the complaint.

§12.27. Extension of Deadlines. On its own motion, or on the reasonable request of a respondent, the commission may extend any deadline for action relating to a sworn complaint.

§12.29. Subpoenas.

(a) The commission may subpoena documentary evidence that is directly relevant to a sworn complaint in connection with an informal or formal hearing only after it has set a date and time for the hearing.

(b) The commission may subpoena a witness in connection with a formal hearing only after it has set a date and time for the hearing.

(c) A subpoena under subsections (a) or (b) of this section shall specify the date, time, place, and manner for execution of the subpoena.

(d) A subpoena that requires a person to submit written testimony for an informal or formal hearing, or to testify at a formal hearing, shall be served on that person at least ten business days before the date the subpoena is to be executed.

(e) As provided by §12.115 of this title (relating to Non-disclosure of Subpoenaed Witnesses), the commission may order that a person may not, except as specifically authorized by the chairman, make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

§ 12.31. Administrative Law Judge.

(a) The commission may refer a sworn complaint to an administrative law judge at the Office of Administrative Hearings to develop findings of fact, conclusions of law, and to recommend a proposed decision by the commission. When a sworn complaint has been referred under this section, the administrative law judge may exercise any power of the commission in connection with a sworn complaint that does not require a commission vote.

(b) An administrative law judge acting under this section is subject to §12.7 of this title (relating to Confidentiality) in the same respect as the commission.

(c) Whenever notice required by this chapter is provided by an administrative law judge to a complainant or a respondent, the administrative law judge shall provide the same notice to the executive director.

§12.33. Contested Case Procedures.

(a) The rules, procedures, and rights established by the Administrative Procedure Act in connection with a contested case are adopted by reference as additional rules for hearings and other proceedings under this Chapter 12.

(b) Whenever a law administered and enforced by the commission or a commission rule other than this section conflicts with a requirement, procedure, or right established by the Administrative Procedure Act in connection with a contested case, the law administered and enforced by the commission or the commission rule shall control.

§12.35. Frivolous Complaint.

(a) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

(b) By a record vote of at least six commissioners, the commission may order a complainant to show cause why the commission should not determine that the complaint filed by the complainant is a frivolous complaint.

(c) In deciding if a complaint is frivolous, the commission will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

(1) the timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

(2) the nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the commission;

(3) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

(4) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

(5) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(6) any evidence of the complainant's motives in filing the complaint.

(d) Notice of an order to show cause shall be given to the complainant pursuant to §12.21 of this title (relating to Notice), with a copy to the respondent, and shall include:

(1) an explanation of why the complaint appears to be frivolous; and

(2) the date, time, and place of the show cause hearing to be held under subsection (c) of this section.

(e) Before making a determination that a sworn complaint is a frivolous complaint, the commission shall hold a hearing at which the complainant may be heard and may be represented by counsel retained by the complainant.

(f) By a record vote of at least six commissioners after the hearing under subsection (e) of this section, the commission may determine that a complainant filed a frivolous complaint and may impose a civil penalty against that complainant under §12.37 of this title (relating to Sanctions).

§12.37. Sanctions.

(a) Before assessing a sanction, the commission shall consider the following factors:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

(2) the history and extent of previous violations by the respondent;

(3) the demonstrated good faith of the respondent, including any actions taken to rectify the consequences of the violation;

(4) the penalty necessary to deter future violations; and

(5) any other matters that justice may require.

(b) The commission may impose a civil penalty of not more than \$5,000, or triple the amount at issue under a law administered and enforced by the commission, whichever amount is greater, for a violation of a law administered and enforced by the commission or for a delay in complying with a commission order.

(c) The commission may impose a civil penalty of not more than \$10,000 if it determines a sworn complaint was a frivolous complaint.

(d) The commission may deny,

suspend, or revoke the registration of a person required to be registered under the Government Code, Chapter 305 (relating to Registration of Lobbyists), if it determines that the person was convicted for an offense under the Penal Code, Chapter 36 (relating to Bribery and Corrupt Influence), or the Government Code, Chapter 305 (relating to Registration of Lobbyists).

(e) The commission may notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, the senate, the house of representatives, or the State Bar of Texas, if it finds a respondent has violated a law administered and enforced by the commission.

(f) The commission may issue and enforce cease and desist orders to stop violations and issue affirmative orders to require compliance with laws administered and enforced by the commission.

§12.39. Criminal Referral.

(a) At the conclusion of a formal hearing, the commission may provide any evidence in its possession of criminal wrongdoing to the appropriate prosecuting attorney.

(b) A criminal referral under this section shall be delayed until the day after the election day, as specified in the Government Code, §571.134 (relating to Delay of Referral), if the respondent is a candidate, a candidate's campaign treasurer, or the campaign treasurer of a political committee supporting or opposing a candidate and the complaint was filed within 60 days before the date of an election in which the respondent is involved.

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 September 30, 1993.

TRD-9329997

Jim Mathison
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter B. Filing and Initial Processing of a Sworn Complaint

- 1 TAC §§12.51, 12.53, 12.55, 12.57, 12.59, 12.61, 12.63, 12.65, 12.67, 12.69, 12.71

The Texas Ethics Commission (the commission) proposes new §§12.51, 12.53, 12.55,

12.57, 12.59, 12.61, 12.63, 12.65, 12.67, 12.69, and 12.71, concerning the procedures used in the processing of sworn complaints by the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 12 generally describe the general provisions and procedures under which sworn complaints will be processed; describe the procedures in the filing and initial processing of a sworn complaint; provide guidelines in the investigation and preliminary review of a sworn complaint; provide guidelines in the informal hearing stage of a sworn complaint; and provide guidelines in the formal hearing stage of a sworn complaint.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provides the commission with the authority to promulgate rules regulating the orderly processing of sworn complaints affecting those laws, rules, and regulations enforced and administered by the commission.

§12.51. Filing with Commission. A sworn complaint is filed with the commission by mailing or delivering the complaint to the agency office. The filing date for a sworn complaint is the date it is received at the agency office.

§12.53. Commission Initiated Complaint.

(a) The commission may initiate a preliminary review of a matter within the jurisdiction of the commission by a record vote of at least six members. The matter, including the names of each respondent, shall be specified in the motion voted on by the commission.

(b) A preliminary review and all further proceedings under this chapter with respect to a matter initiated under this section shall be deemed to be a sworn complaint for all purposes of this chapter. Notices required by this title are given only to the respondent, since there is no complainant in a sworn complaint under this section.

§12.55. Attempted Sworn Complaint. When the commission receives a complaint that is not sworn, or any other communication that appears to be an attempt to file a sworn complaint under this chapter, the commission will notify the person submitting the complaint of the requirements for filing a sworn complaint and shall provide a copy of a sworn complaint form with instructions.

§12.57. Contents of a Sworn Complaint.

(a) A sworn complaint must be written and include the following information:

- (1) the name, mailing address, and telephone number of the complainant;
- (2) the name and, if known to the complainant, mailing address and telephone number of each respondent;
- (3) the position or title of each respondent where the alleged violation is related to the position or title held by the respondent;
- (4) in simple, concise, and direct statements, the nature of the alleged violation, including, if known to the complainant, the specific rule or provision of law alleged to have been violated;
- (5) in simple, concise, and direct statements, the facts alleged by the complainant which, if true, constitute a violation of a law administered and enforced by the commission, including the dates or period of time in which the alleged violation occurred;
- (6) a simple, concise, and direct statement that identifies allegations of fact

not personally known to the complainant but alleged on information and belief, and the source and basis of complainant's information and belief that those facts are true;

(7) all documents or other material relevant to the allegations that are in complainant's possession when the sworn complaint was filed;

(8) a description of all documents or other material relevant to the allegations known and available to complainant but not in complainant's possession when the sworn complaint was filed, including the location of those documents; and

(9) a description of all documents or other material relevant to the allegations known but not available to the complainant when the sworn complaint was filed, including the location of those documents, if known to the complainant.

(b) A sworn complaint must be accompanied by the complainant's sworn affidavit. The complainant shall swear by oath or affirmation before a notary or other person authorized by law to administer oaths, under penalty of perjury, that the information contained in the complaint is true and correct as to alleged facts within the personal knowledge of the complainant, or that the complainant has good reason to believe and does believe that the facts alleged on information and belief are true.

(c) A communication that fails to include the affidavit required by subsection (b) of this section is not a sworn complaint, and will be returned to the person making the communication in accordance with §12.55 of this title (relating to Attempted Sworn Complaint).

§12.59. Nature of Violation.

(a) The description of the nature of an alleged violation under §12.57 of this title (relating to Contents of a Sworn Complaint) is sufficient if the commission can reasonably ascertain the relevant rule or provision of law from the description or from the statement of facts. When the nature of the violation is not clearly stated in the complaint, the commission shall clearly restate the nature of the alleged violation in the notice provided under §12.63 of this title (relating to Notice of Sworn Complaint).

(b) A sworn complaint that erroneously cites a specific rule or provision of law is nonetheless sufficient if the correct citation can reasonably be ascertained by the commission. When a complaint erroneously cites a specific rule or provision of law, the commission shall cite the correct rule or provision of law in the notice provided under §12.63 of this title (relating to Notice of Sworn Complaint).

§12.61. Statement of Facts.

(a) The allegations under §12.57 of this title (relating to Contents of a Sworn Complaint) must include all facts necessary to establish each element of the violation. The alleged facts must provide sufficient detail to reasonably place the respondent on notice of the law violated, of the manner and means by which the violation allegedly occurred, and to afford the respondent a basis on which to prepare a response.

(b) The facts alleged must disclose the specific date or dates on which the alleged violation occurred, if that date is known to the complainant. If the complainant is unable to provide a specific date for the violation, the complaint must disclose a specific period of time during which the alleged violation may have occurred.

(c) The facts alleged may adopt by reference the content of documents submitted with the complaint. However, the allegations must reasonably identify those portions of the document that are relevant to the alleged violation.

§12.63. Notice of Sworn Complaint.

(a) No later than 14 business days after the filing date, the executive director shall provide notice to the complainant and the respondent of whether the complaint complies with the form requirements of this subchapter.

(b) If the complaint fails to comply with the form requirements of §12.57 of this title (relating to Contents of a Sworn Complaint), the notice to the complainant shall include the original complaint and the notice to the respondent shall include a copy of the complaint. The notice to both the respondent and the complainant under this subsection shall include a statement of how the complaint fails to comply with this title, a copy of Chapter 12 of this title (relating to Sworn Complaints) and all other commission rules relating to sworn complaints, if any, and a statement of the respondent's rights.

(c) If the complaint satisfies the form requirements, the notice to the complainant and respondent shall include a copy of the complaint, a statement that the complaint complies with this title, a copy of Chapter 12 of this title (relating to Sworn Complaints) and all other commission rules relating to sworn complaints, if any, and a statement of the respondent's rights.

(d) Notice under this section shall be given pursuant to §12.21 of this title (relating to Notice).

§12.65. Status Reports on Pending Sworn Complaints.

(a) Every three months after the date a sworn complaint is filed, until there has been a final disposition, the commission shall notify the complainant and the respondent of the status of the sworn complaint.

(b) Notice under this section shall be given pursuant to §12.21 of this title (relating to Notice).

§12.67. Copies and Documents Provided by the Commission.

(a) When this title requires a copy of the sworn complaint to be provided to the complainant or respondent, the copy shall include all documents submitted with the complaint, unless the executive director:

(1) determines that certain supporting documents are redundant and will be provided to the respondent in accordance with paragraph (3) of this subsection;

(2) describes the documents for which copies are not provided; and

(3) includes a statement that the documents described in paragraph (2) of this subsection are available for examination by the respondent at the agency office and that copies will be provided to the respondent on request at the respondent's expense.

(b) The right to receive a document from the commission may be waived. Whenever the executive director believes a complainant or respondent may agree a document is not needed, the executive director may ask if the complainant or respondent will waive the right to receive the document.

§12.69. Vote to Consider a Sworn Complaint.

(a) By record vote of at least six members, the commission shall decide if it has jurisdiction to hear a sworn complaint.

(b) A respondent may contest the commission's jurisdiction by submitting a written protest of jurisdiction to the executive director no later than ten business days after notice is given under §12.63 of this title (relating to Notice of Sworn Complaint).

(c) A respondent who did not contest the commission's finding of jurisdiction under subsection (b) of this section may request reconsideration of the finding of jurisdiction in a motion to be considered at a preliminary review hearing.

(d) In its discretion, the commission may refuse to consider a complaint otherwise within its jurisdiction under §12.5 of this title (relating to Subject Matter of a

Sworn Complaint). The commission may dismiss a complaint before making a final determination that a respondent violated a law if it makes the following findings:

(1) assuming the truth of all allegations, and after considering the factors listed in §12.37(a) of this title (relating to Sanctions), no sanction would be assessed against a respondent named in the complaint;

(2) no further consideration or action by the commission with respect to the complaint is needed to deter future violations of the law by those with knowledge of the complaint; and

(3) dismissal of the complaint is in the public interest.

(e) If the commission determines under this section that it has jurisdiction to consider a sworn complaint, it shall immediately begin its preliminary review. If the commission votes to refuse jurisdiction, the complaint shall be immediately dismissed.

§12.71. Notice of Jurisdiction.

(a) If the commission votes to accept jurisdiction, the executive director shall notify the complainant and the respondent of the commission's decision. The notice shall note that the commission has begun its preliminary review, and shall include one copy of each of the following:

(1) the sworn complaint;

(2) Chapter 12 of this title (relating to Sworn Complaints), and all other commission rules relating to sworn complaints, if any;

(3) a statement of the respondent's rights; and

(4) a statement inviting the respondent to provide to the commission any information relevant to the complaint.

(b) If the commission votes to refuse jurisdiction, the executive director shall notify the complainant and the respondent that the commission has dismissed the complaint. The notice shall give the reason the commission refused jurisdiction to consider the complaint.

(c) Notice under this section shall be given pursuant to §12.21 of this title (relating to Notice).

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 September 30, 1993.

TRD-9329998

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter C. Investigation and Preliminary Review

• 1 TAC §§12.81, 12.83, 12.85, 12.87, 12.89

The Texas Ethics Commission (the commission) proposes new §§12.81, 12.83, 12.85, 12.87, and 12.89, concerning the procedures used in the processing of sworn complaints by the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 12 generally describe the general provisions and procedures under which sworn complaints will be processed; describe the procedures in the filing and initial processing of a sworn complaint; provide guidelines in the investigation and preliminary review of a sworn complaint; provide guidelines in the informal hearing stage of a sworn complaint; and provide guidelines in the formal hearing stage of a sworn complaint.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a

and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: Chapter 571 of the Government Code

§12.81. Initial Investigation. After a sworn complaint is filed, the executive director may investigate the complaint. The executive director may ask the respondent to voluntarily produce and permit the inspection and copying of documents in the respondent's possession that constitute or contain evidence material to the sworn complaint or that may lead to the discovery of such evidence. The executive director may also ask the respondent to voluntarily provide a sworn written statement, answer written questions under oath, or both.

§12.83. Preliminary Review.

(a) The executive director may report to the commission any findings and conclusions from an investigation pursuant to §12.81 of this title (relating to Initial Investigation).

(b) Based on the executive director's initial investigation, and before holding a hearing, the commission may consider the complaint and offer a proposed agreed disposition to the respondent. If the respondent refuses to accept a proposed agreed disposition, or requests a hearing, the commission may schedule a preliminary review hearing or may refer the sworn complaint to an administrative law judge pursuant to §12.31 of this title (relating to Administrative Law Judge).

§12.85. Preliminary Review Hearing.

(a) If requested by the respondent, or if the respondent and the commission cannot reach an agreed disposition, the commission shall schedule a preliminary review hearing to determine if there is sufficient credible evidence that a violation within the jurisdiction of the commission has occurred.

(b) Notice of a hearing under this section shall be given pursuant to §12.21 of this title (relating to Notice).

(c) The executive director and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.

§12.87. Resolution of Preliminary Review.

(a) After completing a preliminary review hearing, the commission shall schedule an informal hearing if there is no agreed disposition and it determines there is credible evidence that the respondent violated a

law within the jurisdiction of the commission. The commission may schedule an informal hearing if it determines there is insufficient credible evidence that the respondent violated a law within the jurisdiction of the commission, but that an informal hearing may result in sufficient credible evidence to support an order for a formal hearing.

(b) The commission shall dismiss a sworn complaint after completing a preliminary review hearing if it determines there is credible evidence that a violation within the jurisdiction of the commission did not occur.

(c) The commission may dismiss a sworn complaint after completing a preliminary review hearing if it determines there is insufficient credible evidence that a violation within the jurisdiction of the commission occurred, and an informal hearing is unlikely to result in sufficient credible evidence to support an order for a formal hearing.

§12.89. Notice of Informal Hearing or Dismissal.

(a) If the commission schedules an informal hearing under §12.87 of this title (relating to Resolution of Preliminary Review), the executive director shall notify the complainant and the respondent of the commission's decision and of the date, time, and place of the informal hearing.

(b) If the commission dismisses the complaint under §12.87 of this title (relating to Resolution of Preliminary Review), the executive director shall notify the complainant and the respondent that the commission dismissed the complaint. The notice shall give the reason the complaint was dismissed.

(c) Notice under this section shall be given pursuant to §12.21 of this title (relating to Notice).

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 September 30, 1993.

TRD-9328999 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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Subchapter D. Informal Hearing

• 1 TAC §§12.101, 12.103, 12.105

The Texas Ethics Commission (the commission) proposes new §§12.101, 12.103, and 12.105, concerning the procedures used in the processing of sworn complaints by the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 12 generally describe the general provisions and procedures under which sworn complaints will be processed; describe the procedures in the filing and initial processing of a sworn complaint; provide guidelines in the investigation and preliminary review of a sworn complaint; provide guidelines in the informal hearing stage of a sworn complaint; and provide guidelines in the formal hearing stage of a sworn complaint.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provides the commission with the authority to promulgate rules regulating the orderly processing of sworn complaints affecting those laws, rules, and regulations enforced and administered by the commission.

§12.101. Informal Hearing.

(a) At an informal hearing, the commission:

- (1) may consider all evidence related to a sworn complaint;
- (2) may review any documents or materials related to the sworn complaint;
- (3) may submit written questions and require those questions to be answered under oath; and
- (4) may subpoena documents or materials related to the sworn complaint.

(b) The executive director and the respondent may present any relevant evidence at an informal hearing, including examination and cross-examination of witnesses.

§12.103. Resolution After an Informal Hearing.

(a) After completing an informal hearing, the commission shall by record vote schedule a formal hearing if there is no agreed disposition and it determines there is credible evidence that the respondent violated a law within the jurisdiction of the commission.

(b) The commission shall dismiss a sworn complaint after completing an informal hearing if it determines there is credible evidence that a violation within the jurisdiction of the commission did not occur.

§12.105. Notice of Formal Hearing or Dismissal.

(a) If the commission schedules a formal hearing under §12.103 of this title (relating to Resolution After an Informal Hearing), the executive director shall notify the complainant and the respondent of the commission's decision and of the date, time, and place of the formal hearing. The notice shall also include a statement of the nature of the alleged violation, a description of the evidence of the alleged violation, a copy of the complaint or motion, Chapter 12 of this title (relating to Sworn Complaints) and all other commission rules relating to sworn complaints, if any, and a statement of the rights of the respondent.

(b) If the commission dismisses the complaint under §12.103 of this title (relating to Resolution After an Informal Hearing), the executive director shall notify the complainant and the respondent that the commission dismissed the complaint. The notice shall give the reason the complaint was dismissed.

(c) Notice under this section shall be given pursuant to §12.21 of this title (relating to Notice).

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 September 30, 1993.

TRD-9330000

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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Subchapter E. Formal Hearing

- 1 TAC §§12.111, 12.113, 12.115, 12.117, 12.119, 12.121, 12.123

The Texas Ethics Commission (the commission) proposes new §§12.111, 12.113, 12.115, 12.117, 12.119, 12.121, and 12.123, concerning the procedures used in the processing of sworn complaints by the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 12 generally describe the general provisions and procedures under which sworn complaints will be processed; describe the procedures in the filing and initial processing of a sworn complaint; provide guidelines in the investigation and preliminary review of a sworn complaint; provide guidelines in the informal hearing stage of a sworn complaint; and provide guidelines in the formal hearing stage of a sworn complaint.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date

these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.082, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provides the commission with the authority to promulgate rules regulating the orderly processing of sworn complaints affecting those laws, rules, and regulations enforced and administered by the commission.

§12.111. Standard of Proof. At a formal hearing, the commission shall determine by clear and convincing evidence if the respondent violated a law administered and enforced by the commission.

§12.113. Disclosure of Information. No later than five business days before the date of a scheduled formal hearing, or on the granting of motion for discovery by the respondent, the commission shall provide the following information and documents, if any, to the complainant and to the respondent:

- (1) a list of proposed witnesses to be called at the hearing;
- (2) copies of all documents expected to be introduced as exhibits at the hearing; and
- (3) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

§12.115. Non-disclosure of Subpoenaed Witnesses.

(a) Except as provided by §12.113 of this title (relating to Disclosure of Information) or as specifically authorized by the presiding officer, the commission may order that a person may not make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(b) A commission order under subsection (a) of this section must be provided to the respondent no later than five business days before the formal hearing. Notice of the order shall be given pursuant to §12.21 of this title (relating to Notice).

§12.117. Request to Appear.

- (a) A person whose name is men-

tioned or who is identified or referred to in testimony given or statements provided during a formal hearing, and who reasonably believes the testimony or statement tends to adversely affect that person's reputation, may ask to appear and offer testimony before the commission or may submit a sworn statement of facts.

(b) A request to appear under subsection (a) of this section must:

(1) be in a writing received by the executive director no later than ten days after the date the offending testimony or statement is made;

(2) identify the offending testimony or statement, including to whom it is attributed; and state how the offending testimony or statement damages the person's reputation; and

(3) state the substance of the testimony to be offered by the person making the request.

(c) When a request to appear is made under subsection (a) of this section, the commission may offer the person making the request an opportunity to appear before the commission, or may instruct the person to submit a sworn statement of facts. Notice of the opportunity to appear shall be given to the requestor pursuant to §12.21 of this title (relating to Notice).

(d) A transcript of a person's testimony provided under this section and any sworn statement submitted under this section shall be made available as a part of the records available to the public relating to the sworn complaint.

§12.119. Resolution After a Formal Hearing.

(a) No more than 30 days after the date a formal hearing is completed, the commission by record vote shall issue its decision on the sworn complaint.

(b) Five votes of commission members are required to determine that no violation occurred.

(c) Six votes of commission members are required to determine that the respondent violated a law.

(d) Any decision other than one reached under subsection (c) of this section shall result in the dismissal of the sworn complaint. The dismissal shall state the complaint was dismissed because there were insufficient votes on the commission to find that there was or was not a violation of law based on clear and convincing evidence.

(e) If the commission reaches a decision under subsection (b) of this section, the decision shall include a written report stating in detail the commission's findings

of fact and conclusions of law.

(f) If the commission reaches a decision under subsection (c) of this section, the decision shall include a written report stating in detail the commission's findings of fact, conclusions of law, and the sanction assessed by the commission, if any, including criminal referral.

§12.121. Notice of Resolution After Formal Hearing.

(a) Notice of the decision reached by the commission under §12.119 of this title (relating to Resolution After a Formal Hearing), including the commission's report, if any, shall be provided to the complainant and respondent.

(b) Notice under this section shall be given pursuant to §12.21 of this title (relating to Notice).

§12.123. Commission Report Available to the Public. A decision and written report of the commission under §12.119 of this title (relating to Resolution After a Formal Hearing) is a public record and shall be made available for public inspection during normal business hours.

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 September 30, 1993.

TRD-9330001

Jim Mathleson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 18. General Rules Concerning Reports

Subchapter A. Forms and Reports

- 1 TAC §§18.1, 18.3, 18.5, 18.7, 18.9, 18.11, 18.13, 18.15, 18.17, 18.19, 18.21, 18.23, 18.25

The Texas Ethics Commission (the commission) proposes new §§18.1, 18.3, 18.5, 18.7, 18.9, 18.11, 18.13, 18.15, 18.17, 18.19, 18.21, 18.23, and 18.25 concerning reports filed with the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 18 describe the forms used by the commission; the filing of a report; corrected reports; late reports; administrative penalties; and administrative waivers of fines.

Andrew Martin, general counsel, has determined that for the first five-year period the

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

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code; Title 15, Texas Election Code; Chapter 572, Texas Government Code Chapter 305, Texas Government Code, Chapter 302, Texas Government Code; which provide the commission with the authority to promulgate rules concerning the use of disclosure, forms and their content.

§18.1. Adoption and Revision of Forms.

(a) The executive director shall produce and certify all forms used to report information to be disclosed under this title or by a law administered and enforced by the commission. Forms and their content.

(b) A form prescribed by the executive director under subsection (a) of this section shall include all information required by this title and by other applicable law.

(c) Twenty days before a form is adopted under this section, the executive director shall send a copy of each such form

to each member of the commission.

§18.3. Forms Used by a Local Filing Authority. A local filing authority shall require any report filed with that authority under this title or by a law administered and enforced by the commission to be on a form prescribed under §18.1 of this title (relating to Adoption and Revision of Forms) or approved and certified under §18.11 of this title (relating to Substitution or Replication of Forms).

§18.5. Notice.

(a) When required by reference to this section, a notice may be hand-delivered, with receipt acknowledged, or mailed to the recipient's last known mailing address on file with the commission.

(b) A hand-delivered notice is effective when it is received. Notice that is mailed is effective on the date it is deposited into an official repository of the United States Postal Service, properly addressed, with postage prepaid.

(c) A person entitled to receive notice may waive that right by filing a written waiver with the executive director. That waiver may be withdrawn by written notice received by the executive director no later than five business days before the next day a notice is required under this chapter.

(d) Notice that is mailed is presumed to have been received by the person to whom the notice is addressed on the fifth business day after the notice is effective. A notice mailed by registered or certified mail, return receipt requested, is received on the date the receipt is signed by the recipient.

§18.7. Notice of Forms To Be Used.

(a) The executive director shall provide to each local filing authority a sample of each form to be used by that authority under §18.3 of this title (relating to Forms Used by a Local Filing Authority). A local filing authority shall make the appropriate form available for use by those required to file a report.

(b) The executive director shall provide a sample of each form prescribed under §18.1 of this title (relating to Adoption and Revision of Forms) to each political party's state executive committee and to the county chairman of each county executive committee.

§18.9. Notice of Filing Obligations.

(a) The executive director shall provide to each filer who has a campaign treasurer appointment on file with the commission:

(1) a schedule of the appropriate filing deadlines for the following year; and

(2) one copy of any form to be used by the filer.

(b) The executive director shall provide a copy of the financial disclosure form to be filed under Chapter 40 of this title (relating to Financial Disclosure for Public Officials) to each person required to file that report.

(c) Failure to receive a form to be provided under this section cannot be raised as a defense for failure by a filer to file a report, or to file a report on time.

§18.11. Substitution or Replication of Forms.

(a) A report filed with the commission shall be filed on the appropriate form prescribed under §18.1 of this title (relating to Adoption and Revision of Forms), or:

(1) on a report, form, or format established by other applicable statute or rule; or

(2) on a substitute form or format approved and certified under subsections (b) and (c) of this section.

(b) The executive director may approve and certify a form or format prepared by a person other than an employee of the agency for use under this title if the director finds that the form or format:

(1) provides for the reporting of all information required or requested on the official form;

(2) is substantially similar in paper size and color, layout, and format to the official form; and

(3) will not be confusing to those who use the form.

(c) A substitute form that is substantially identical to an official form may be filed with the commission and shall be deemed to be approved under subsection (b) of this section unless the executive director rejects the form by notice under §18.47 of this title (relating to Notice of Reporting Error).

(d) Except as provided under subsection (c) of this section, an approval and certification of a form or format under this section shall be written, signed by the executive director, and include the effective date of the certification. The approval and certification shall state that certification may be revoked if, because of subsequent revisions to a form under §18.1 of this title (relating to Adoption and Revision of Forms), the substitute form no longer qualifies for approval and certification under subsection (b) of this section.

§18.13. Names of Individuals.

(a) When a report required by this title asks the filer to provide a name, the filer shall provide the full name of the person whose name must be reported.

(b) The full name required by subsection (a) of this section is the name by which the person is commonly known, but should include the person's first and middle name even if the person does not commonly use a first or middle name. Compliance with this section can be demonstrated by showing that the name provided is identical to the name shown on that person's driver's license or voter registration card. However, if the person is commonly known by a nickname or initials different than the full name, this name should also be provided.

§18.15. Address.

(a) When a report required by this title asks for an address, the filer should list the mailing address unless a street address is specifically required. A mailing address often is a street address, but can also be a post office box, or a street address other than the residence or office of the person whose address is required.

(b) When a report required by this title specifically requires a street address, the filer should list the street address for the primary office or residence address of the person for whom the address is provided.

§18.17. Change of Address.

(a) If a filer changes the mailing address previously reported on a report filed with the commission or a local filing authority, the filer shall provide notice to the commission or local filing authority of the new mailing address no later than the deadline for the next report to be filed, unless an earlier deadline is specifically established by this title.

(b) After two unsuccessful attempts to provide notice to a person of a deadline or any future deadlines required by this title, the executive director is not required to make any further attempts to mail notice until the person has provided a new mailing address.

(c) A filer has no obligation to report a change of address for any other person.

§18.19. Telephone Number. When a report required by this title asks for a telephone number, the filer should list the telephone number or numbers where the person to be reached is normally available during weekday business hours.

§18.21. Title. When a report required by this title asks the filer to provide a courtesy title to be used before his or her last or full name, list the title used by that person (e.g., Mr., Ms., Mrs., Miss, Dr. etc.) .

§18.23. Office. When a report required by this title asks the filer to identify the office sought by a candidate or held by an officeholder, list the title of the public office, including the district and, if the office is for a political subdivision, the name of the political subdivision (e.g., House of Representatives, District 85; Travis County Commissioner, Precinct 3).

§18.25. Required Filing of Duplicate Reports.

(a) Each person required to file one of the reports required by subsection (c) of this section shall file the original report and one copy of the original report on or before the applicable deadline for filing that report.

(b) The copy required by subsection (a) of this section must be a photocopy or other exact duplicate of the original report.

(c) This section applies to any report or corrected report required by one of the following laws and any rules promulgated under those laws:

(1) Election Code, Title 15 (relating to Regulating Political Funds and Campaigns);

(2) Government Code, Chapter 305 (relating to Registration of Lobbyists); and

(3) Government Code, Chapter 572 (relating to Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest).

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 September 30, 1993.

TRD-9330002

Jlm Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter B. Corrected Reports

• 1 TAC §§18.41, 18.43, 18.45, 18.47, 18.49

The Texas Ethics Commission (the commission) proposes new §§18.41, 18.43, 18.45,

18.47, and 18.49, concerning reports filed with the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 18 describe the forms used by the commission; the filing of a report; corrected reports; late reports; administrative penalties; and administrative waivers of fines.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code; Title 15, Texas Election Code; Chapter 572, Texas Government Code; Chapter 305, Texas Government Code; Chapter 302, Texas Government Code; which provide the commission with the authority to promulgate rules concerning the use of disclosure forms and their content.

§18.41. Corrected Report.

(a) Any report filed with the commission or a local filing authority may be corrected by the filer.

(b) Information on a corrected re-

port that is changed from the report it corrects shall be clearly identified on the corrected report.

§18.43. Voluntary Correction of Reporting Error. A filer may correct a reporting error at any time by filing a corrected report.

§18.45. Required Correction of a Reporting Error. A filer shall correct a reporting error if the filer receives notice of that error under §18.47 of this title (relating to Notice of Reporting Error).

§18.47. Notice of Reporting Error.

(a) The executive director may notify any filer whose report contains an apparent error of the existence of the error and the action needed to correct the error.

(b) Notice under this section shall be provided in accordance with §18.5 of this title (relating to Notice).

§18.49. Good Faith Affidavit.

(a) A filer may submit an affidavit to establish that the reason a corrected report was filed was good faith error or lack of actual knowledge concerning information included or omitted from a report. The affidavit shall be sworn under penalty of perjury and shall:

(1) explain why the information on the corrected report was not included in the original report, or was reported in error;

(2) state that the corrected report was filed promptly after the error became known to the filer; and

(3) state that the filer did not intend to violate a reporting requirement by filing a report that failed to include information known or reasonably available to the filer, or that included erroneous information, or that failed to include a required signature or verification, as applicable.

(b) The executive director shall provide a standard form of affidavit that, when completed by the filer, will conform with the requirements of subsection (a) of this section. A copy of the affidavit shall be included in any notice to a filer for which the completed affidavit may be offered by the filer to avoid imposition of a fine.

(c) The executive director may not accept an affidavit under this section if the oath is in any way qualified.

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 September 30, 1993.

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter C. Late Reports

• 1 TAC §§18.61, 18.63, 18.65, 18.67, 18.69

The Texas Ethics Commission (the commission) proposes new §§18.61, 18.63, 18.65, 18.67, and 18.69, concerning reports filed with the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 18 describe the forms used by the commission; the filing of a report; corrected reports; late reports; administrative penalties; and administrative waivers of fines.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code; Title 15, Texas Election Code; Chapter 572, Texas Government Code, Chapter 305, Texas Government Code, Chapter 302, Texas Government Code; which provide the commission with the authority to promulgate rules concerning the use of disclosure forms, their content, and late reports.

§18.61. Late Report.

(a) A report is filed on the earliest of the following dates:

(1) the date it is received at the commission's office;

(2) if the report is mailed, the date the document is deemed to be filed under §6.9 of this title (relating to Computation of Time), if the report is properly addressed with all postage or handling charges prepaid; or

(3) if the report is delivered by common or contract carrier, the date the report is delivered to the common or contract carrier, if the report is properly addressed with all handling charges prepaid. For all purposes under this title, a "common or contract carrier" is a business that is regularly engaged in the delivery of parcels for the general public, but does not include an employee of the filer.

(b) A report may be determined to be late under §18.65 of this title (relating to Determination that Report is Late) if:

(1) the report was not filed by the deadline established by the applicable statute or rule; or

(2) the report was filed on or before the deadline, but does not include all information required to be reported, including without limitation a required signature, oath, or affirmation, and a corrected report curing the error was not filed by a deadline established under §18.63 of this title (relating to Preliminary Notice that Report is Late).

(c) A report that is corrected and for which no fine is assessed under §18.83 of this title (relating to No Fine for Certain Corrected Reports) is not late for purposes of this title.

§18.63. Preliminary Notice that Report is Late.

(a) The executive director shall notify each filer whose report appears to be late of the reason the report appears to be late. Notice required by this section shall be provided in accordance with this section and with §18.5 of this title (relating to Notice).

(b) If a report has not been received by the commission when the notice required

by subsection (a) of this section is given, the notice shall advise the filer that the report will be determined to be late, and a fine will be assessed against the filer, unless the filer provides to the executive director no later than ten days after receiving the notice:

(1) a copy of the report that was timely filed; and

(2) an affidavit signed by the filer that states the report was filed by the deadline. The affidavit shall comply with §18.67 of this title (relating to Affidavit of Timely Report), and a copy of that affidavit form shall be enclosed with the notice.

(c) If a complete report received by the commission appears to be late because the date of the postmark or receipt mark of a common or contract carrier is either a date after the deadline or is illegible, the notice shall state that the report will be determined to be late, and a fine will be assessed against the filer, unless the filer provides to the executive director no later than ten days after receiving the notice the filer's affidavit that complies with §18.67 of this title (relating to Affidavit of Timely Report).

(d) If a report appears to be late because of a material reporting error identified in a notice under §18.47 of this title (relating to Notice of Reporting Error), the notice under this section shall state that the report will be determined to be late, and a fine will be assessed against the filer, unless the filer provides the following to the executive director no later than ten business days after the date the filer receives the notice:

(1) a corrected report that cures the error, and

(2) an affidavit under §18.49 of this title (relating to Good Faith Affidavit) sworn to by the filer.

(e) If a report appears to be late because of a reporting error identified in a notice previously provided under §18.47 of this title (relating to Notice of Reporting Error), and the error has not been cured after notice by filing a corrected report, the notice under this section shall state that the report will be determined to be late, and a fine will be assessed against the filer, unless the filer provides to the executive director no later than ten business days after the date the filer receives the notice a corrected report that cures the error.

§18.65. Determination that Report is Late.

(a) If a complete report has been filed and the filer provides any document required by a subsection of §18.63 of this title (relating to Preliminary Notice that Report is Late) before a deadline established by that notice, the executive director shall

consider the report timely filed.

(b) The executive director shall find that any report that is not timely filed is late. A rebuttable presumption of lateness is raised when the filer's response to the notice under §18.63 of this title (relating to Preliminary Notice that Report is Late) is not actually received at the agency office by the 15th business day after that notice is given. The presumption may be rebutted by submitting to the executive director an affidavit under §18.67 of this title (relating to Affidavit of Timely Report), and, if necessary, a copy of the report.

§18.67. Affidavit of Timely Report.

(a) A filer may submit an affidavit that a report was timely filed in the following form: I, [insert filer's name], filed [insert description of the report filed] with the Texas Ethics Commission on or before [insert date of deadline] by: [indicate method of filing by checking one] ___ mailing the report by first-class United States Mail, properly addressed to the Texas Ethics Commission, with required postage charges prepaid; or ___ delivering the report to a common or contract carrier, [insert name of the carrier], properly addressed to the Texas Ethics Commission, with all delivery and handling charges prepaid; or ___ by personally delivering it to the offices of the Texas Ethics Commission at 1101 Camino La Costa, Austin, Texas. The copy of the report attached to this affidavit, if any, is a true and complete copy of the report I filed with the Texas Ethics Commission. I do solemnly swear or affirm under penalty of perjury that the foregoing statement is in all things true and correct. (signature of filer) (signature of officer administering oath) Sworn and subscribed before me by [insert name of filer] this the ___ day of _____, 19___, to certify which, witness my hand and seal of office. (name of officer administering oath) (title and seal of officer administering oath)

(b) The executive director shall provide a form of affidavit that conforms with the requirement of subsection (a) of this section.

(c) The executive director may accept an affidavit that substantially conforms to the affidavit prescribed in subsection (a) of this section.

(d) The affidavit must be sworn under penalty of perjury. The executive director may not accept an affidavit if the oath is in any way qualified.

§18.69. Report More than 30 Days Late.

(a) If a report is more than 30 days late, the executive director shall demand that the filer file the report and pay all fines that have been assessed.

(b) A demand under this section shall be mailed by registered or certified mail, return receipt requested. The demand shall include a warning that if the report is not filed and the fine assessed for the late report is not paid within ten business days after the demand is received, the commission may assess an additional fine under §18.91 of this title (relating to Additional Fine Assessed 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 September 30, 1993.

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Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter D. Administrative Penalties

- 1 TAC §§18.81, 18.83, 18.85, 18.87, 18.89, 18.91, 18.93, 18.95, 18.97

The Texas Ethics Commission (the commission) proposes new §§18.81, 18.83, 18.85, 18.87, 18.89, 18.91, 18.93, 18.95, and 18.97, concerning reports filed with the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 18 describe the forms used by the commission; the filing of a report; corrected reports; late reports; administrative penalties; and administrative waivers of fines.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken

comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code; Title 15, Texas Election Code; Chapter 572, Texas Government Code, Chapter 305, Texas Government Code, Chapter 302, Texas Government Code; which provide the commission with the authority to promulgate rules concerning the use of disclosure forms, their content, late reports, and administered penalties.

§18.81. Material Reporting Error.

(a) The following errors on a report are not material:

(1) one or more instances of a missing or incorrect street address, occupation, telephone number, or zip code that is required to be included on a report;

(2) one or more instances of an incorrectly reported or missing contribution required to be reported, if the total of correctly reported contributions does not vary more than 5.0% from the incorrect amount reported on the original report, and the report is not a Title 15 report for which the deadline for filing the report is established by reference to an election date;

(3) one or more instances of an incorrectly reported or missing expenditure required to be reported, if the total of correctly reported expenditures does not vary more than 5.0% from the incorrect amount reported on the original report, and the report is not a Title 15 report for which the deadline for filing the report is established by reference to an election date.

(b) The executive director shall consider any error other than one described under subsection (a) of this section to be material.

§18.83. No Fine for Certain Corrected Reports.

(a) Both the corrected report and the original report shall be deemed to have been timely filed, and no fine is assessed

against a filer who files a corrected report:

(1) under §18.43 of this title (relating to Voluntary Correction of Reporting Error) to correct a reporting error that is not material;

(2) under §18.43 of this title (relating to Voluntary Correction of Reporting Error) to correct a reporting error that is material, if the corrected report is accompanied by the filer's sworn affidavit under §18.49 of this title (relating to Good Faith Affidavit); or

(3) under §18.45 of this title (relating to Required Correction of a Reporting Error) to correct a reporting error that is not material, if the corrected report is filed no later than ten business days after the filer receives notice of that error under §18.47 of this title (relating to Notice of Reporting Error).

(b) A corrected report other than one described under subsection (a) of this section shall be treated as a late report for all purposes, including the assessment of a fine.

(c) Notwithstanding any language in this title to the contrary, a person who files a late report that was required to be filed eight days before an election, or a report that corrects a material error on such a report, shall be fined in accordance with §18.87 of this title (relating to Additional Fine for Title 15 Reports Filed Eight Days Before an Election).

§18.85. Fine for a Late Report.

(a) The base fine for a late report is \$100. The total fine for a late report includes the base fine and the additional fine, if any, established by another section of this subchapter.

(b) A fine assessed under this subchapter is in addition to any other sanction assessed under this title or by operation of other law.

§18.87. Additional Fine for Title 15 Reports Filed Eight Days Before an Election.

(a) A filer who files a late Title 15 report where the original report was required to be filed eight days before an election shall be fined the greater of:

(1) \$100 for each day after the deadline the report or a report correcting a material reporting error on the original report was not filed, including the day the late report or corrected report was filed; or

(2) 10% of the total contributions that were not timely reported eight days before the election.

(b) A fine under this section is in addition to any fine assessed under §18.85

of this title (relating to Fine for a Late Report).

§18.89. Notice of Late Report and Fine.

(a) The executive director shall determine if a report is late under this subchapter, and shall assess a fine established by this subchapter.

(b) The executive director shall mail notice to each filer whose report is determined to be late. The notice shall:

(1) advise the filer that the executive director has determined the report is late;

(2) state the reason the report was determined to be late;

(3) assess a fine in the amount established by this title;

(4) demand immediate payment of the fine, and provide instructions for paying the fine; and

(5) order the filer to immediately file the report, if a complete report is not on file with the agency on the date the notice under this section is given.

§18.91. Additional Fine Assessed by the Commission.

(a) In addition to any other fine assessed under this subchapter, the commission may vote to impose a fine against a filer whose report is more than 30 days late and who has not paid an assessed fine after receiving the demand and warning set forth under §18.69 of this title (relating to Report More than 30 Days Late).

(b) When assessed under subsection (a) of this section, the fine under this section is calculated by multiplying \$1,000 by each 30 day period that a report is late or not filed.

(c) The total aggregate fine assessed under this chapter for a single late report or a report that is not filed shall not exceed \$10,000.

§18.93. Report Must be Filed. The satisfaction by a filer of a civil or criminal penalty for failure to file a report, or for late filing of a report, does not remove the filer's obligation to file a required report. All penalties that may accrue for failure to report any required information shall accrue until the information has been provided.

§18.95. No Fine by a Local Filing Authority.

(a) A local filing authority has no power to assess a fine against a filer under this title.

(b) Notwithstanding subsection (a) of this section, the commission may assess a fine against a filer who files a report with a local filing authority under the sworn complaint procedures established by Chapter 12 of this title (relating to Sworn Complaints). The commission may consider the fine amounts established by this title for a late report in determining the amount of a fine to be assessed in a sworn complaint. In mitigation of that fine, the commission may also consider if and when a filer has filed a correction report with a local filing authority.

§18.97. Attorney's Fees. The Office of the Attorney General may retain any award for attorneys fees paid by a filer in connection with the attorney general's efforts to collect a fine assessed under this subchapter.

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 September 30, 1993.

TRD-9330005

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter E. Waiver of Fine • 1 TAC §§18.111, 18.113, 18.115

The Texas Ethics Commission (the commission) proposes new §§18.111, 18.113, and 18.115, concerning reports filed with the commission. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 18 describe the forms used by the commission; the filing of a report; corrected reports; late reports; administrative penalties; and administrative waivers of fines.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code; Title 15, Texas Election Code; Chapter 572, Texas Government Code, Chapter 305, Texas Government Code, Chapter 302, Texas Government Code; which provide the commission with the authority to promulgate rules concerning the use of disclosure forms, their content, late reports, administrative penalties, and waiver of penalties.

§18.111. Jurisdiction to Consider Waiver Request. A filer must have filed a complete and, if necessary, a corrected report for which a fine was assessed before the executive director or commission will consider a request to waive a fine assessed with respect to a report.

§18.113. Administrative Waiver of Fine.

(a) A fine assessed under this chapter may be waived by the executive director if:

(1) the report was filed late because of a medical emergency or condition that involved the filer, a family-member or relative of the filer, or a member of the filer's household;

(2) the report that was filed late was:

(A) the first personal financial disclosure form to be filed by an individual, and

(B) the individual is not an elected official, a candidate for election, or a salaried public servant, and

(C) the form was filed no later than 30 days after the individual received notice that the form appeared to be late;

(3) the filer reasonably relied on incorrect information given to the filer by the agency; or

(4) other administrative error by the agency.

(b) A request to waive a fine under this section is made by submitting an affidavit to the executive director that states facts sufficient to establish grounds for a waiver under subsection (a) of this section. The affidavit must be sworn under penalty of perjury and must state the circumstances which caused the late filing. The specific medical condition of a person need not be stated in a defense asserted under subsection (a)(1) of this section.

(c) When an affidavit requesting a waiver under this section is received, the executive director shall defer all further action to collect the fine for which a waiver is sought until final action on the waiver request.

(d) The executive director shall promptly consider an affidavit submitted under this section. If, in the executive director's discretion, the affidavit establishes grounds for a waiver under this section, the executive director shall waive the fine.

(e) If the executive director does not waive the fine, the executive director shall give notice of the denial of the waiver to the filer making the request. Notice shall be given under §18.5 of this title (relating to Notice) and shall advise the filer that the commission will consider the waiver request if the filer submits a letter under §18.115 of this title (relating to Waiver by Commission).

§18.115. Waiver by Commission.

(a) A fine assessed against a filer under this chapter may be waived or reduced by the commission if it finds that a waiver or reduction is in the public interest and in the interest of justice. The commission shall consider the following before acting to waive or reduce a fine:

(1) the facts and circumstances supporting the filer's request for a waiver;

(2) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, and the amount of the fine;

(3) any history of previous violations by the filer;

(4) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;

(5) the fine necessary to deter future violations; and

(6) any other matter that justice may require.

(b) A request to waive a fine under this section is made by submitting to the executive director:

(1) an affidavit, sworn under penalty of perjury, that states detailed facts alleged by the filer to establish grounds for a waiver under subsection (a) of this section; or

(2) a letter that requests commission consideration of a waiver request denied by the executive director under §18.113 of this title (relating to Administrative Waiver of Fine).

(c) When a waiver request under subsection (b) of this section is received, the executive director shall defer all further action to collect the fine for which a waiver is sought until final action on the waiver request.

(d) The commission will consider a request to waive a fine no earlier than its first meeting more than 30 days after the date the waiver request is received. A filer who requests a waiver may appear before the commission to argue and offer sworn testimony and evidence in support of the waiver. The executive director shall notify the filer of the date, approximate time, and place of the meeting at which the commission will consider the waiver by registered mail postmarked no later than the date the notice of the meeting is posted in accordance with the Open Meetings Law. The filer may waive this notice.

(e) After hearing the waiver request, the commission by majority vote may affirm, reduce, or waive the fine.

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 September 30, 1993.

TRD-9330006 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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Chapter 20. Campaign Financing

Subchapter A. Contribution and Expenditure Reports

• 1 TAC §20.1

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

The Texas Ethics Commission proposes the repeal of §20.1, concerning the penalty for late filing of campaign contribution and expenditure reports. The section is being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

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

Mr. Mathieson also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800, or toll free in Texas, (800) 325-8506.

The repeal is proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§20.1. Penalty for Late Filing of Contribution and Expenditure 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 September 30, 1993.

TRD-9329980 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 20. Reporting Political Contributions and Expenditures

Subchapter A. General Rules

- 1 TAC §§20.1, 20.3, 20.5, 20.7, 20.9, 20.11, 20.13, 20.15, 20.17, 20.19, 20.21, 20.23, 20.25

The Texas Ethics Commission (the commission) proposes new §§20.1, 20.3, 20.5, 20.7, 20.9, 20.11, 20.13, 20.15, 20.17, 20.19, 20.21, 20.23, and 20.25, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date,

time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures.

§20.1. Definitions. The following words and terms, when used in this Chapter 20, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions On Contributions And Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

Campaign communication—A written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.

Campaign contribution—A contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.

Campaign expenditure—An expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.

Campaign treasurer—Either the individual appointed by a candidate to be the campaign treasurer, or the individual responsible for filing campaign finance reports of a political committee under Texas law or the law of any other state.

Candidate—A person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:

(A) the filing of a campaign treasurer appointment;

(B) the filing of an application for a place on the ballot;

(C) the filing of an application for nomination by convention;

(D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;

(E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;

(F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;

(G) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure; or

(H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.

Contribution—A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subsection, and a guarantee of a loan or extension of credit, including a loan described by this subsection. The term includes an in-kind contribution. The term does not include:

(A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made;

(B) an expenditure required to be reported under the Government Code, §305.006(b); or

(C) a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor.

Corporation—A corporation that is organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, federal law, or law of another state or nation. The term also includes the following associations, whether incorporated or not: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, government-regulated coopera-

tives, stock companies, and abstract and title insurance companies. The term does not mean professional corporations or professional associations.

Direct campaign expenditure—A campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if:

(A) it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or

(B) it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure.

Election cycle—A primary election and a general election and any related runoff elections.

Expenditure—A payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.

General-purpose committee—A political committee that has among its principal purposes:

(A) supporting or opposing:

(i) two or more candidates who are unidentified or are seeking offices that are unknown; or

(ii) one or more measures that are unidentified; or

(B) assisting two or more officeholders who are unidentified.

Identified Measure—A question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

In-Kind Contribution—A contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure.

Labor organization—An agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Non-political expenditure—An expenditure from political contributions that is not an officeholder expenditure or a campaign expenditure.

Officeholder contribution—A contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

(A) the officeholder incurs in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

Officeholder expenditure—An expenditure made by any person to defray expenses that:

(A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

Opposed candidate—A candidate who has an opponent whose name is to appear on the ballot. The name of a write-in candidate does not appear on the ballot.

Out-of-state political committee—A political committee that makes political expenditures outside Texas and in the 12 months immediately preceding the making of a political expenditure by the committee inside Texas (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80% or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. Section 20.13 of this title (relating Out-of-State Committees) explains the practical application of this definition.

Pledge—A contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The term does not include a contribution actually made in the form of a check.

Political advertising—A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

(A) is published in a newspaper, magazine, or other periodical in return for consideration;

(B) is broadcast by radio or television in return for consideration; or

(C) appears in a pamphlet, circular, flier, billboard or other sign,

bumper sticker, or similar form of written communication.

Political committee—Two or more persons that have as a principal purpose accepting political contributions or making political expenditures to support or oppose candidates, officeholders, or measures.

Political contribution—A campaign contribution or an officeholder contribution.

Political expenditure—A campaign expenditure or an officeholder expenditure.

Political subdivision—A county, city, or school district or any other governmental entity that:

(A) embraces a geographic area with a defined boundary;

(B) exists for the purpose of discharging functions of government; and

(C) possesses authority for subordinate self-government through officers selected by it.

Report—Any document required to be filed by this title, including an appointment of campaign treasurer, any type of report of contributions and expenditures, and any notice.

Reportable activity—A political contribution, political expenditure, or other activity required to be reported under this title.

Specific-purpose committee—A political committee that does not meet the definition of general-purpose committee and that has among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified;

(B) assisting one or more of officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

Telegram report—A shorthand term for a report filed in accordance with the requirements of §§20.221, 20.333, or 20.435 of this title (relating to Reporting Political Contributions and Expenditures). The report may be filed by telegram, telephonic facsimile machine, or by hand.

Unidentified Measure—A question or proposal that is intended to be submitted in an election for an expression of the voters' will and that is not yet legally required to be submitted in an election, except that the term does not include the circulation or

submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. The circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will is considered to be an identified measure.

§20.3. Reports Filed with the Commission. The Ethics Commission is the appropriate filing authority for reports filed by:

(1) a candidate for one of the following offices:

(A) a statewide office;

(B) a district office filled by voters in more than one county;

(C) a seat in the state legislature;

(D) a seat on the state board of education; or

(E) an office of a political subdivision other than a county, if the governing body of the political subdivision has not been formed and if the political subdivision includes territory in more than one county;

(2) a person holding an office listed in paragraph (1) of this section;

(3) the secretary of state;

(4) a specific-purpose committee supporting or opposing a candidate or officeholder required to file with the commission; or

(5) a specific-purpose committee supporting or opposing:

(A) a measure to be submitted to the voters of the entire state; or

(B) a measure that concerns a political subdivision other than a county, if the governing body of the political subdivision has not been formed and if the political subdivision includes territory in more than one county;

(6) a general-purpose committee.

§20.5. Reports Filed with a County Filing Authority. The county clerk (or the county elections administrator or tax assessor-collector, as applicable in a particular county) is the appropriate filing authority for reports filed by:

(1) a candidate for:

(A) a county office;

(B) a precinct office;

(C) a district office (except for an office in a multi-county district); or

(D) an office of a political subdivision other than a county if the political subdivision is within the boundaries of a single county and if the governing body of the political subdivision has not been formed;

(2) a person holding an office listed in paragraph (1) of this section;

(3) a specific-purpose committee supporting or opposing a candidate listed in paragraph (1) of this section or an officeholder listed in paragraph (2) of this section.

(4) a specific-purpose committee supporting or opposing:

(A) a measure to be submitted to the voters of a single county; or

(B) a measure concerning a political subdivision other than a county when the governing body for the political subdivision has not been formed and no boundary of the political subdivision crosses a boundary of a county.

§20.7. Reports Filed with Other Local Filing Authority. The secretary of a political subdivision (or the presiding officer if the political subdivision has no secretary) is the appropriate filing authority for:

(1) a candidate for an office of a political subdivision other than a county;

(2) a person holding an office of a political subdivision other than a county; or

(3) a specific-purpose committee supporting or opposing a measure to be submitted at an election ordered by the authority of a political subdivision other than a county.

§20.9. Filing Option for Certain Specific-Purpose Committees. A specific-purpose committee required to file reports with more than one authority may choose to file reports only with the commission.

§20.11. Federal Candidates and Officeholders.

(a) The laws administered and enforced by the commission do not apply to a

candidate for election to an office of the federal government or to a federal officeholder.

(b) A candidate for an elective office of the federal government shall file with the commission a copy of each document relating to his or her candidacy that is required to be filed under federal law within the same period in which it is required to be filed under federal law.

§20.13. Out-of-State Committees.

(a) An out-of-state political committee is not required to file reports under this title.

(b) An out-of-state political committee that files an appointment of campaign treasurer with a Texas filing authority is required to file reports under this title.

(c) A political committee must determine if it is an "out-of-state political committee" (and therefore not required to file reports under this title) each time the political committee plans to make a political expenditure in Texas other than an expenditure in connection with a campaign for a federal office or an expenditure for a federal officeholder. The determination is made as follows.

(1) Before making the expenditure, the committee must calculate its total political expenditures made during the 12 months immediately preceding the date of the planned expenditure. This total does not include the planned political expenditure triggering the calculation requirement.

(2) If 80% or more of the total political expenditures are in connection with elections not voted on in Texas, the committee is an out-of-state committee and may make the anticipated expenditure without complying with the reporting requirements set out in this title, regardless of the amount of the anticipated expenditure.

(3) If less than 80% of the total political expenditures are in connection with elections not voted on in Texas, the committee is no longer an out-of-state committee and may not make the anticipated expenditure without complying with the requirements of this title applicable to political committees generally.

(d) Section 22.7 of this title (relating to Contribution from Out-of-State Committee) contains other provisions regarding requirements applicable to recipients of contributions from out-of-state political committees.

§20.15. Change of Address. The campaign treasurer of a political committee required to file reports with the commission shall provide written notice to the commission of any change in his or her mailing address no

later than the tenth day after the date of the change.

§20.17. Retention of Records and Reports.

(a) Each candidate, officeholder, or campaign treasurer of a political committee shall maintain a copy of each report filed and the records supporting that report for a period of two years from the date of the filing deadline for the report.

(b) The records required by subsection (a) of this section shall contain all information used to prepare all required reports, including, for example, bank statements, check logs, receipts, and ledgers of contributions and expenditures.

§20.19. Reports Must Be Filed On Official Forms. Except for telegram reports, all reports required by Chapters 20-38 must be filed on forms prescribed by the commission pursuant to §18.1 of this title (relating to Adoption and Revision of Forms).

§20.21. Due Dates on Holidays and Weekends.

(a) Except as provided in subsection (b) of this section, if the deadline for a report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day.

(b) Subsection (a) of this section does not apply to a report required by §20.221 of this title (relating to Telegram Report by Certain Candidates); §20.333 of this title (relating to Telegram Report by Certain Specific-Purpose Committees); or §20.435 of this title (relating to Telegram Reports by Certain General-Purpose Committees). Reports under those sections are due on the date assigned by those sections.

§20.23. Timeliness of Action by Mail. When this chapter requires a notice, report, or other document or paper to be delivered, submitted, or filed within a specified period or before a specified deadline, a delivery, submission, or filing by first-class United States mail is timely, except as otherwise provided by this chapter, if:

(1) it is properly addressed with postage prepaid; and

(2) it bears a post office cancellation mark indicating a time within the period or before the deadline, or if the person required to take the action furnishes satisfactory proof that it was deposited in the mail within the period or before the deadline.

§20.25. Affidavit. Except for telegram reports, each report of contributions and expenditures must include an affidavit to be

executed by the filer before a notary or other person authorized by law to administer oaths, under penalty of perjury, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

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

Issued in Austin, Texas, on September 30, 1993.

TRD-9330007 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter C. Rules Concerning Reports

- 1 TAC §§20.27, 20.29, 20.31, 20.33, 20.35, 20.111, 20.113, 20.115, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20.137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, 20.161

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

The Texas Ethics Commission proposes the repeal of §§20.27, 20.29, 20.31, 20.33, 20.35, 20.111, 20.113, 20.115, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20.137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, and 20.161, concerning the rules for filing campaign disclosure reports. The sections are being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

Jim Mathieson, assistant general counsel, 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. Mathieson 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 is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spo-

ken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800, or toll free in Texas, (800) 325-8506.

The repeals are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§20.27. Reporting Schedule of a Political Party Accepting Corporate or Labor Union Contributions.

§20.29. Reporting Schedule for a Candidate for State Chair, and for a General-Purpose or Specific-Purpose Political Committee Supporting or Opposing such a Candidate.

§20.31. Exception Concerning the Reporting by Certain Specific-Purpose Committees the Name of Each Candidate or Officeholder Benefiting from a Direct Campaign Expenditure.

§20.33. Filing of Report After Special Legislative Session.

§20.35. Officerholder Accounts.

§20.111. Definitions.

§20.113. Change of Address.

§20.115. One-Time Notice of Filing Obligations.

§20.119. Late report.

§20.121. Preliminary Notice that Report is Late.

§20.123. Determination that Report is Late.

§20.125. Report More than 30 Days Late.

§20.127. Affidavit of Timely Report.

§20.131. Calculation and Imposition of Fine.

§20.133. Appeal of Fine to Commission.

§20.135. Defenses to Late Filing.

§20.137. Report Must be Filed.

§20.139. Attorney's Fees.

§20.151. Direct Campaign Expenditure Exceeding \$100.

§20.153. Amended report.

§20.155. Special Sessions Report.

§20.157. 48 Hours Report.

§20.159. Political Advertising Disclosure.

§20.161. Retention of Records and 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 September 30, 1993.

TRD-9329981

Jlm Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800



Subchapter B. General Reporting Rules

- 1 TAC §§20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, 20.67

The Texas Ethics Commission (the commission) proposes new §§20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, and 20.67, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures.

§20.51. Value of In-Kind Contribution.

(a) For reporting purposes, the value of an in-kind contribution is the fair market value.

(b) If an in-kind contribution is sold at a political fundraiser, the total amount received for the item at the fundraiser must be reported. This reporting requirement is in addition to the requirement that the fair market value of the in-kind contribution be reported.

(c) If political advertising supporting or opposing two or more candidates is an in-kind contribution, each person benefiting from the contribution shall report the

amount determined by dividing the full value of the political advertising by the number of persons benefitted by the political advertising.

§20.53. Disclosure of True Source of Contribution or Expenditure. A person may not knowingly make or authorize a political contribution or political expenditure in the name of or on behalf of another unless the person discloses the name and address of the person who is the true source of the contribution.

§20.55. Time of Accepting Contribution.

(a) A candidate, officeholder, or political committee shall make a determination to accept or refuse a political contribution not later than the end of the reporting period during which the contribution is received, except as provided by subsection (e) of this section.

(b) A determination to refuse a political contribution is a distinct act from returning a political contribution and may occur at a different time.

(c) If a determination to accept or refuse a political contribution is not made before the end of the reporting period during which the contribution is received, the contribution is considered to have been accepted on the last day of that reporting period.

(d) A political contribution that is received but not accepted shall be returned to the contributor not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. A contribution not returned within that time is considered to be accepted.

(e) A determination to accept or refuse a political contribution received during a special legislative session shall be made not later than the third day after the date the contribution is received.

§20.57. Time of Making Expenditure.

(a) The date of a political expenditure is the date the amount is readily determinable by the person making the expenditure, except as provided by subsection (b) of this section.

(b) If under normal business practices, the amount of an expenditure is not known or readily ascertainable until receipt of a periodic bill, the date of the expenditure is the date the bill is received. Examples of expenditures to which this subsection is applicable are expenditures for use of electricity or for long-distance phone calls.

(c) A political expenditure by credit card must be included in the report for the period during which the charge was made, not in the report for the period during which the statement from the credit card company was received.

§20.59. Reporting Expenditure by Credit Card. A report of a political expenditure by credit card must identify the vendor who receives payment from the card company.

§20.61. Description of Expenditure. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure.

§20.63. Reporting the Use and Reimbursement of Personal Funds.

(a) A candidate is required to report a campaign expenditure from personal funds.

(b) An officeholder is not required to report an officeholder expenditure from personal funds unless he or she intends to be reimbursed from political contributions.

(c) A candidate or officeholder must report a political expenditure from personal funds as a political expenditure, not as a political contribution or a loan.

(d) A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if:

(1) the expenditures were fully reported as political expenditures on the report covering the period during which the expenditures were made; and

(2) the report disclosing the expenditures indicates that the expenditures were made from the candidate's or officeholder's personal funds and are subject to reimbursement.

(e) A candidate's or officeholder's failure to comply with subsection (d) of this section may not be cured by filing a corrected report after the report deadline has passed.

(f) A candidate or officeholder who has complied with subsection (d) of this section and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made.

(g) Section 22.21 of this title (relating to Additional Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans) sets limits on the amount of political expenditures from personal

funds that a statewide officeholder may reimburse from political contributions.

§20.65. Reporting No Activity.

(a) As a general rule, a candidate or officeholder must file a report required by Subchapter C of this title (relating to Reporting Requirements for a Candidate) or Subchapter D of this title (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File) even if there has been no reportable activity during the period covered by the report.

(b) This general rule does not apply to:

- (1) telegram reports;
- (2) special session reports; or
- (3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than \$500 in political contributions or make more than \$500 in political expenditures during the reporting period.

(c) If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only those pages of the report necessary to identify the filer and to swear to the lack of reportable activity.

§20.67. Reporting After the Death or Incapacity of a Filer.

(a) The responsibility to file reports required by this title survives the death or incapacity of a candidate or officeholder.

(b) The legal representative or the estate of a candidate or officeholder who has died, or the legal representative of a candidate who is incapacitated, shall file any reports due under Subchapter C of this title (relating to Reporting Requirements for a Candidate) or Subchapter D of this title (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File).

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 September 30, 1993.

TRD-9330008 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800



Subchapter C. Reporting Requirements for a Candidate

- 1 TAC §§20.201, 20.203, 20.205, 20.207, 20.209, 20.211, 20.213, 20.215, 20.217, 20.219, 20.221, 20.223, 20.225, 20.227, 20.229, 20.231, 20.233, 20.235, 20.237, 20.239, 20.241, 20.243

The Texas Ethics Commission (the commission) proposes new §§20.201, 20.203, 20.205, 20.207, 20.209, 20.211, 20.213, 20.215, 20.217, 20.219, 20.221, 20.223, 20.225, 20.227, 20.229, 20.231, 20.233, 20.235, 20.237, 20.239, 20.241, and 20.243, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next

meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by candidates.

§20.201. Required Appointment of Campaign Treasurer. A candidate must file a campaign treasurer appointment before accepting any campaign contributions or making or authorizing any campaign expenditures, including campaign expenditures from personal funds.

§20.203. Candidates for State Party Chair. Because the state chair of a political party does not hold a public office, a candidate for state chair of a political party is not within the definition of "candidate" set out in §20.1(4) of this title (relating to Definitions). Nonetheless, a candidate for the state chair of a political party is subject to filing requirements as provided by Subchapter J of this title (relating to Reports by a Candidate for State Party Chair).

§20.205. Contents of Candidate's Campaign Treasurer Appointment. Each candidate's campaign treasurer appointment shall include the following information:

- (1) the name of the candidate making the appointment;
- (2) the mailing address of the candidate making the appointment;
- (3) the office sought by the candidate making the appointment, if known;
- (4) the name of the individual appointed campaign treasurer;
- (5) the campaign treasurer's residence or business street address;
- (6) a statement acknowledging awareness of Government Code, Chapter 573, Subchapter C (relating to Nepotism Prohibitions); and
- (7) the signature of the candidate making the appointment.

§20.207. Termination of Campaign Treasurer Appointment.

- (a) A candidate may terminate a

campaign treasurer appointment by:

- (1) notifying the filing authority in writing of the termination;
- (2) filing a campaign treasurer appointment for a successor campaign treasurer; or
- (3) filing a final report.

(b) A person may terminate his or her own status as campaign treasurer by immediately notifying both the appointing authority and the filing authority in writing.

(c) If a person terminates his or her own status as campaign treasurer, the termination is effective on the date the candidate receives the notice or on the date the filing authority actually receives the notice, whichever is later.

(d) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to subsection (c) of this section.

§20.209. Reporting Obligations Imposed on Candidate, Not Campaign Treasurer. A candidate, not the candidate's campaign treasurer, is responsible for complying with this title.

§20.211. Semi-annual Reports.

(a) A candidate shall file semi-annual reports as provided by this section.

(b) One semi-annual report is due no earlier than July 1 and no later than July 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

- (A) January 1;
- (B) the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File); or
- (C) the day the candidate's campaign treasurer appointment was filed, if this is the candidate's first report filed under this subchapter (other than a telegram report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File).

(2) The period covered by a report under this subsection ends on June 30.

- (c) One semi-annual report is due

no earlier than January 1 and no later than January 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) July 1;

(B) the first day after the period covered by the last report required by this subchapter or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File); or

(C) the day the candidate's campaign treasurer appointment was filed, if this is the candidate's first report filed under this subchapter or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File).

(2) The period covered by a report under this subsection continues through December 31.

§20.213. Pre-election Reports.

(a) A candidate who has an opponent on the ballot in an election must file two pre-election reports, except as provided by subsections (b), (e), and (f) of this section.

(b) A candidate who has declared the intention to file reports in accordance with §20.217 of this title (relating to Modified Reporting) and who remains eligible to file under the modified schedule is not required to file pre-election reports.

(c) The first pre-election report is due not later than 30 days before election day. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise the period begins on the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the 40th day before the election.

(d) The second pre-election report is due not later than eight days before election day. The report covers the period that begins on the 39th day before the election and ends on the tenth day before the election.

(e) If a person becomes an opposed

candidate during the period that begins on the 39th day before the election and ends on the tenth day before the election, the person shall file one pre-election report. The report shall cover a period that begins on the day the candidate's campaign treasurer appointment was filed, if this is the candidate's first report filed, or on the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues ends on the tenth day before the election.

(f) If a person becomes an opposed candidate after the tenth day before the election, the person is not required to file pre-election reports. The person is required to file any telegram reports required by §20.221 of this title (relating to Telegram Report by Certain Candidates).

§20.215. Runoff Report.

(a) A candidate in a runoff election shall file a runoff report, except as provided by subsection (b) of this section.

(b) A candidate who has declared an intention to file reports in accordance with §20.217 of this title (relating to Modified Reporting) and who remains eligible to file under the modified schedule is not required to file a runoff report.

(c) A runoff report is due no later than the eighth day before the runoff election.

(d) A runoff report covers the period that begins on the ninth day before the date of the main election and ends on the tenth day before the runoff.

§20.217. Modified Reporting.

(a) An opposed candidate who does not intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with an election may choose to file under the modified schedule.

(b) Under the modified schedule, an opposed candidate is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a candidate must file a declaration of intent not to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the candidate understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary,

a runoff report.

(d) A declaration under subsection (c) of this section is filed with the candidate's campaign treasurer appointment.

(e) To file under the modified schedule, a candidate must file the declaration required under subsection (c) of this section no later than the 30th day before the election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) If an opposed candidate exceeds either of the \$500 limits, the candidate must file reports under §20.213 of this title (relating to Pre-election Reports) and §20.215 of this title (relating to Runoff Report).

(g) If an opposed candidate exceeds either of the \$500 limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise the period begins on the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

§20.219. Content of Candidate's Sworn Report of Contributions and Expenditures. Semi-annual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the candidate's full name;
- (2) the candidate's address;
- (3) the office sought by the candidate, if known;
- (4) the identity and date of the election for which the report is filed, if known;
- (5) the campaign treasurer's name;
- (6) the campaign treasurer's telephone number;
- (7) the campaign treasurer's residence or business street address;
- (8) for each political committee from which the candidate received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to

Candidate or Officeholder):

(A) the committee's full name;

(B) the committee's address;

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

(9) for each individual making a reportable direct campaign expenditure from whom the candidate received notice under §22.5 of this title (relating to Direct Campaign Expenditures):

(A) the full name of the individual; and

(B) the address of the individual;

(10) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(11) for each person from whom the candidate accepted a political contribution other than a pledge or a loan of more than \$50 in value or political contributions other than pledges or loans that total more than \$50 in value, and from each person from whom the candidate received payment on or fulfillment of a pledge:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(12) for each person from whom the candidate accepted a pledge or pledges to provide more than \$50 in money or goods or services worth more than \$50:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(13) for each person making a loan or loans to the candidate for campaign purposes if the total amount loaned by the person during the period is more than \$50:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the date of the loan;

(D) the interest rate;

(E) the maturity date;

(F) the collateral for the loan, if any; and

(G) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupa-

tion of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(14) for political expenditures made during the reporting period that total more than \$50 to a single payee, other than expenditures reported under paragraph (10) of this section:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(15) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure;

(E) a declaration that the expenditure was made out of personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

(16) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (10) of this section:

(A) the date of each payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made;

(D) the nature of the goods or services for which the payment was made; and

(E) the amount of the payment;

(17) for each other candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the candidate:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(18) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(19) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions of \$50 or less;

(C) the total amount of all political contributions, other than pledges and loans;

(D) the total amount or an itemized listing of the political expenditures of \$50 or less; and

(E) the total amount of all political expenditures, including expenditures reported under paragraph (10) of this section;

(20) if applicable, a statement that no reportable activity occurred during the reporting period; and

(21) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.221. Telegram Report by Certain Can-

didates.

(a) As provided by subsection (b) of this section, certain candidates must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the second day before an election. Reports under this section are known as "telegram" reports, although they may be filed by hand or by telephonic facsimile machine as well as by telegram.

(b) The following candidates must file telegram reports:

(1) an opposed candidate for state senator who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,000; and

(2) an opposed candidate for state representative who, during the period described in subsection (a) of this section, accepts political contributions from a person that in the aggregate exceed \$200.

(c) A candidate must file a telegram report no later than 48 hours after the candidate accepts a contribution from a person that triggers the requirement to file the telegram report.

(d) The report filed under subsection (c) of this section may be delivered by hand, by telegram, or by telephonic facsimile machine. Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to this section.

(e) If, during the reporting period for telegram contributions, a candidate receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a telegram report during that period, the candidate must file an additional telegram report for each such contribution. Each such telegram report is due no later than 48 hours after the candidate accepts the contribution.

(f) A candidate must file telegram reports for each person whose contribution or contributions made during the period for telegram reports exceed the threshold for telegram reports.

(g) A candidate must also report contributions reported on a telegram report on the next semi-annual, pre-election, or runoff report filed, as applicable.

§20.223. Form and Contents of Telegram Report.

(a) A telegram report shall be filed by telegram or telephonic facsimile machine or by hand. The report is not required to be on a form prescribed by the commission.

(b) A telegram report shall include

the following information:

(1) the name of the candidate;

(2) the office sought by the candidate;

(3) the name of the person making a contribution or contributions that triggered the requirement to file a telegram report;

(4) the address of the person making the contribution or contributions;

(5) the amount of each contribution; and

(6) the date each contribution was accepted.

§20.225. Special Session Reports.

(a) A candidate for a statewide office or for the legislature who accepts a political contribution during the period that begins on the date the governor signs a proclamation calling a special legislative session and ends on the date of final adjournment must file a special session report.

(b) A special session report must be filed with the commission no later than the 30th day after the date of final adjournment of the special session.

(c) A special session report is a report of contributions only, not expenditures. Expenditures made during the period covered by a special session report are required to be reported in the next applicable sworn report of contributions and expenditures.

(d) Contributions reported in a special session report are not to be reported in any other report.

(e) A determination to accept or refuse a political contribution received during the period covered by a special session report shall be made no later than the third day after the date the contribution is received.

(f) A contribution that is refused under subsection (e) of this section must be returned no later than the 30th day after the date of final adjournment. A contribution not returned by that date will be deemed accepted.

(g) A candidate is not required to file a separate special session report if another report is due no later than the tenth day after the date a report required under this section would be due.

§20.227. Contents of Special Session Report. A special session report shall include the following information:

(1) the candidate's name;

(2) the candidate's address;

(3) the office sought by the can-

didate;

(4) the date each contribution was accepted;

(5) the full name of each person making a contribution;

(6) the address of each person making a contribution;

(7) the amount of each contribution accepted during the period; and

(8) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.229. Final Report.

(a) A candidate who expects no further reportable activity in connection with his or her candidacy may file a final report at any time.

(b) The term "reportable activity" includes an expenditure to pay a campaign debt.

(c) Filing a final report terminates the candidate's campaign treasurer appointment and relieves the candidate of the responsibility for filing reports, except as provided by subsection (e) of this section.

(d) A former candidate may not accept campaign contributions or make campaign expenditures without a campaign treasurer appointment on file. A payment to reduce a campaign debt is a campaign expenditure.

(e) A candidate who is not an officeholder when he or she files a final report under this section, and who retains unexpended political contributions, unexpended interest or other income from political contributions, assets purchased with political contributions or interest, or other income from political contributions is subject to the requirements of §§20.233-20.243 of this subchapter (relating to Reporting Requirements for a Candidate).

(f) A candidate who is an officeholder when he or she files a final report under this section becomes subject to the reporting requirements set out in Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File).

§20.231. Contents of Final Report. A final report must contain the following:

(1) the information listed in §20.219 of this title (relating to Content of Candidate's Sworn Report of Contributions and Expenditures);

(2) the following statement, signed by the candidate: "I do not expect any further political contributions or political expenditures in connection with my candidacy. I understand that designating a report as a final report terminates my campaign treasurer appointment. I also understand that I may not accept any campaign contributions or make any campaign expenditures without a campaign treasurer appointment on file";

(3) if the candidate is not an officeholder, a statement that the candidate does or does not have unexpended contributions or unexpended interest or income earned from political contributions;

(4) if the candidate is not an officeholder and has unexpended contributions or unexpended interest or income earned from political contributions, the following statement signed by the candidate: "I understand that I may not convert unexpended political contributions or unexpended interest or income earned on political contributions to personal use. I also understand that I must file an annual report of unexpended contributions and that I may not retain unexpended contributions or unexpended interest or income earned on political contributions longer than six years after filing this final report. Further, I understand that I must dispose of unexpended political contributions and unexpended interest or income earned on political contributions in accordance with the requirements of Election Code, §254.204 (relating to Disposition of Unexpended Contributions)";

(5) if the candidate is not an officeholder, a statement that the candidate does or does not retain assets purchased with political contributions or interest or other income from political contributions;

(6) if the candidate is not an officeholder and retains assets purchased with political contributions or interest or other income from political contributions, the following statement signed by the candidate: "I understand that I may not convert assets purchased with political contributions or interest or other income from political contributions to personal use. I also understand that I must dispose of assets purchased with political contributions in accordance with the requirements of Election Code, §254.204 (relating to Disposition of Unexpended Contributions) ."; and

(7) if the candidate is an officeholder, a statement that the officeholder is aware that he or she remains subject to filing requirements applicable to an officeholder who does not have a campaign treasurer appointment on file.

§20.233. Annual Report of Unexpended Contributions.

(a) A candidate who files a final report and is not an officeholder when he or she files a final report under §20.229 of this title (relating to Final Report) must file an annual report of unexpended political contributions if he or she has unexpended political contributions.

(b) A former candidate who is not an officeholder must file an annual report of unexpended contributions for each year in which he or she retains unexpended political contributions. The report is due not earlier than January 1 and not later than January 15 of the year after a year in which the former candidate retained unexpended political contributions. An annual report of unexpended contributions is not required for a year in which the former candidate filed a report of disposition of unexpended contributions under §20.239 of this title (relating to Report of Final Disposition of Unexpended Contributions).

(c) An annual report is filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(d) The requirement to file annual reports ends after:

(1) all political contributions have been disbursed and reported on an annual report; or

(2) the former officeholder has complied with §20.289 of this title (relating to Disposition of Unexpended Contributions) and §20.291 of this title (relating to Report of Final Disposition of Unexpended Contributions).

§20.235. Contents of Annual Report. An annual report of unexpended contributions shall include the following information:

(1) the candidate's full name;

(2) the candidate's address;

(3) for each payment made by the candidate from unexpended political contributions during the previous year:

(A) the full name of each person to whom a payment was made;

(B) the address of each person to whom a payment was made;

(C) the date of each payment;

(D) the nature of the goods or services for which the payment was made; and

(E) the amount of each payment;

(4) the total amount of unexpended political contributions as of December 31 of the previous year;

(5) the total amount of interest and other income earned on unexpended political contributions during the previous year; and

(6) an affidavit, executed by the candidate, stating, "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.237. Final Disposition of Unexpended Contributions.

(a) A former candidate who was not an officeholder at the time he or she filed a final report may not retain unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions for more than six years after the date of the final report, except as provided by subsection (f) of this section.

(b) During the six-year period after the final report is filed, a former candidate may disburse unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions to one of the following:

(1) the political party with which the person was affiliated when the person's name last appeared on a ballot;

(2) a candidate or political committee, subject to the reporting requirements of §20.243 of this title (relating to Contribution of Unexpended Political Contributions to Candidate or Political Committee);

(3) the comptroller of public accounts, for deposit in the state treasury for use in financing primary elections;

(4) one or more persons from whom political contributions were received, with contributions to a person not to exceed the aggregate amount the former candidate accepted from that person during the last two years that the candidate accepted political contributions;

(5) a recognized, tax-exempt charitable organization; or

(6) a public or private post-secondary educational institution or an institution of higher education, as defined by the Education Code, §61.003(8) (relating to Definitions), solely for the purpose of assisting or creating a scholarship program.

(c) A former candidate may not

convert unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions to personal use.

(d) At the end of the six-year period after the final report is filed, a former candidate must dispose of unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions in one of the ways listed in subsection (b) of this section.

(e) A former candidate must make the disposition required by subsection (d) of this section by the tenth day after the end of the six-year period.

(f) The six-year period prescribed by subsection (a) of this section ceases to run if the former candidate files a new campaign treasurer appointment during the period.

§20.239. Report of Final Disposition of Unexpended Contributions.

(a) A person required by §20.237 of this title (relating to Final Disposition of Unexpended Contributions) to dispose of unexpended contributions at the end of the period for retaining such funds is required to file a report of the disposition of such funds.

(b) The report must be filed no later than the 30th day after the end of the six-year period prescribed by §20.237(a) of this title (relating to Final Disposition of Unexpended Contributions).

(c) The report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed.

(d) The report shall cover the period that begins on the first day after the period covered by the last annual report required through the day a report under this section is filed.

§20.241. Contents of Report of Final Disposition of Unexpended Contributions. A report of final disposition of unexpended contributions shall include the following information:

- (1) the candidate's full name;
- (2) the candidate's address;
- (3) the full name of each person to whom a payment from unexpended political contributions was made;
- (4) the address of each person to whom such a payment was made;
- (5) the date of each payment;
- (6) the nature of the goods or

services for which the payment was made;

(7) the amount of each payment; and

(8) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.243. Contribution of Unexpended Political Contributions to Candidate or Political Committee.

(a) A former candidate who has filed a final report and who contributes unexpended political contributions to a candidate or political committee must report the contribution on an annual report of unexpended contributions or on a report of final disposition of unexpended contributions, as applicable. The former candidate must also report the contribution under subsection (b) of this section.

(b) A former candidate who has filed a final report and who contributes unexpended political contributions to a candidate or political committee must report each contribution to the filing authority with whom the candidate or political committee receiving the contribution files reports. The contribution must be reported on the form used for reports of contributions and expenditures by specific-purpose committees. The report should be filed by the due date for the report in which the candidate or political committee receiving the contribution must report the receipt of the contribution.

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 September 30, 1993.

TRD-9330009

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter D. Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File

- 1 TAC §§20.271, 20.273, 20.275, 20.277, 20.279, 20.281, 20.283, 20.285, 20.287, 20.289, 20.291, 20.293, 20.295

The Texas Ethics Commission (the commis-

sion) proposes new §§20.271, 20.273, 20.275, 20.277, 20.279, 20.281, 20.283, 20.285, 20.287, 20.289, 20.291, 20.293, and 20.295, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by officeholders who have no appointment of campaign treasure on file.

§20.271. Officeholders Covered.

(a) The provisions in this subchapter that apply to an officeholder apply only to a person who holds an elective public office in the state and to the secretary of state.

(b) For purposes of this subchapter, a statewide officer-elect or a member-elect of the legislature is considered to be an officeholder beginning on the day after the date of the general or special election at which the officer-elect or member-elect was elected.

(c) An officeholder who has a campaign treasurer appointment on file is a candidate for filing purposes and shall file under Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) rather than under this subchapter.

§20.273. Semiannual Reports of Contributions and Expenditures.

(a) Except as provided by §20.275 of this title (relating to Exception from Filing Requirement for Certain Local Officeholders), an officeholder shall file semi-annual reports of contributions and expenditures as provided by this section.

(b) One semi-annual report is due no earlier than July 1 and no later than July 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) January 1;

(B) the first day after the period covered by the last report required by this chapter, whether that report was filed by the officeholder in his or her status as an officeholder or as a candidate; or

(C) the day the officeholder took office, if the report is the first report filed by the officeholder under this chapter.

(2) The period covered by a report under this subsection ends on June 30.

(c) One semi-annual report is due no earlier than January 1 and no later than January 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) July 1;

(B) the first day after the period covered by the last report required by this chapter, whether that report was filed by the officeholder in his or her status as an officeholder or as a candidate; or

(C) the day the officeholder took office, if the report is the first report filed by the officeholder under this chapter.

(2) The period covered by a report under this subsection ends on December 31.

§20.275. Exception from Filing Requirement for Certain Local Officeholders. An officeholder is not required to file a semi-annual report of contributions and expenditures if the officeholder:

(1) is required to file with an authority other than the commission;

(2) does not have a campaign treasurer appointment on file; and

(3) does not accept more than \$500 in political contributions or make more than \$500 in political expenditures during the reporting period.

§20.277. Appointment by Officeholder of Campaign Treasurer.

(a) An officeholder who appoints a campaign treasurer after a period in which the officeholder did not have a campaign treasurer appointment on file must file a sworn report of contributions and expenditures no later than 15 days after the date the campaign treasurer appointment was filed.

(b) A report required by this section covers a period that begins on the later of the following dates, as applicable:

(1) the first day after the period covered by the last report filed under this chapter, whether that report was filed by the officeholder in his or her status as an officeholder or as a candidate; or

(2) the day the officeholder took office, if the report is the first report filed by the officeholder under this chapter.

(c) The period covered by a report required by this section ends on the day the campaign treasurer appointment was filed.

(d) After an officeholder files a campaign treasurer appointment, the officeholder is a candidate for filing purposes and shall file under Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) rather than under this subchapter.

§20.279. Contents of Officeholder's Sworn Report of Contributions and Expenditures. An officeholder's semi-annual report of contributions and expenditures required by this subchapter must cover reportable activity during the reporting period and must include the following information:

- (1) the officeholder's full name;
- (2) the officeholder's address;
- (3) the office held by the officeholder;

(4) for each political committee from which the officeholder received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):

- (A) the committee's full name;
- (B) the committee's address;

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

(5) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(6) for each person from whom the officeholder accepted a political contribution other than a pledge or loan of more than \$50 in value or political contributions other than pledges or loans that total more than \$50 in value, and from each person

from whom the officeholder received payment on or fulfillment of a pledge:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a detailed description of any in-kind contribution;

(7) for each person from whom the officeholder accepted a pledge or pledges to provide more than \$50 in money or goods or services worth more than \$50:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge; and

(D) the date each pledge was accepted;

(8) for each person making a loan or loans to the officeholder for officeholder purposes, if the total amount loaned by the person during the period is more than \$50:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the date of the loan;

(D) the interest rate;

(E) the maturity date;

(F) the collateral for the loan, if any; and

(G) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each

guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(9) for political expenditures made during the reporting period that total more than \$50 to a single payee, other than expenditures reported under paragraph (5) of this section:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(10) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of each expenditure;

(D) the nature of the goods or services for which the expenditure was made;

(E) a declaration that the expenditure was made from personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

(11) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (5) of this section:

(A) the date of each payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made; and

(D) the nature of the goods or services for which the payment was made;

(12) for each other candidate or other officeholder who benefits from a direct campaign expenditure made during the reporting period by the officeholder:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(13) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(14) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions of \$50 or less;

(C) the total amount of all political contributions, other than pledges or loans;

(D) the total amount or an itemized listing of the political expenditures of \$50 or less; and

(E) the total amount of all political expenditures, including expenditures reported under paragraph (5) of this section.

(15) if applicable, a statement that no reportable activity occurred during the reporting period; and

(16) an affidavit, executed by the officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.281. *Special Session Report by Certain*

Officeholders.

(a) A statewide officeholder or member of the legislature who accepts a political contribution during the period that begins on the date the governor signs a proclamation calling a special legislative session and ends on the date of final adjournment must file a special session report.

(b) A special session report is a report of contributions only, not expenditures. Expenditures made during the period covered by a special session report are required to be reported in the next applicable sworn report of contributions and expenditures.

(c) Contributions reported in a special session report are not to be reported in any other report.

(d) A special session report must be filed with the commission no later than the 30th day after the date of final adjournment of the special session.

(e) A determination to accept or refuse a political contribution received during the period covered by a special session report shall be made no later than the third day after the date the contribution is received.

(f) A contribution that is refused under subsection (e) of this section must be returned no later than the 30th day after the date of final adjournment. A contribution not returned by that date will be deemed accepted.

(g) An officeholder is not required to file a separate special session report if another report is due not later than the tenth day after the date a report required under this section would be due.

§20.283. *Contents of Special Session Report.* A report required by §20.281 of this title (relating to Special Session Report by Certain Officeholders) shall include the following information:

- (1) the officeholder's name;
- (2) the officeholder's signature;
- (3) the officeholder's address;
- (4) the office held;
- (5) the date each contribution was accepted;
- (6) the name of each person making a contribution;
- (7) the address of each person making a contribution;
- (8) the amount of each contribution accepted during the period; and
- (9) an affidavit, executed by the officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information re-

quired to be reported by me under Title 15, Election Code."

§20.285. *Annual Report of Unexpended Contributions by Former Officeholder.*

(a) A person who ceases to be an officeholder at a time when he or she does not have a campaign treasurer appointment on file must file an annual report if he or she has unexpended political contributions after filing the last required report as an officeholder.

(b) A report under this section shall be filed not earlier than January 1 and not later than January 15 of each year following the year in which the former officeholder filed the last required report as an officeholder, unless the requirement to file annual reports has ended as provided by subsection (d) of this section.

(c) The report shall be filed with the authority with whom the former officeholder was required to file the last required report as an officeholder.

(d) The requirement to file annual reports ends after:

(1) all political contributions have been disbursed and reported on an annual report; or

(2) the former officeholder has complied with §20.289 of this title (relating to Disposition of Unexpended Contributions) and §20.291 of this title (relating to Report of Final Disposition of Unexpended Contributions).

§20.287. *Contents of Annual Report.*

(a) An annual report of unexpended contributions shall include the following information:

- (1) the officeholder's full name;
- (2) the officeholder's address;
- (3) for each payment made by the officeholder from unexpended political contributions during the previous year:

(A) the full name of each person to whom a payment was made;

(B) the address of each person to whom a payment was made;

(C) the date of each payment;

(D) the nature of the goods or services for which the payment was made; and

(E) the amount of the pay-

ment;

(4) the total amount of unexpended political contributions as of December 31 of the previous year;

(5) the total amount of interest and other income earned on unexpended political contributions during the previous year; and

(6) an affidavit, executed by the former officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.289. Disposition of Unexpended Contributions.

(a) A former officeholder who did not have a campaign treasurer appointment on file at the time he or she ceased to be an officeholder may not retain unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions for more than six years after the date he or she ceased to be an officeholder, except as provided by subsection (f) of this section.

(b) During the six-year period after the date a former officeholder ceased to be an officeholder, the former officeholder covered by subsection (a) of this section may disburse unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions for a purpose listed in §20.237 of this title (relating to Final Disposition of Unexpended Contributions).

(c) A former officeholder may not convert political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions to personal use.

(d) At the end of the six-year period, a former officeholder covered by subsection (a) of this section must dispose of unexpended political contributions, unexpended interest or other income earned from political contributions, and assets purchased with political contributions in one of the ways listed in §20.237 of this title (relating to Final Disposition of Unexpended Contributions).

(e) A former officeholder must make the disposition required by subsection (c) of this section by the tenth day after the end of the six-year period.

(f) The six-year period prescribed by subsection (a) of this section ceases to run if the former officeholder files a campaign treasurer appointment during the period.

§20.291. Report of Final Disposition of Unexpended Contributions.

(a) A former officeholder who disposes of unexpended contributions under §20.289 of this title (relating to Disposition of Unexpended Contributions) is required to file a report of the final disposition.

(b) A report of final disposition of unexpended contributions must be filed no later than the 30th day after the end of the six-year period prescribed by §20.289(a) of this title (relating to Disposition of Unexpended Contributions).

(c) The report shall be filed with the authority with whom the former officeholder's last required report as an officeholder was required to be filed.

(d) The report shall cover the period that begins on the first day after the period covered by the last report required through the day a report under this section is filed.

§20.293. Contents of Report of Final Disposition of Unexpended Contributions. A report of final disposition of unexpended contributions shall include the following information:

- (1) the officeholder's full name;
- (2) the officeholder's address;
- (3) the full name of each person to whom a payment from unexpended political contributions was made;
- (4) the address of each person to whom such a payment was made;
- (5) the date of each payment;
- (6) the nature of the goods and services received for each payment;
- (7) the amount of each payment; and
- (8) an affidavit, executed by the former officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.295. Contribution of Unexpended Political Contributions to Candidate or Political Committee.

(a) A former officeholder who contributes unexpended political contributions to a candidate or political committee must report the contribution on an annual report of unexpended contributions or on a report of final disposition of unexpended contributions, as applicable. The former officeholder must also report the contribution under subsection (b) of this section.

(b) A former officeholder who con-

tributes unexpended political contributions to a candidate or political committee must report each contribution to the filing authority with whom the candidate or political committee receiving the contribution files reports.

(1) The former officeholder must report such contributions on the form used for reports of contributions and expenditures a specific-purpose committee.

(2) The former officeholder must file the report by the due date for the report in which the candidate or political committee receiving the contribution must report the receipt of the contribution.

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 September 30, 1993.

TRD-9330010

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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Subchapter E. Reports by a
Specific-Purpose Committee

- 1 TAC §§20.301, 20.303, 20.305, 20.307, 20.309, 20.311, 20.313, 20.315, 20.317, 20.319, 20.321, 20.323, 20.325, 20.327, 20.329, 20.331, 20.333, 20.335, 20.337, 20.339, 20.341, 20.343

The Texas Ethics Commission (the commission) proposes new §§20.301, 20.303, 20.305, 20.307, 20.309, 20.311, 20.313, 20.315, 20.317, 20.319, 20.321, 20.323, 20.325, 20.327, 20.329, 20.331, 20.333, 20.335, 20.337, 20.339, 20.341, and 20.343, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code.

§20.301. Thresholds for Campaign Treasurer Appointment.

(a) A specific-purpose committee may not accept political contributions exceeding \$500 and may not make or authorize political expenditures exceeding \$500 without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$500 to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day:

- (1) a statewide office;

- (2) a seat in the state legislature;
- (3) a seat on the state board of education; or
- (4) a multi-county district office.

§20.303. Appointment of Campaign Treasurer.

(a) A specific-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.301(a) of this title (relating to Thresholds for Campaign Treasurer Appointment).

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$500 in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the specific-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.305. Appointing an Assistant Campaign Treasurer.

(a) A specific-purpose committee for supporting or opposing a candidate for a statewide office, the state legislature, the state board of education, or a multi-county district office or a statewide or district measure may appoint an assistant campaign treasurer by written appointment filed with the commission.

(b) A statewide measure is a measure to be voted on by all eligible voters in the state.

(c) A district measure is a measure to be voted on by the voters of a district.

(d) The assistant campaign treasurer has the same authority as a campaign treasurer.

(e) The campaign treasurer, not the assistant campaign treasurer, is liable for any penalties assessed by the commission for late reports or incomplete reports or for failure to file a report.

(f) Section 20.315 of this title (relating to Termination of Campaign Treasurer Appointment) and §20.317 of this title (relating to Termination Report) apply to the appointment and removal of an assistant campaign treasurer.

§20.307. Name of Specific-Purpose Committee. The name of a specific-purpose committee that supports a candidate for an officeholder of a statewide office, the

state legislature, the state board of education, or a multi-county district office, must include the name of that candidate or officeholder.

§20.309. Contents of Specific-Purpose Committee Campaign Treasurer Appointment. A campaign treasurer appointment for a specific-purpose committee shall include the following information:

(1) the full name of the specific-purpose committee;

(2) the address of the specific-purpose committee;

(3) the full name of the person appointing the campaign treasurer;

(4) the following information for the individual appointed campaign treasurer and, if an assistant campaign treasurer is appointed, for that individual also:

(A) the individual's full name;

(B) the individual's residence or business street address; and

(C) if the individual's mailing address is different from the street address provided, the mailing address for the individual;

(5) if the specific-purpose committee supports or opposes one or more candidates, the full name of each such candidate and the office sought by that candidate;

(6) if the specific-purpose committee supports or opposes one or more measures, the identity of each such measure;

(7) if the specific-purpose committee assists one or more officeholders, the identity of each such officeholder; and

(8) the signature of the individual appointed campaign treasurer.

§20.311. Updating Certain Information on the Campaign Treasurer Appointment.

(a) Except as provided by subsection (b) of this section, if there is a change in any information that is required to be reported in a specific-purpose committee's campaign treasurer appointment, the campaign treasurer must notify the filing authority of the change no later than the tenth day after the date on which the change occurs.

(b) If the name of or office sought by a candidate the specific-purpose committee supports or opposes changes, the committee must report that change within 24

hours of the change.

§20.313. Converting to a General-Purpose Committee.

(a) A specific-purpose committee that changes its operation and becomes a general-purpose committee is subject to the requirements applicable to a general-purpose committee as of the date it files its campaign treasurer appointment as a general-purpose committee with the commission.

(b) The campaign treasurer of a specific-purpose committee that becomes a general-purpose committee must deliver written notice of its change in status to the authority with whom the committee was required to file as a specific-purpose committee.

(c) The notice required under subsection (b) of this section is due no later than the next deadline for filing a report under this subchapter that:

(1) occurs after the committee's change in status; and

(2) would be applicable to the political committee if it were still a specific-purpose committee.

(d) The notice must state that future reports will be filed with the commission.

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds \$500 in political expenditures or \$500 in political contributions as a general-purpose committee.

(f) As provided by §20.401 of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee), the new general-purpose committee may not make political expenditures totaling more than \$500 unless the committee has accepted political contributions from at least ten people and has filed its campaign treasurer appointment as a general-purpose committee not later than the 60th day before the date the expenditure is made that causes the committees total expenditures to exceed \$500.

§20.315. Termination of Campaign Treasurer Appointment.

(a) A specific-purpose committee may terminate a campaign treasurer appointment at any time by:

(1) notifying the filing authority in writing of the termination;

(2) filing a campaign treasurer appointment for a successor campaign treasurer; or

(3) filing a dissolution report.

(b) A committee's campaign treasurer may resign by immediately notifying both the appointing authority and the filing authority in writing.

(c) Except as provided by subsection (e) of this section, if the campaign treasurer resigns or otherwise leaves the position, the termination is effective on the date the committee actually receives the notice or on the date the filing authority actually receives the notice, whichever is later.

(d) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to subsection (c) of this section.

(e) For purposes of the termination report required by §20.317 of this title (relating to Termination Report), a campaign treasurer's resignation is effective on the date the treasurer resigns as provided by subsection (b) of this section.

(f) Section 20.23 of this title (relating to Timeliness of Action by Mail) applies to subsection (e) of this section.

(g) A termination of a specific-purpose committee's campaign treasurer appointment and the filing of the termination report by themselves do not dissolve the specific-purpose committee. A specific-purpose committee can be dissolved only by filing a dissolution report.

§20.317. Termination Report.

(a) If the campaign treasurer appointment of a specific-purpose committee is terminated, the campaign treasurer whose appointment was terminated shall file a termination report that contains the information listed in §20.331 of this title (relating to Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures).

(b) A termination report is not required if the termination occurs on the last day of a reporting period under this subchapter and the campaign treasurer files a report for that period as provided by this subchapter.

(c) A termination report covers a period that begins on the day after the period covered by the last report of contributions and expenditures required to be filed under this subchapter (other than a telegram report or a special session report) or the day the campaign treasurer appointment was filed (if the committee has not yet filed a report of contributions and expenditures). The period covered by the report ends on the day the termination of the campaign treasurer appointment is effective.

(d) The report shall be filed not later than the tenth day after the date the

termination of the campaign treasurer appointment is effective.

(e) Activity reported in a termination report is not required to be included in any subsequent report of the specific-purpose committee that is filed under this subchapter.

§20.319. Notice to Candidate or Officeholder.

(a) The campaign treasurer of a specific-purpose committee that accepts political contributions or makes political expenditures for a candidate or officeholder shall notify the affected candidate or officeholder of that fact in accordance with this section.

(b) This section does not apply to a specific-purpose committee that has not appointed a campaign treasurer in accordance with §20.303(b) of this title (relating to Appointment of Campaign Treasurer).

(c) The notice required by this section shall be in writing and shall include:

(1) the full name of the specific-purpose committee;

(2) the address of the specific-purpose committee;

(3) the full name of the specific-purpose committee's campaign treasurer;

(4) the address of the specific-purpose committee's campaign treasurer;

(5) a statement that the committee is a specific-purpose committee; and

(6) a statement that the specific-purpose committee has accepted political contributions or has made political expenditures on behalf of the candidate or officeholder.

(d) The notice required by this section shall be delivered no later than the end of the reporting period in which the reportable activity occurs.

§20.321. Involvement in More Than One Election by Certain Specific-Purpose Committees. A specific-purpose committee that supports or opposes more than one candidate or measure may be required to file reports covering overlapping periods. If so, the committee is only required to report activity occurring during the period of overlap on the first report on which the activity is required to be reported.

§20.323. Semi-annual Reports.

(a) The campaign treasurer of a specific-purpose committee shall file semi-annual reports as provided by this section.

(b) One semi-annual report is due no earlier than July 1 and no later than July

15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) January 1;

(B) the day the committee's campaign treasurer appointment was filed, if this is the committee's first report filed under this subchapter (other than a telegram report or a special session report); or

(C) the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report).

(2) The period covered by a report under this subsection ends on June 30.

(c) One semi-annual report is due no earlier than January 1 and no later than January 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) July 1;

(B) the day the committee's campaign treasurer appointment was filed, if this is the committee's first report filed under this subchapter (other than a telegram report or a special session report); or

(C) the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report).

(2) The period covered by a report under this subsection ends on December 31.

§20.325. Pre-election Reports.

(a) The campaign treasurer of a specific-purpose committee that supports or opposes a candidate or a measure in an election shall file pre-election reports as provided by subsections (d) and (e) of this section.

(b) For purposes of this section, supporting or opposing a candidate or a measure in an election means accepting political contributions or making political expenditures to support or oppose the candidate or measure.

(c) The campaign treasurer of a specific-purpose committee that has declared an intention to file under the modified schedule in accordance with §20.329 of this title (relating to Modified Reporting) and that remains eligible to file under the

modified schedule is not required to file pre-election reports.

(d) A specific-purpose committee that supports or opposes a candidate or measure in an election during the reporting period set out in the next sentence of this subsection must file a report under this subsection. The report required by this subsection covers a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report or special session report) filed under this subchapter, as applicable, and ends on the 40th day before the election. The report due under this subsection shall be filed no later than the 30th day before the election.

(e) A specific-purpose committee that was required to file a pre-election report under subsection (d) of this section must file a report under this subsection by the eighth day before the election. The report shall cover a period that begins on the 39th day before the election and ends on the tenth day before the election. The report is due no later than the eighth day before the election.

(f) A committee that was not required to file a report under subsection (d) of this section is required to file a report by the eighth day before the election if the committee supports or opposes a candidate or measure during the period that begins on the 39th day before the election and ends on the tenth day before the election. A report required under this subsection shall cover a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report or special session report) filed under this subchapter, as applicable, and ends on the tenth day before the election.

§20.327. Runoff Report.

(a) A specific-purpose committee that supports or opposes a candidate or measure in an election and in an ensuing runoff election shall file a runoff report, except as provided by subsection (b) of this section.

(b) A specific-purpose committee that has declared an intention to file under the modified schedule in accordance with §20.329 of this title (relating to Modified Reporting) and that remains eligible to file under the modified schedule is not required to file a runoff report.

(c) A runoff report is due no later than the eighth day before the runoff election.

(d) A runoff report covers the period that begins on the ninth day before

the date of the main election and ends on the tenth day before the runoff.

(e) For purposes of this section, supporting or opposing a candidate or a measure in an election means accepting political contributions or making political expenditures to support or oppose the candidate or measure.

§20.329. Modified Reporting.

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with the election.

(b) Under the modified schedule, the campaign treasurer of a specific-purpose committee is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the committee's campaign treasurer appointment.

(e) To file under the modified schedule, a specific-purpose committee must file the declaration required under subsection (c) of this section no later than the 30th day before the election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds either of the \$500 limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the \$500 limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

(1) The period covered by a 48-hour report shall begin either on the day

the committee's campaign treasurer appointment was filed (if it is the committee's first report of contributions and expenditures) or on the first day after the period covered by the last report (other than a telegram report or special session report) filed under this subchapter, as applicable.

(2) The period covered by a 48-hour report shall continue through the day the committee exceeded one of the limits for modified reporting.

(h) A specific-purpose committee that exceeds either of the \$500 limits for modified reporting after the 30th day before the election and on or before the tenth day before the election must file a report under §20.325(f) of this title (relating to Pre-election Reports), in addition to any required telegram reports.

§20.331. Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures. Semi-annual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the specific-purpose committee;

(2) the address of the specific-purpose committee;

(3) the full name of the specific-purpose committee's campaign treasurer;

(4) the residence or business street address of the specific-purpose committee's campaign treasurer;

(5) if the committee campaign treasurer's mailing address is different from the street address provided, the mailing address for the campaign treasurer;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) the full name of each candidate supported by the specific-purpose committee and the office sought by each such candidate;

(8) the full name of each candidate opposed by the specific-purpose committee and the office sought by each such candidate;

(9) the full name of each officeholder assisted by the specific-purpose committee and the office held by each officeholder;

(10) each measure supported or opposed by the specific-purpose committee, and an indication of whether the committee supports or opposes the measure;

(11) for each political expenditure by the committee that was made as a political contribution to a candidate, office-

holder, or another political committee and that was returned to the specific-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the specific-purpose committee;

(12) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(13) if the specific-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation, as defined by §20.1 of this title (relating to Definitions):

(A) the amount of the contribution;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution; and

(D) the date each contribution was accepted;

(14) for each person from whom the specific-purpose committee accepted a

political contribution other than a pledge or a loan of more than \$50 in value or political contributions other than pledges or loans that total more than \$50 in value, and from each person from whom the committee received payment on or fulfillment of a pledge:

(A) the full name of the person;

(B) the address of the person;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(15) for each person from whom the specific-purpose committee accepted a pledge or pledges to provide more than \$50 in money or to provide goods or services worth more than \$50:

(A) the full name of the person making a pledge;

(B) the address of the person making a pledge;

(C) the amount of the pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(16) for each person making a loan or loans to the specific-purpose committee for campaign or officeholder purposes if the total amount loaned by the person during the period is more than \$50:

(A) the full name of the person or financial institution making the loan,

(B) the address of the person or financial institution making the loan,

(C) the date of the loan,

(D) the interest rate;

(E) the maturity date.

(F) the collateral for the loan, if any; and

(G) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(17) for political expenditures made during the reporting period that total more than \$50 to a single payee:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(18) for each direct campaign expenditure benefiting a candidate or officeholder, except for a direct campaign expenditure made by a committee supporting only one candidate or officeholder:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(19) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (10) of this section:

(A) the date of the payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made;

(D) the nature of the goods or services for which the payment was

made; and

(E) the amount of the payment;

(20) for each political contribution accepted from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(21) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions of \$50 or less;

(C) the total amount of all political contributions other than pledges or loans;

(D) the total amount or an itemized listing of the political expenditures of \$50 or less; and

(E) the total amount of all political expenditures, including expenditures reported under paragraph (12) of this section;

(22) if applicable, a statement that no reportable activity occurred during the reporting period; and

(23) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.333. Telegram Report by Certain Specific-Purpose Committees.

(a) As provided by subsection (b) of this section, certain specific-purpose committees must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the second day before an election. Reports under this section are known as "telegram" reports, although they may be filed by hand or by telephonic facsimile machine as well as by telegram.

(b) Campaign treasurers for the following specific-purpose committees must file telegram reports:

(1) a specific-purpose committee for supporting or opposing a candidate for state senator that, during the period described in subsection (a) of this section,

accepts one or more political contributions from a person that in the aggregate exceed \$1,000; and

(2) a specific-purpose committee for supporting or opposing a candidate for state representative that, during the period described in subsection (a) of this section, accepts political contributions from a person that in the aggregate exceed \$200.

(c) The campaign treasurer of a specific-purpose committee must file a report no later than 48 hours after the committee accepts a contribution from a person that triggers the requirement to file the telegram report.

(d) The report filed under subsection (c) of this section may be delivered by hand, by telegram, or by telephonic facsimile machine. Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to a report filed under this section.

(e) If, during the reporting period for telegram contributions, a committee receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a telegram report during the period, the campaign treasurer for the committee must file an additional telegram report for each such contribution. Each such telegram report is due no later than 48 hours after the committee accepts the contribution.

(f) The campaign treasurer of a specific-purpose committee must file a telegram report for each person whose contribution or contributions made during the period for telegram reports exceed the threshold for telegram reports.

(g) A campaign treasurer of a specific-purpose committee must also report contributions reported on a telegram report on the next semi-annual, pre-election, or runoff report filed, as applicable.

§20.335. Contents of Telegram Report by a Specific-Purpose Committee Supporting or Opposing a Candidate for State Senator or State Representative. A telegram report shall include the following information:

(1) the full name of the specific-purpose committee;

(2) the full name of the campaign treasurer;

(3) the name of the person making a contribution or contributions that triggered the requirement to file a telegram report;

(4) the address of the person making the contribution or contributions;

(5) the amount of each contribution; and

(6) the date each contribution was accepted.

§20.337. Special Session Reports by Specific-Purpose Committees.

(a) A campaign treasurer of a specific-purpose committee for supporting, opposing, or assisting a candidate for or holder of a statewide office or the legislature that accepts a political contribution during the period that begins on the date the governor signs a proclamation calling a special legislative session and ends on the date of final adjournment must file a special session report.

(b) A special session report must be filed with the commission not later than the 30th day after the date of final adjournment of the special session.

(c) A special session report is a report of contributions only, not expenditures. Expenditures made during the period covered by a special session report are required to be reported in the next applicable sworn report of contributions and expenditures.

(d) Contributions reported in a special session report are not to be reported in any other report.

(e) A determination to accept or refuse a political contribution received during the period covered by a special session report shall be made no later than the third day after the date the contribution is received.

(f) A contribution that is refused under subsection (e) of this section must be returned no later than the 30th day after the date of final adjournment. A contribution not returned by that date will be deemed accepted.

(g) A specific-purpose committee's campaign treasurer is not required to file a separate special session report if another report is due no later than the tenth day after the date a report required under this section would be due.

§20.339. Contents of the Special Session Report. A report required by §20.337 of this title (relating to Special Session Reports by Specific-Purpose Committees) shall include the following information:

- (1) the specific-purpose committee's full name;
- (2) the specific-purpose committee's address;
- (3) the campaign treasurer's full name;
- (4) the campaign treasurer's residence or business street address;
- (5) if the campaign treasurer's mailing address is different from the street

address provided, the mailing address for the campaign treasurer;

(6) the offices sought or held by the candidates supported or opposed by the specific-purpose committee;

(7) the date each contribution was accepted;

(8) the full name of each person making a contribution;

(9) the address of each person making a contribution;

(10) the amount of each contribution accepted during the period; and

(11) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.341. Dissolution Report.

(a) The campaign treasurer of a specific-purpose committee may file a dissolution report at any time that the committee expects no further reportable activity to occur.

(b) A dissolution report does not have to be filed by a designated deadline.

(c) Filing a dissolution report:

(1) relieves the campaign treasurer of the duty to file additional reports under this subchapter; and

(2) terminates the specific-purpose committee's campaign treasurer appointment.

§20.343. Contents of Dissolution Report. A dissolution report must contain:

(1) the information described in §20.331 of this title (relating to Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures); and

(2) the following sworn statement, signed by the specific-purpose committee's campaign treasurer, and properly notarized: "I, the undersigned campaign treasurer, do not expect the occurrence of any further reportable activity by this specific-purpose committee for this or any other campaign or election for which reporting under the Election Code is required. I declare that all of the information required to be reported by me has been reported. I understand that designating a report as a dissolution report terminates the appointment of campaign treasurer. I further understand the circumstances in which the specific-purpose committee may not make or authorize political expenditures or accept political contributions without having an appointment of campaign treasurer on file."

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 September 30, 1993.

TRD-9330011

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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Subchapter F. Reporting Requirement for a General-Purpose Committee

- 1 TAC §§20.401, 20.403, 20.405, 20.407, 20.409, 20.411, 20.413, 20.415, 20.417, 20.419, 20.421, 20.423, 20.425, 20.427, 20.429, 20.431, 20.433, 20.435, 20.437, 20.439, 20.441

The Texas Ethics Commission (the commission) proposes new §§20.401, 20.403, 20.405, 20.407, 20.409, 20.411, 20.413, 20.415, 20.417, 20.419, 20.421, 20.423, 20.425, 20.427, 20.429, 20.431, 20.433, 20.435, 20.437, 20.439, and 20.441, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic

cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article 111, §24 and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by general-purpose committees.

§20.401. Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee.

(a) A general-purpose committee may not accept political contributions exceeding \$500 and may not make or authorize political expenditures exceeding \$500 without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$500 to support or oppose a candidate in a primary or general election for the following:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the state board of education; or
- (4) a multi-county district office.

(c) A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has:

(1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500; and

(2) received contributions from at least ten persons.

(d) Subsection (c) of this section does not apply to a general-purpose committee that accepts contributions from a multi-candidate political committee (as defined by the Federal Election Campaign Act) that is registered with the Federal Election Commission, provided that the general-purpose committee is in compliance with §22.7 of this title (relating to Contribution from Out-of-State Committee).

§20.403. Reporting Requirements for Certain General-Purpose Committees.

(a) A general-purpose committee that is established by a political party's county executive committee is subject to Subchapter I of this chapter (relating to Rules Applicable to a Political Party's County Executive Committee). Subchapter I of this chapter (relating to Rules Applicable to a Political Party's County Executive Committee) prevails over this chapter in the case of conflict.

(b) A general-purpose committee that is the principal political committee of a political party is subject to Subchapter G of this chapter (relating to Rules Applicable to a Principal Political Committee of a Political Party). Subchapter G of this chapter (relating to Rules Applicable to a Principal Political Committee of a Political Party) prevails over this chapter in the case of conflict.

(c) A general-purpose committee that supports or opposes a candidate for state chair of a political party is subject to Subchapter K of this chapter (relating to Reports by Political Committees Supporting or Opposing a Candidate for State Chair of a Political Party). Subchapter K of this chapter (relating to Reports by Political Committees Supporting or Opposing a Candidate for State Chair of a Political Party) prevails over this chapter in the case of conflict.

§20.405. Campaign Treasurer Appointment for a General-purpose Political Committee.

(a) A general-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.401(a) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(b) After a general-purpose committee appoints a campaign treasurer, the

campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$500 in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the general-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.407. Appointing an Assistant Campaign Treasurer.

(a) A general-purpose committee may appoint an assistant campaign treasurer by written appointment filed with the commission.

(b) The assistant campaign treasurer has the same authority as a campaign treasurer.

(c) The campaign treasurer, not the assistant campaign treasurer, is liable for any penalties assessed by the commission for late reports or incomplete reports or for failure to file a report.

(d) Section 20.415 of this title (relating to Termination of Campaign Treasurer Appointment) and §20.417 of this title (relating to Termination Report) apply to the appointment and removal of an assistant campaign treasurer.

§20.409. Name of General-Purpose Committee.

(a) The name of a general-purpose committee must include the full name of each corporation, labor organization, or other association or legal entity other than an individual that directly establishes, administers, or controls the general-purpose committee.

(b) A corporation, labor organization, or other association or legal entity that "directly establishes, administers, or controls" a general-purpose committee is one that has:

(1) the authority to actively participate in determining to whom the general-purpose committee makes political contributions or for what purposes the general-purpose committee makes political expenditures; or

(2) the authority to designate a person to a position of authority with the general-purpose committee, including that of an officer or director of the general-purpose committee.

(c) The name of an entity used in the name of a general-purpose committee may be a commonly recognized acronym by which the entity is known.

§20.411. Contents of General-Purpose Committee Campaign Treasurer Appointment.

(a) A campaign treasurer appointment for a general-purpose committee shall include the following information:

(1) the full name of the general-purpose committee, and, if the name is an acronym, the words the acronym represents;

(2) the address of the general-purpose committee;

(3) the full name of the person appointing the campaign treasurer;

(4) the following information for the individual appointed campaign treasurer and if an assistant campaign treasurer is appointed, for that individual as well:

(A) the individual's full name;

(B) the individual's residence or business street address; and

(C) if the individual's mailing address is different from the street address provided, the mailing address for the individual;

(5) one of the following:

(A) the full name and any acronym of the name that is used in the name of the general-purpose committee pursuant to §20.409 of this title (relating to name of general-purpose committee), if applicable; or

(B) the full name of each person who determines to whom the general-purpose committee makes contributions; or

(C) the full name of each person who determines for what purposes the general-purpose committee makes expenditures;

(6) the signature of the individual appointed campaign treasurer.

§20.413. Updating Information on the Campaign Treasurer Appointment.

(a) The campaign treasurer must notify the commission in writing of any change in the campaign treasurer's address no later than the tenth day after the date on which the change occurs.

(b) If any of the information required to be included in the general-purpose committee's appointment changes, excluding changes in the campaign treasurer's ad-

dress, the campaign treasurer shall file a corrected appointment with the commission no later than the 30th day after the date the change occurs.

§20.415. Termination of Campaign Treasurer Appointment.

(a) A general-purpose committee may terminate a campaign treasurer appointment at any time by:

(1) notifying the commission in writing of the termination;

(2) filing a campaign treasurer appointment for a successor campaign treasurer; or

(3) filing a dissolution report.

(b) A committee's campaign treasurer may resign by immediately notifying both the appointing authority and the filing authority in writing.

(c) If the campaign treasurer resigns or otherwise leaves the position, the termination is effective on the date the committee actually receives the notice or on the date the filing authority actually receives the notice, whichever is later. Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to this subsection.

(d) For purposes of the termination report required by §20.417 of this title (relating to Termination Report), a campaign treasurer's resignation is effective on the date the treasurer resigns, as provided by subsection (b) of this section. Section 20.23 of this title (relating to Timeliness of Action by Mail) applies to this subsection.

(e) A termination of a general-purpose committee's campaign treasurer appointment and the filing of the termination report by themselves do not dissolve the general-purpose committee. A general-purpose committee can be dissolved only by filing a dissolution report with the commission.

§20.417. Termination Report.

(a) If the campaign treasurer appointment of a general-purpose committee is terminated, the campaign treasurer whose appointment was terminated shall file a termination report that contains the information listed in §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures).

(b) A termination report is not required if the termination occurs on the last day of a reporting period under this subchapter and the campaign treasurer files a report for that period as provided by this subchapter.

(c) A termination report covers a

period that begins on either the day after the period covered by the last report of contributions and expenditures required to be filed under this subchapter (other than a telegram report) or the day the campaign treasurer appointment was filed (if the committee has not yet filed a report of contributions and expenditures). The period covered by the report continues through the day the termination of the campaign treasurer appointment is effective.

(d) The report shall be filed not later than the tenth day after the date the termination of the campaign treasurer appointment is effective.

(e) Activity reported in a termination report is not required to be included in any subsequent report of the general-purpose committee that is filed under this subchapter.

§20.419. Converting to a Specific-Purpose Committee.

(a) A general-purpose committee that changes its operation and becomes a specific-purpose committee is subject to the requirements applicable to a specific-purpose committee as of the date it files its campaign treasurer appointment as a specific-purpose committee.

(b) The campaign treasurer of a general-purpose committee that changes its operation and becomes a specific-purpose committee shall deliver written notice of the change in status to the commission.

(c) The notice shall identify the filing authority with whom future filings by the committee are expected to be made.

(d) The notice required by this section is due not later than the next deadline for filing a report under this subchapter that:

(1) occurs after the change in status; and

(2) would be applicable to the committee if it were still a general-purpose committee.

(e) As provided by §20.301 of this title (relating to Thresholds for Campaign Treasurer Appointment), a new specific-purpose committee involved in an election supporting or opposing a candidate for a statewide office, the state legislature, the state board of education, or a multi-county district office in a primary or general election may not accept political contributions exceeding \$500 and may not make or authorize political expenditure exceeding \$500 unless the committee's campaign treasurer appointment as a specific-purpose committee has been on file at least 30 days before the applicable election day.

§20.421. Notice to Candidate or Office-

holder.

(a) The campaign treasurer of a general-purpose committee that accepts political contributions or makes political expenditures for a candidate or officeholder shall notify the affected candidate or officeholder in accordance with this section.

(b) This section does not apply to a general-purpose committee that has not appointed a campaign treasurer in accordance with §20.405 of this title (relating to Campaign Treasurer Appointment for a General-purpose Political Committee).

(c) The notice required by this section shall be in writing and shall include:

(1) the full name of the general-purpose committee;

(2) the address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer;

(4) the address of the general-purpose committee's campaign treasurer;

(5) a statement that the committee is a general-purpose committee; and

(6) a statement that the general-purpose committee has accepted political contributions or has made political expenditures on behalf of the candidate or officeholder.

(d) The notice required by this section shall be delivered no later than the end of reporting period in which the reportable activity occurs.

§20.423. Semiannual Reports.

(a) Except as provided by subsection (d) of this section, the campaign treasurer of a general-purpose committee shall file semi-annual reports as provided by this section.

(b) One semi-annual report is due no earlier than July 1 and no later than July 15.

(1) The report due by July 15 shall cover a period that begins on either January 1, the day the committee's campaign treasurer appointment was filed, or the first day after the period covered by the last report required to be filed under this subchapter (other than a telegram report), as applicable.

(2) The period covered by the report due on July 15 ends on June 30.

(c) One semi-annual report is due no earlier than January 1 and no later than January 15.

(1) The report due on January 15 shall cover a period that begins on either July 1, the day the committee's campaign

treasurer appointment was filed, or the first day after the period covered by the last report required to be filed under this subchapter (other than a telegram report), as applicable.

(2) The period covered by the report due on January 15 ends on December 31.

(d) A general-purpose committee that files monthly reports under §20.429 of this title (relating to Option to File Monthly) does not file under this section.

§20.425. Pre-election Reports.

(a) A general-purpose committee that accepts political contributions or makes political expenditures in support of or in opposition to a candidate or measure to be voted on in an election shall file pre-election reports as provided by subsections (c) and (d) of this section.

(b) A general-purpose committee that files under §20.429 of this title (relating to Option to File Monthly) does not file under this section.

(c) The first pre-election report is due no later than the 30th day before the election.

(1) A general-purpose committee that accepts a political contribution or makes a political expenditure to support or oppose a candidate or measure in the election during the period set out in paragraph (2) of this subsection must file a report under this subsection.

(2) The report covers a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report) filed under this subchapter, as applicable, and ends on the 40th day before the election.

(d) The second pre-election report is due no later than the eighth day before the election. The period covered by this report depends on whether the committee was required to file a report under subsection (c) of this section.

(1) A general-purpose committee that was required to file a pre-election report under subsection (c) of this section must file a report under this subsection by the eighth day before the election. The report shall cover a period that begins on the 39th day before the election and ends the tenth day before the election.

(2) A committee that was not required to file a report by the 30th day before the election is required to file a report by the eighth day before the election if the committee accepts a political contribution or makes a political expenditure to

support or oppose a candidate or measure during the period that begins on the 39th day before the election and ends on the tenth day before the election.

(A) A report that is required to be filed under paragraph (2) of this subsection shall cover a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report) filed under this subchapter, as applicable.

(B) The period covered by a report under paragraph (2) of this subsection ends on the tenth day before the election.

§20.427. Runoff Report.

(a) A general-purpose committee that accepts political contributions or makes political expenditures to support or oppose a candidate or measure in an election and in an ensuing runoff election shall file a runoff report, except as provided by §20.429 of this title (relating to Option to File Monthly).

(b) A runoff report is due no later than the eighth day before the runoff election.

(c) A runoff report covers the period that begins on the ninth day before the date of the main election and ends on the tenth day before the runoff.

§20.429. Option to File Monthly.

(a) As an alternative to filing semi-annual, pre-election, and runoff reports, a general-purpose committee may file monthly reports.

(b) A general-purpose committee that files on the monthly filing schedule must file telegram reports required by §20.435 of this title (relating to Telegram Reports by Certain General-Purpose Committees).

(c) To be entitled to file monthly reports, the general-purpose committee must deliver written notice of its intent to file monthly to the commission.

(1) A general-purpose committee may file notice of its intent to file monthly at the time the committee files its campaign treasurer appointment.

(2) A general-purpose committee that does not file notice of its intent to file monthly at the time it files its campaign treasurer appointment may file the notice only during the period that begins on January 1 and ends on January 15.

(d) A general-purpose committee

that files monthly reports may revert to the regular filing schedule prescribed by §20.423 of this title (relating to Semiannual Reports), §20.425 of this title (relating to Pre-election Reports), and §20.427 of this title (relating to Runoff Report) by delivering notice to the commission of the general-purpose committee's intent to revert.

(1) The notice must be delivered in writing not earlier than January 1 or later than January 15 of the year for which the general-purpose committee intends to revert to the regular reporting schedule.

(2) The notice must include a report of all political contributions accepted and all political expenditures made that were not previously reported.

§20.431. Monthly Reporting.

(a) A monthly report filed by a general-purpose committee shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the threshold reporting amount of \$50 set out in §20.433(11), (12), (13), (14), and (18) of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures) does not apply to a general-purpose committee reporting monthly. For a general-purpose committee reporting monthly, the threshold reporting amount under §20.433(11), (12), (13), (14), and (18) of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures) is \$10.

(b) A monthly report is due not later than the fifth day of the month following the end of the period covered by the report.

(c) Except for the first monthly report filed, a monthly report covers a period that begins on the 26th day of one month and ends on the 25th day of the next month.

(d) The beginning day for the first monthly report filed by a general-purpose committee shall be as follows:

(1) For a general-purpose committee that has been filing on the regular schedule and chooses monthly filing between January 1 and January 15 of a particular year, the first report will cover a period that begins on January 1 of that year.

(2) For a general-purpose committee that elected to file monthly at the time it filed its campaign treasurer appointment, the period covered by the first monthly report depends on the day of the month that the campaign treasurer was appointed.

(A) If the general-purpose committee filed its campaign treasurer ap-

pointment before the 25th on the month, the first report will cover a period that begins on the day the appointment was filed and ends on the 25th day of the same month.

(B) If the general-purpose committee filed its campaign treasurer appointment on or after the 25th of the month, the first report will cover the period that begins on the day the appointment is filed and ends on the 25th day of the next month.

§20.433. Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures. Semi-annual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the general-purpose committee;

(2) address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer;

(4) the residence or business street address of the general-purpose committee's campaign treasurer;

(5) if the committee campaign treasurer's mailing address is different from the street address provided, the mailing address for the campaign treasurer;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;

(9) if the general-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation as defined by §20.1 of this title (relating to Definitions):

(A) the amount of the contribution;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the con-

tribution; and

(D) the date each contribution was accepted;

(10) for each political expenditure by the committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the general-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the general-purpose committee.

(11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than \$50 in value, or political contributions other than pledges or loans that total more than \$50 in value (or more than \$10 for a general-purpose committee reporting monthly), and from each person from whom the committee received payment on or fulfillment of a pledge, and in each instance the contribution was not reported under paragraph (10) of this section:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than \$50 in money or to provide goods or services worth more than \$50 (more than \$10 for a general-purpose committee reporting monthly):

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(13) for each person making a loan or loans to the general-purpose committee for campaign purposes if the total amount loaned by the person during the period is more than \$50 (more than \$10 for a general-purpose committee reporting monthly):

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the date of the loan;

(D) the interest rate;

(E) the maturity date;

(F) the collateral for the loan, if any; and

(G) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(14) for political expenditures made during the reporting period that total more than \$50 (more than \$10 for a general-purpose committee reporting monthly) to a single payee:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expendi-

ture;

(D) the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(15) for each non-political expenditure made from political contributions:

(A) the date of each payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made;

(D) the nature of the goods or services for which the payment was made; and

(E) the amount of the payment;

(16) for each candidate or officeholder who benefits from a direct campaign expenditure made by the committee:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(17) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(18) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions of \$50 or less (\$10 or less for a general-purpose committee reporting monthly);

(C) the total amount of all political contributions, other than pledges or loans;

(D) the total amount or an itemized listing of the political expenditures of \$50 or less (\$10 or less for a general-purpose committee reporting monthly); and

(E) the total amount of all political expenditures;

(19) if applicable, a statement that no reportable activity occurred during the reporting period; and

(20) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

§20.435. Telegram Reports by Certain General-Purpose Committees.

(a) In addition to other reports required by this chapter, a general-purpose committee must file a telegram report if it makes direct campaign expenditures supporting or opposing a single candidate that in the aggregate exceed \$1,000 or a group of candidates that in the aggregate exceed \$15,000 during the period for telegram reports.

(b) The period for telegram reports begins on the ninth day before election day and ends at noon on the second day before election day.

(c) A report under this section may be filed by telegram or telephonic facsimile machine or by hand.

(d) A report under this section must be filed with the commission not later than 48 hours after the expenditure is made.

(e) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to this section.

(f) The report does not have to be on a form issued by the commission.

(g) Reports required by this section need not include an affidavit.

(h) Contributions reported under this section must be reported again in the next applicable sworn report of contributions and expenditures.

§20.437. Contents of Telegram Report. A report required by §20.435 of this title (relating to Telegram Reports by Certain General-Purpose Committees) shall include the following information:

(1) the full name of the general-purpose committee;

(2) the full name of the campaign treasurer;

(3) the amount of each direct campaign expenditure;

(4) the date of each direct campaign expenditure;

(5) the goods or services for which each direct campaign expenditure

was made; and

(6) the identification of the candidates or group of candidates benefiting from the direct campaign expenditure.

§20.439. Dissolution Report.

(a) The campaign treasurer of a general-purpose committee may file a dissolution report at any time that the committee expects no further reportable activity to occur.

(b) A dissolution report does not have to be filed by a designated deadline.

(c) Filing a dissolution report:

(1) relieves the campaign treasurer of the duty to file additional reports under this subchapter; and

(2) terminates the general-purpose committee's campaign treasurer appointment.

§20.441. Contents of Dissolution Report. A dissolution report must contain:

(1) the information listed in §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures); and

(2) the following sworn statement, signed by the general-purpose committee's campaign treasurer, and properly notarized: "I, the undersigned campaign treasurer, do not expect the occurrence of any further reportable activity by this general-purpose committee for this or any other campaign or election for which reporting under the Election Code is required. I declare that all of the information required to be reported by me has been reported. I understand that designating a report as a dissolution report terminates the appointment of campaign treasurer. I further understand the circumstances in which the general-purpose committee may not make or authorize political expenditures or accept political contributions without having an appointment of campaign treasurer on file."

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 September 30, 1993.

TRD-9330012 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Subchapter G. Rules Applicable to a Principal Political Committee of a Political Party

• 1 TAC §20.501, §20.503

The Texas Ethics Commission (the commission) proposes new §20.501 and §20.503, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by principal political committees of a political party.

§20.501. Designation of Principal Political Committee. The state or county executive committee of a political party may designate a general-purpose committee as the principal political committee for that state or county, as applicable.

§20.503. Exceptions from Certain Notice Requirements.

(a) The principal political committee for a political party in the state or in a county is exempted from complying with §20.421 of this title (relating to Notice to Candidate or Officeholder).

(b) The principal political committee for a political party in the state or in a county is not required to report under §20.433(16) of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures) a direct campaign expenditure that it makes on behalf of a slate of two or more nominees of the party.

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

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TRD-9330013 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Subchapter H. Rules Applicable to a Political Party Accepting Contributions from Corporations or Labor Organizations

• 1 TAC §§20.521, 20.523, 20.525, 20.527, 20.529, 20.531

The Texas Ethics Commission (the commission) proposes new §§20.521, 20.523, 20.525, 20.527, 20.529, and 20.531, concerning the reporting of political contributions and

expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the

reporting of political contributions and expenditures by a political party that accepts contributions from corporations and labor organizations.

§20.521. Restrictions on Use of Contributions from Corporations or Labor Organizations. A political party that accepts a contribution authorized by §24.19 of this title (relating to Contribution to a Political Party) may use the contribution only for the following purposes:

(1) to defray normal overhead and administrative or operating costs incurred by the party; or

(2) to administer a primary election or convention held by the party.

§20.523. Separate Account Required. A political party that accepts contributions authorized by §24.19 of this title (relating to Contribution to a Political Party) shall maintain the contributions in a separate account from other contributions.

§20.525. Record of Contributions and Expenditures.

(a) The party chair of a political party is required to maintain a record of all contributions from corporations and labor organizations and all expenditures from such contributions.

(b) The party chair of a political party shall preserve the record required by subsection (a) of this section for at least two years after the filing deadline for the report containing the information on the record.

(c) The party chair of a political party that accepts contributions authorized by §24.19 of this title (relating to Contribution to a Political Party) shall report all contributions and expenditures made to and from the account required by §20.523 of this title (relating to Separate Account Required), in accordance with the reporting schedule in §20.529 of this title (relating to Reporting Schedule for Political Party Accepting Corporate or Labor Union Contributions).

(d) The reports required by subsection (c) of this section shall contain the following information for the period covered by the report:

(1) for each corporation or labor organization from whom the political party accepted a political contribution of more than \$50 in value or political contributions that total more than \$50 in value:

(A) the full name of the corporation or labor organization making the contribution;

(B) the address of the corporation or labor organization making the contribution;

(C) the total amount of contributions; and

(D) the date each contribution was accepted;

(2) for each political expenditure made by the political party from the account required by §20.523 of this title (relating to Separate Account Required) which totals more than \$50 to a single payee:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom each expenditure was made;

(C) the date of the expenditure;

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(3) the total amount or an itemized listing of the contributions of \$50 or less accepted from corporations or labor organizations;

(4) the total amount or an itemized listing of expenditures of \$50 or less to a payee from the account required by §20.523 of this title (relating to Separate Account Required);

(5) the total amount of all political contributions accepted from corporations and labor organizations; and

(6) the total amount of all expenditures made from the account required by §20.523 of this title (relating to Separate Account Required).

§20.527. Form of Report.

(a) The report required by this subchapter is separate from any other report a political party is required to file under this title.

(b) The report is filed by the chair of the state party or county executive committee, as applicable, and not by the treasurer of a general-purpose committee. Contributions and expenditures required to be reported under this subchapter should not be included on a report filed in accordance with Subchapter F of this title (relating to

Reporting Requirements for a General-Purpose Committee).

§20.529. Reporting Schedule for Political Party Accepting Corporate or Labor Union Contributions. A political party that has accepted a contribution from a corporation or labor organization shall file the following reports until the political party is no longer accepting corporate or labor union contributions and the acceptance and expenditure of all such funds has been reported:

(1) A report shall be filed not earlier than July 1 and not later than July 15, covering the period that begins on either January 1 or the day after a primary election report filed under paragraph (3) of this section, as applicable, and ends on June 30.

(2) A report shall be filed not earlier than January 1 and not later than January 15, covering the period that begins on either July 1 or the day after a general-election report filed under paragraph (4) of this section, as applicable, and ends on December 31;

(3) A report shall be filed for each primary election held by the political party. The report shall be filed not later than the eighth day before the primary election, covering the period that begins on January 1st and ends on the tenth day before the primary election;

(4) A report shall be filed for the general election for state and county officers. The report shall be filed not later than the 50th day before the general election, covering the period that begins on July 1 and ends on the 61st day before the general election for state and county officers.

§20.531. Restrictions on Contributions Before General Election. A political party may not knowingly accept a contribution authorized by §20.521 of this title (relating to Restrictions on Use of Contributions from Corporations or Labor Organizations) or make an expenditure from a separate account established pursuant to §20.523 of this title (relating to Separate Account Required) during the period that begins on the 60th day before the date of the general election for state and county officers and ends on the day of the election.

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

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Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Subchapter I. Rules Applicable to a Political Party's County Executive Committee

- 1 TAC §§20.551, 20.553, 20.555, 20.557, 20.559, 20.561

The Texas Ethics Commission (the commission) proposes new §§20.551, 20.553, 20.555, 20.557, 20.559, and 20.561, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for

November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by a political party's county executive committee.

§20.551. Obligation to Maintain Records. A county executive committee that accepts political contributions or makes political expenditures shall maintain the records required by §20.17 of this title (relating to Retention of Records and Reports).

§20.553. County Executive Committee Accepting Contributions or Making Expenditures Totaling \$5,000 or Less.

(a) A county executive committee accepting political contributions or making political expenditures totaling \$5,000 or less is not required to:

(1) appoint a campaign treasurer before accepting political contributions or making political expenditures; or

(2) file the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee).

(b) A county executive committee described in subsection (a) of this section is required to comply with §20.551 of this title (relating to Obligation to Maintain Records).

§20.555. County Executive Committee Accepting Contributions or Making Expenditures That Exceed \$5,000.

(a) A county executive committee described by subsection (b) of this section is subject to the requirements of Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee), except where those rules conflict with this subchapter. In the case of conflict, this subchapter prevails over Subchapter F of this title (relating to Reporting Requirements for a General-Purpose Committee).

(b) A county executive committee that accepts political contributions or makes political expenditures that, in the aggregate, exceed \$5,000 in a calendar year shall file:

(1) a campaign treasurer appointment with the commission no later than the 15th day after the date that amount is exceeded; and

(2) the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee). The first report filed must include all political contributions accepted and all political expenditures made before the county executive committee filed its campaign treasurer appointment.

§20.557. Exceptions from Certain Restrictions.

(a) A county executive committee is exempted from complying with §20.401(a) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(b) A county executive committee is not subject to §20.401(c) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(c) A county executive committee is not subject to §20.401(b) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

§20.559. Exception from Notice Requirement. A county executive committee that accepts political contributions for or makes political expenditures on behalf of a candidate or officeholder is exempted from complying with §20.421 of this title (relating to Notice to Candidate or Officeholder).

§20.561. County Executive Committee Accepting Contributions From Corporations and or Labor Organizations.

(a) A county executive committee that accepts contributions from corporations or labor organizations authorized by §24.19 of this title (relating to Contribution to a Political Party) is subject to the provisions set out in Subchapter H of this chapter (relating to Rules Applicable to a Political Party Accepting Contributions from Corporations or Labor Organizations).

(b) The chair of a county executive committee that accepts contributions from a corporation or labor organization must file the report required by §20.525 (relating to Record of Contributions and Expenditures).

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

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Jim Mathieson
Assistant General Counsel

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For further information, please call: (512) 463-5800

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Subchapter J. Reports by a
Candidate for State Party
Chair

• 1 TAC §§20.571, 20.573, 20.575,
20.577

The Texas Ethics Commission (the commission) proposes new §§20.571, 20.573, 20.575, and 20.577, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years these rules are in effect the public benefit anticipated as a result of enforcing these rules will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final

adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by a candidate for state party chair.

§20.571. Definitions. The following term, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

Candidate for state chair of a political party—A person who seeks election to serve as the chair of the state executive committee of a political party with a nominee on the ballot in the most recent gubernatorial general election. Candidacy may be evidenced by any one or more of the following actions:

(A) declaring candidacy;

(B) soliciting or accepting a campaign contribution or making or authorizing a campaign expenditure; or

(C) appointing a campaign treasurer as a candidate for state chair.

§20.573. Rules Applicable to Candidate for State Chair of a Political Party. Except as provided by this subchapter, a candidate for state chair of a political party is subject to the rules applicable to a candidate for a statewide public office.

§20.575. Contributions to and Expenditures by Candidate for State Chair of a Political Party. Except as provided by this subchapter, each contribution to and expenditure by a candidate for state chair of a political party is subject to the same rules as contributions to and expenditures by a candidate for statewide public office.

§20.577. Reporting Schedule for a Candidate for State Chair.

(a) A candidate for state chair of a political party is required to file only the reports listed in this section and is not required to file any other reports required by

candidates for public office under Subchapter C of this chapter (relating to Reporting Requirements for a Candidate)

(b) A candidate for state chair of a political party is required to file semi-annual reports as provided by this subsection.

(1) One semi-annual report is due no earlier than July 1 and no later than July 15.

(A) The period covered by a report under this paragraph begins on the later of the following dates, as applicable:

(i) January 1;

(ii) the first day after the period covered by the last report required by this subchapter; or

(iii) the day the state chair's campaign treasurer appointment was filed, if this is the first report filed under this subchapter.

(B) The period covered by the report under this paragraph ends on June 30.

(2) One semi-annual report is due no earlier than January 1 and no later than January 15.

(A) The period covered by a report under this paragraph begins on the later of the following dates, as applicable:

(i) July 1;

(ii) The first day after the period covered by the last report required by this subchapter; or

(iii) The day the state chair's campaign treasurer appointment was filed, if this is the first report filed under this subchapter.

(c) A candidate for state chair of a political party shall also file the following reports.

(1) A candidate for state chair of a political party shall file a report not earlier than the 39th day before the convening of the state convention and not later than the 30th day before the convening of the state convention. The report shall cover the period that begins on either the day the candidate filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the 40th day before the convening.

(2) A candidate for state chair of a political party shall file a report not earlier than the ninth day before the convening of the state convention and not later than the

eighth day before the convening of the state convention. The report must cover the period that begins on either the day after the committee filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the tenth day before the convening.

(d) A candidate for state chair of a political party who expects no further reportable activity in connection with his or her candidacy may file a final report at any time in accordance with §20.229 of this title (relating to Final Report) and §20.231 of this title (relating to Contents of Final Report).

(e) A former candidate for state chair of a political party who retains unexpended political contributions, unexpended interest or other income from political contributions, or assets purchased with political contributions at the time of filing a final report is subject to the requirements of §§20.233-20.243 of Subchapter C (relating to Reporting Requirements for a Candidate).

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 September 30, 1993.

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Jim Mathleson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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Subchapter K. Reports by Political Committees Supporting or Opposing a Candidate for State Chair of a Political Party

• 1 TAC §§20.591, 20.593, 20.595

The Texas Ethics Commission (the commission) proposes new §§20.591, 20.593, and 20.595, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These and other new rules are proposed to entirely replace the commission's current rules. The sections in this Chapter 20 set forth the general rules concerning reports filed with the commission; the reporting requirements of candidates; reporting requirements of an officeholder without a campaign treasurer appointment on file; the reporting requirements of a specific-purpose political committee; the reporting requirements of a general-purpose political committee; the rules applicable to a principal political committee of a political party; general rules concerning po-

litical parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years these rules are in effect the public benefit anticipated as a result of enforcing these rules will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by a political committee supporting or opposing a candidate for state chair of a political committee.

§20.591. Appointment of Campaign Treasurer by Political Committee Supporting or Opposing Candidate for State Chair of a Political Party. Except as provided by this subchapter, a political committee supporting or opposing a candidate for state chair of a political party is subject to the rules applicable to a specific-purpose com-

mittee supporting or opposing a candidate for a statewide public office.

§20.593. Contributions and Expenditures by Political Committee Supporting or Opposing Candidate for State Chair of a Political Party. Except as provided by this subchapter, each contribution to and expenditure by a political committee supporting or opposing a candidate for state chair of a political party is subject to the same rules as a specific-purpose committee supporting or opposing a candidate for statewide public office.

§20.595. Reporting Schedule for a Political Committee Supporting or Opposing Candidate for State Chair of a Political Party.

(a) A political committee supporting or opposing a candidate for state chair of a political party is required to file semi-annual reports in accordance with §20.323 of this title (relating to Semi-annual Reports).

(b) A political committee supporting or opposing a candidate for state chair of a political party shall also file the following reports:

(1) A political committee supporting or opposing a candidate for state chair of a political party shall file a report not earlier than the 39th day before the convening of the state convention and not later than the 30th day before the convening of the state convention. The report shall cover the period that begins on either the day the political committee filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the 40th day before the convening; and

(2) A political committee supporting or opposing a candidate for state chair of a political party shall file a report not earlier than the ninth day before the convening of the state convention and not later than the eighth day before the convening of the state convention. The report covers the period that begins on either the date the political committee filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the tenth day before the convening.

(c) A political committee supporting or opposing a candidate for state chair of a political party may file a dissolution report in accordance with §20.341 of this title (relating to Dissolution Report) and §20.343 of the chapter (relating to Contents of Dissolution Report) at any time that the committee expects no further reportable activity to occur).

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 September 30, 1993.

TRD-9330017 Jim Mathleson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

◆ ◆ ◆
Chapter 22. Restrictions on Contributions and Expenditures

- 1 TAC §§22.1, 22.3, 22.5, 22.7, 22.9, 22.11, 22.13, 22.15, 22.17, 22.19, 22.21, 22.23, 22.25, 22.27, 22.29, 22.31

The Texas Ethics Commission (the commission) proposes new §§22.1, 22.3, 22.5, 22.7, 22.9, 22.11, 22.13, 22.15, 22.17, 22.19, 22.21, 22.23, 22.25, 22.27, 22.29, and 22.31, concerning general restrictions on political contributions and expenditures. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these section as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the

proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commissioner from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules concerning political contributions and expenditures.

§22.1. Certain Campaign Treasurer Appointments Required Before Political Activity Begins.

(a) An individual must file a campaign treasurer appointment with the proper authority before accepting a campaign contribution or making or authorizing a campaign expenditure.

(1) An officeholder may accept an officeholder contribution and make or authorize an officeholder expenditure without a campaign treasurer appointment on file.

(2) An officeholder who does not have a campaign treasurer appointment on file may not accept a campaign contribution or make or authorize a campaign expenditure.

(b) A political committee may not accept political contributions exceeding \$500 and may not make or authorize political expenditures exceeding \$500 without filing a campaign treasurer appointment with the appropriate filing authority.

(c) A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has:

(1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed

\$500; and

(2) received contributions from at least ten persons.

(d) Subsection (c) of this section does not apply to a general-purpose committee that accepts contributions from a multi-candidate political committee (as defined by the Federal Election Campaign Act) that is registered with the Federal Election Commission, provided that the general-purpose committee is in compliance with §22.7 of this title (relating to Contribution from Out-of-State Committee).

(e) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a political committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$500 to support or oppose a candidate in a primary or general election for the following:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the state board of education; or
- (4) a multi-county district office.

(f) This section does not apply to the county executive committee of a political party except as provided in Subchapter I (relating to a political party's county executive committee).

§22.3. Disclosure of True Source of Contribution or Expenditure. A person may not knowingly make or authorize a political contribution or political expenditure in the name of or on behalf of another unless the person discloses the name and address of the person who is the true source of the contribution.

§22.5. Direct Campaign Expenditures.

(a) Only the following persons, complying with applicable restrictions and procedures, may make or authorize a direct campaign expenditure:

- (1) an individual making an expenditure authorized by subsection (b) or (d) of this section;
- (2) a corporation or labor organization making an expenditure authorized by subsection (e) of this section;
- (3) a candidate making or authorizing an expenditure for the candidate's own election;
- (4) a political committee; or
- (5) a campaign treasurer or assistant campaign treasurer acting in an official capacity.

(b) An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from his or her own property if:

(1) the total expenditures on any one or more candidates or measures do not exceed \$100 and the individual receives no reimbursement for the expenditures; or

(2) if the total expenditures on any one or more candidates or measures exceed \$100, the individual complies with Subchapter E of this title (relating to Reporting Requirements for a Specific-Purpose Committee) as if the individual were a campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures.

(c) An individual making expenditures under subsection (b)(2) of this section is not required to file a campaign treasurer appointment, but is required to use the reporting forms and schedule prescribed by Subchapter E of this chapter (relating to Reporting Requirements for a Specific-Purpose Committee).

(d) An individual making a direct campaign expenditure consisting of the individual's personal travel expenses is not required to comply with subsection (b)(2) of this section, provided that the individual receives no reimbursement for the expenditures.

(e) A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation makes the expenditures in accordance with subsections (b) and (c) of this section as if the corporation or labor organization were an individual.

§22.7. Contribution from Out-of-State Committee.

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than \$500, the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed \$500 during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than

\$100 to the out-of-state political committee during the 12 months immediately preceding the contribution; or

(2) a copy of the out-of-state political committee's statement of organization filed as required by law with the Federal Election Commission and certified by the Federal Election Commission.

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed \$500.

(d) A candidate, officeholder, or political committee may comply with subsection (c) of this section in successive reporting periods by submitting a copy of the certified document obtained before accepting the first contribution triggering subsection (a) of this section (if the document has not been amended since the last submission), rather than by obtaining and submitting an original certified document for each reporting period, if the candidate, officeholder, or political committee:

(1) receives contributions covered by subsection (a) of this section from the same out-of-state committee in successive reporting periods; and

(2) complies with subsection (b)(2) of this section before accepting the first contribution triggering subsection (a) of this section.

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

(1) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by the Federal Election Commission; or

(2) the following information:

(A) the full name of the committee, and, if the name is an acronym, the words the acronym represents;

(B) the address of the committee;

(C) the phone number of the committee;

(D) the name of the person appointing the campaign treasurer; and

(E) the following information for the individual appointed campaign treasurer and assistant campaign treasurer:

- (i) the individual's full name;
- (ii) the individual's residence or business street address; and
- (iii) the individual's telephone number.

(f) This section does not apply to a contribution from an out-of-state political committee if the committee filed a campaign treasurer appointment with the commission before making the contribution.

§22.9. Cash Contributions Exceeding \$100 Prohibited.

(a) A candidate, officeholder, or specific-purpose committee may not knowingly accept political contributions in cash that in the aggregate exceed \$100 from a contributor in a reporting period.

(b) Checks are not considered cash for purposes of this section.

§22.11. Prohibition On Contributions During Regular Session.

(a) During the period that begins on the 30th day before the date a regular legislative session convenes and ends on the day of final adjournment, a person may not knowingly make a political contribution to:

- (1) a statewide officeholder or officer-elect;
- (2) a member of the legislature or member-elect; or
- (3) a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or officeholder elect or member or member-elect of the legislature.

(b) An individual or committee described in subsection (a) of this section may not knowingly accept a political contribution, and shall refuse a political contribution that is received, during the period prescribed by subsection (a) of this section.

(c) A political contribution that is received and refused pursuant to this section shall be returned to the contributor not later than the 30th day after the date of receipt.

(d) A contribution made by mail is not considered received during the period prescribed by subsection (a) of this section if it was deposited into an official repository of the United States Postal Service with postage prepaid and properly addressed before the beginning of the period. The date of the postmark is considered to be the date the contribution was placed in the mail unless proven otherwise.

(e) This section does not apply to a political contribution that was made and accepted with the intent that it be used:

(1) in an election held or ordered during the period prescribed by subsection (a) of this section in which the person accepting the contribution is a candidate, if the contribution was made after the person appointed a campaign treasurer with the appropriate authority and before the person was sworn in for that office;

(2) to defray expenses incurred in connection with an election contest; or

(3) by a person who holds a statewide office or a member of the legislature, if the person or member was defeated at the general election held immediately before the session is convened, or by a specific-purpose political committee that supports or assists only that person or member.

(f) This section does not apply to contributions offered or accepted during a special session.

§22.13. Contributions in the Capitol Prohibited.

(a) A person may not knowingly make or authorize a political contribution while in the Capitol to:

- (1) a candidate or officeholder;
- (2) a political committee; or
- (3) a person acting on behalf of a candidate, officeholder, or political committee.

(b) A candidate, officeholder, or political committee or a person acting on behalf of a candidate, officeholder, or political committee may not knowingly accept a political contribution, and shall refuse a political contribution that is received, in the Capitol.

(c) The term "Capitol" for purposes of this rule includes the Capitol Building and the Capitol Extension, and any office that is being used as the official capitol office for a member of the legislature, the governor, the lieutenant governor, or the secretary of state.

(d) This section does not prohibit contributions delivered in the Capitol through the United States postal service or a common or contract carrier.

§22.15. Prohibition on Payments Made to Purchase Real Property.

(a) A candidate or officeholder, or a specific-purpose committee for supporting, opposing, or assisting a candidate or officeholder, may not knowingly make or authorize a payment from a political contribution to purchase real property, or to pay

the interest on or principal of a note for the purchase of real property.

(b) Subsection (a) of this section does not apply to a payment made in connection with real property that was purchased before January 1, 1992.

§22.17. Prohibition on Personal Use of Political Contributions.

(a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. This subsection applies only to political contributions accepted on or after September 1, 1983.

(b) A specific-purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder. This prohibition applies only to political contributions accepted on or after September 1, 1987.

(c) The prohibitions set out in subsections (a) and (b) of this section apply to the use of an asset purchased with political contributions and to the use of any interest or other income earned on political contributions.

(d) "Personal use" means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. It does not include:

(1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not normally reside in Travis County, but excluding payments prohibited pursuant to §22.15 of this title (relating to Prohibition on Payments Made to Purchase Real Property);

(2) payments of federal income taxes due on interest and other income earned on political contributions;

(3) use of contributions for defending a criminal action or prosecuting or defending a civil action brought by or against the individual in his or her status as a candidate or officeholder;

(4) use of contributions for participating in an election contest or participating in a civil action to determine an individual's eligibility to be a candidate for, or elected or appointed to, a public office in this state;

(5) an expenditure for a purpose

listed in §20.289 of this title (relating to Disposition of Unexpended Contributions);

(6) payment of travel expenses of a candidate's spouse or any other person if the spouse or other person is campaigning for candidate; or

(7) payment of travel expenses of an officeholder's spouse or any other person if the other person's travel is in connection with the performance of duties or activities as a public officeholder.

(e) An asset purchased with political contributions is not converted to personal use if the political contributions are fully reimbursed during the reporting period in which the use occurred in an amount that reasonably reflects the value of the use.

§22.19. General Restrictions on Reimbursement of Personal Funds.

(a) If a candidate makes political expenditures from the candidate's personal funds, he or she may reimburse those personal funds from political contributions only if the expenditure is reported and the candidate states his or her intent to reimburse personal funds pursuant to §20.219(a)(15) of this title (relating to Content of Candidate's Sworn Report of Contributions and Expenditures).

(b) If an officeholder who does not have a campaign treasurer appointment on file makes political expenditures from the officeholder's personal funds, he or she may reimburse those personal funds from political contributions only if the expenditure is reported and the officeholder states his or her intent to reimburse personal funds pursuant to §20.279(a)(10) of this title (relating to Contents of Officeholder's Sworn Report of Contributions and Expenditures).

(c) A candidate or officeholder may reimburse personal funds from political contributions for the use of personal assets for political purposes provided that the reimbursement is reported as a political expenditure. Reimbursement of personal funds from political contributions for the use of a personal vehicle for political purposes must be at the rate set in accordance with the IRS standard mileage rate for business use of a vehicle.

(d) A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if:

(1) the expenditures were fully reported as political expenditures on the report covering the period during which the expenditures were made; and

(2) the report disclosing the expenditures indicates that the expenditures were made from the candidate's or office-

holder's personal funds and are subject to reimbursement.

(e) A candidate's or officeholder's failure to comply with subsection (d) of this section may not be cured by filing a corrected report after the report deadline has passed.

(f) A candidate or officeholder who has complied with subsection (d) of this section and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made.

(g) Section 22.21 of this title (relating to Additional Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans) sets limits on the amount of political expenditures from personal funds that a statewide officeholder may reimburse from political contributions.

§22.21. Additional Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans.

(a) A candidate or officeholder who makes political expenditures from personal funds may not reimburse his or her personal funds from political contributions in amounts that in the aggregate exceed the following amounts for each election in which the person's name appears on the ballot:

(1) for a statewide office other than governor, \$250,000; or

(2) for governor, \$500,000.

(b) A candidate or officeholder who accepts one or more political contributions in the form of loans, including an extension of credit or a guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree by affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity), may not use political contributions to repay the loans in amounts that in the aggregate exceed the amount prescribed by subsection (a) of this section. Interest on loans from the personal funds of any person related to the candidate or officeholder within the second degree by affinity or consanguinity is included in the amount prescribed by subsection (a) of this section.

(c) The total amount of both reimbursements and repayments made by a candidate or officeholder under this section may not exceed the amount prescribed by subsection (a) of this section.

(d) An individual who is both a candidate and an officeholder covered by subsection (a) of this section may reimburse

his or her personal funds or repay loans from political contributions only in one capacity.

§22.23. Restrictions on Certain Payments.

(a) A candidate or officeholder, or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder, may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to:

(1) a business in which the candidate or officeholder has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business; or

(2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder.

(b) A payment made from a political contribution to a business described by subsection (a) of this section that is not prohibited by that subsection may not exceed the amount necessary to reimburse the business for actual expenditures made by the business.

(c) A discount given by a corporation to conform with subsection (b) of this section does not constitute a political contribution from the corporation.

§22.25. Maintenance of Political Contributions in Bank Accounts.

(a) A candidate or officeholder may maintain political contributions in more than one account.

(b) A candidate or officeholder who maintains political contributions in more than one account and who accepts both officeholder and campaign contributions must commingle both types of contributions in each account.

(c) This section applies only to political contributions in the form of officeholder contributions. It does not apply to an "office account" provided from state funds.

§22.27. Time Limit on Retaining Unexpended Contributions. A former candidate may retain unexpended political contributions after he or she ceases to be a candidate or officeholder only in accordance with §20.237 of this title (relating to Final Disposition of Unexpended Contributions) or §20.289 of this title (relating to Disposition of Unexpended Contributions), as applicable.

§22.29. Activity After Death or Incapacity of Candidate or Officeholder.

(a) The legal representative of a candidate or officeholder who has died or become incapacitated may accept political contributions and make or authorize expenditures only for the following purposes:

(1) payment of debts or expenses in connection with a campaign or in connection with officeholder duties and activities;

(2) payments to the political party with which the person was affiliated when the person's name last appeared on a ballot;

(3) political contributions to a candidate or political committee;

(4) donations to the comptroller of public accounts for deposit in the state treasury;

(5) refunds of contributions to one or more persons from whom political contributions were received, not to exceed the total amount contributed by each person within the last two years;

(6) donations to a charity recognized by the Internal Revenue Service as tax-exempt;

(7) donations to a public or private post-secondary educational institution or an institution of higher education as defined by the Education Code, §61.003(8) (relating to Definitions), solely for the purpose of assisting or creating a scholarship program; or

(8) payment of federal income taxes due on interest and other income earned on political contributions.

(b) See §20.67 of this title (relating to Reporting After the Death or Incapacity of a Filer) in regard to reporting requirements after the death or incapacity of a candidate or officeholder.

§22.31. Restrictions on Foreign Nationals. Federal law prohibits contributions from foreign nationals who have not been granted permanent residence in the United States. See United States Code, Title 2, §441(e)

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 September 30, 1993.

TRD-9330018

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 24. Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations

- 1 TAC §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19

The Texas Ethics Commission (the commission) proposes new §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, and 24.19, concerning general restrictions on political contributions and expenditures made by corporations and labor organizations. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules concerning political contributions and expenditures applicable

to corporations and labor organizations.

§24.1. Corporations and Certain Associations Covered.

(a) With the exceptions listed in subsections (b) and (c) of this section, this subchapter applies to corporations that are organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, federal law, or the laws of another state or nation.

(b) For purposes of this subchapter, the following associations, whether incorporated or not, are considered to be corporations covered by this subchapter:

- (1) banks;
- (2) trust companies;
- (3) savings and loan associations or companies;
- (4) insurance companies;
- (5) reciprocal or interinsurance exchanges;
- (6) railroad companies;
- (7) cemetery companies;
- (8) government-regulated cooperatives;
- (9) stock companies; and
- (10) abstract and title insurance companies.

(c) For purposes of this subchapter, members of a corporation that does not have stockholders and members of an association listed in subsection (b) of this section are considered to be stockholders.

(d) This subchapter does not apply to a political committee that incorporates for liability purposes only in accordance with subsection (e) of this section, provided that the sole principal purpose of the committee is accepting political contributions and making political expenditures.

(e) A political committee may incorporate to limit its liability by providing in its official incorporation documents that it is a political committee that is incorporating for liability purposes only, and that its only principal purpose is to accept political contributions and make political expenditures.

§24.3. Prohibitions on Contributions and Expenditures.

(a) A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter.

(b) A corporation or labor organization may not make a political contribution or political expenditure in connection with a

recall election or in connection with the circulation or submission of a petition to call a recall election.

§24.5. Corporate Loans.

(a) A corporation may not make a loan to a candidate, officeholder, or political committee for campaign or officeholder purposes unless:

(1) the corporation has been legally and continuously engaged in the business of lending money for at least one year before the loan is made; and

(2) the loan is made in the due course of business.

(b) This section does not apply to a loan to a political committee that supports or opposes measures exclusively.

§24.7. Contribution on Measure.

(a) A corporation or labor organization may make campaign contributions from its own property in connection with an election on a measure.

(b) A contribution authorized by subsection (a) of this section may be made only to a political committee for supporting or opposing measures exclusively.

§24.9. *Direct Expenditure on Measure.* A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation or labor organization makes the expenditures in accordance with §22.5 of this title (relating to Direct Campaign Expenditures) as if the corporation or labor organization were an individual.

§24.11. Political Expenditures to Communicate with Stockholders, Members, and Families.

(a) A corporation or labor organization may make one or more direct campaign expenditures from its own property for the purpose of communicating directly with its stockholders or members, as applicable, or with the families of its stockholders or members.

(b) An expenditure under this section is not required to be reported.

§24.13. Expenditures For a General-Purpose Committee.

(a) A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee.

(b) A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under subsection (a) of this section from the stockholders, employees, or families of stockholders or employees of one or more corporations.

(c) A labor organization may engage in activity authorized for a corporation by subsections (a) and (b) of this section. For purposes of this section, the members of a labor organization are considered to be corporate stockholders.

(d) An expenditure under this section is not reportable by the general-purpose committee as a political contribution.

(e) A political committee assisted by a corporation or labor organization under this section may not make a political contribution or political expenditure in whole or part from money that is known by a member or officer of the political committee to be dues, fees, or other money required as a condition of employment by a corporation or condition of membership in a labor organization.

(f) A corporation or labor organization or a political committee assisted by a corporation under this section may not use or threaten to use physical force, job discrimination, or financial reprisal to obtain money or any other thing of value to be used to influence the result of an election or to assist an officeholder.

§24.15. Payments to a Corporation of the Candidate or Officeholder.

(a) If a corporation charges a candidate, officeholder, or specific-purpose committee for supporting or assisting a candidate or officeholder less than fair market value for goods or services in order to comply with §32.23(b) of this title (relating to restrictions on payments to certain businesses), the discount is not a prohibited corporate contribution.

(b) If the discount is greater than is necessary to comply with §32.23 of this title (relating to restrictions on payments to certain businesses), the discount is a prohibited corporate contribution if the discount is not otherwise authorized by this chapter.

§24.17. Corporate Expenditures for Get-Out-The-Vote Campaigns Permitted.

(a) An expenditure to finance a voter registration or get-out-the-vote drive is not a political expenditure if the drive encourages voting in general but does not encourage voting for or against a measure, candidate, officeholder, or political party.

(b) A corporation or labor organization is permitted to make an expenditure described in subsection (a) of this section.

(c) A corporate or labor organization expenditure described by subsection (a) of this section is not reportable.

§24.19. Contribution to a Political Party.

(a) A corporation or labor organization may make a contribution from its own property to a political party to be used as provided by Chapter 20, Subchapter H of this Chapter (relating to Rules Applicable to a Political Party Accepting Contributions from Corporations or Labor Organizations).

(b) A corporation or labor organization may not knowingly make a contribution authorized by subsection (a) of this section during a period that begins on the 60th day before the date of a general election for state and county officers and ends on the day of the election.

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 September 30, 1993.

TRD-9330019

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 26. Political and Legislative Advertising

- 1 TAC §§26.1, 26.3, 26.5, 26.7, 26.9, 26.11, 26.13, 26.15, 26.17

The Texas Ethics Commission (the commission) proposes new §§26.1, 26.3, 26.5, 26.7, 26.9, 26.11, 26.13, 26.15, and 26.17, concerning restrictions and requirements on political and legislative advertising. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 rules will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these rules as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 571 of the Government Code which provide the commission with the authority to govern its operations.

§26.1. Definitions. The following term, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

Political advertising—A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

(A) is published in a newspaper, magazine, or other periodical in return for consideration;

(B) is broadcast by radio or television in return for consideration; or

(C) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

§26.3. Required Disclosure on Political Advertising.

(a) An individual or entity may not knowingly enter into a contract or other agreement to print, publish, or broadcast political advertising that does not include a disclosure of the following information:

(1) that the material is political advertising, through use of the words "political advertising" or any recognizable abbreviation;

(2) the full name of either:

(A) the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster; or

(B) the individual or entity that individual represents; and

(3) in the case of advertising that is printed or published, the address of either the individual who personally entered into the agreement with the printer or publisher or the person that individual represents.

(b) The phrase "paid for by" or a similar phrase is not required to be in the disclosure required by subsection (a) of this section, although such a phrase may be included.

(c) The name of a campaign treasurer does not satisfy the requirements of subsection (a)(2) of this section unless the campaign treasurer is a person described in subsection (a) (2) of this section.

(d) The required disclosure must appear on one line of text or on successive lines of text on the face of the political advertising.

§26.5. Disclosure Not Required for Certain Campaign Materials. The requirements of §26.3 or this chapter (relating to Required Disclosure on Political Advertising) do not apply to the following:

(1) a ticket or invitation to a political fund-raising event;

(2) political advertising printed on letterhead stationery, if the letterhead contains the information required by §26.3(a)(2) and (3) of this title (relating to Required Disclosure on Political Advertising); or

(3) political advertising on campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impracticable.

§26.7. Rates For Political Advertising.

(a) The rate charged for political advertising by a radio or television station may not exceed:

(1) during the 45 days preceding a general or runoff primary election and during the 60 days preceding a general or special election, the broadcaster's lowest unit charge for advertising of the same class, for the same time, and for the same period, or

(2) at any time other than that specified by paragraph (1) of this subsection, the amount charged other users for

comparable use of the station.

(b) The rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes.

(c) In determining amounts charged for comparable use, the amount and kind of space or time used, number of times used, frequency of use, type of advertising copy submitted, and any other relevant factors shall be considered.

(d) Discounts offered by a newspaper or magazine to its commercial advertisers shall be offered on equal terms to purchasers of political advertising from the newspaper or magazine.

(e) Provisions of federal law prevail over this section in the case of conflict.

§26.9. Political Advertising By Political Subdivisions. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.

§26.11. True Source of Communication.

(a) A person may not enter into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source.

(b) A person may not knowingly represent in a campaign communication that the communication emanates from a source other than its true source.

(c) A person may not misrepresent his or her identity or, if acting or purporting to act as an agent, misrepresent the identity of the agent's principal, in political advertising or a campaign communication.

§26.13. Misleading Use of Office Title

(a) A person may not knowingly enter into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office he or she does not hold at the time the agreement is made.

(b) A person may not knowingly represent in a campaign communication that a candidate holds a public office he or she does not hold at the time the representation is made.

(c) A person other than an officeholder may not knowingly use a representation of the Great Seal of Texas in political advertising.

§26.15. Notice Requirement on Political Advertising Signs.

(a) In this section, the phrase "political advertising sign" means a written form of political advertising designed to be seen from a road, but does not include a bumper sticker.

(b) The following notice must be written on each political advertising sign: NOTICE: IT IS A VIOLATION OF STATE LAW (ARTICLE 2372cc, VERNON'S TEXAS CIVIL STATUTES, AND ARTICLE 6674v-7, REVISED STATUTES), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY.

(c) A person may not knowingly enter into a contract to print or make a political advertising sign that does not contain the notice required by subsection (b) of this section.

(d) A person may not instruct another person to place a political advertising sign that does not contain the notice required by subsection (b) of this section.

§26.17. Legislative Advertising. Political advertising as defined by the Election Code, §251.001(16) (relating to Definitions), does not constitute legislative advertising under the Government Code, §305.027 (relating to Required Disclosure on Legislative Advertising).

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 September 30, 1993.

TRD-9330020 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

◆ ◆ ◆
**Chapter 28. Reports by a
Candidate for Speaker of
the House of Representatives**

• 1 TAC §§28.1, 28.3, 28.5, 28.7,
28.9

The Texas Ethics Commission (the commission) proposes new §§28.1, 28.3, 28.5, 28.7, and 28.9, concerning the reporting and filing of reports by candidates for speaker of the house of representatives. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 302, Texas Government Code which provides the commission with the authority to promulgate rules concerning the filing of reports by a candidate for speaker of the house of representatives.

§28.1. Definitions. The following words and terms, when used in this Chapter 28, shall have the following meanings, unless the context clearly indicates otherwise.

Campaign funds—For purposes of the Government Code, Chapter 302 (relating to Speaker of the House of Representatives), "campaign funds" as defined in §302.011 (relating to Definitions) shall include "interest earned" and shall include "interest paid."

§28.3. Termination of Candidacy. For purposes of the Government Code, §302.013 (relating to Filing of Statement of Contributions, Loans, and Expenditures), a speaker candidate is considered to have terminated the candidacy when the candidate is no longer seeking the office or is ineligible to seek the office.

§28.5. Information to Report. Each report required to be filed with the commission

pursuant to Government Code, §302.013 (relating to Filing of Statement of Contributions, Loans, and Expenditures), shall set forth the total amount of interest earned during the reporting period.

§28.7. Permitted Expenditures. As required by the Government Code, §302.020 (relating to Permitted Expenditures), a speaker candidate shall not expend campaign funds for any purpose other than those permitted by §302.020 (relating to Permitted Expenditures), and then only if those expenditures are directly related to the speaker candidacy; provided, that this section is not intended to prohibit the payment from campaign funds of federal income taxes due on campaign funds.

§28.9. Segregation of Campaign Funds. All contributed campaign funds shall be maintained in accounts separate and apart from any other accounts.

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 September 30, 1993.

TRD-9330021 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

◆ ◆ ◆
**Chapter 30. Lobbyists
Registration**

Subchapter A. General Provisions

• 1 TAC §§30.1, 30.3, 30.5

The Texas Ethics Commission (the commission) proposes new §§30.1, 30.3, and 30.5, concerning the registration and reporting requirements of lobbyists. The sections of Chapter 30 set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administra-

tive procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, 1 (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission. The sections are proposed under Chapter 305, Texas Government Code, which provides the commission with the authority to promulgate rules concerning the registration and reporting requirements of lobbyists.

§30.1. Definitions. The following words and terms, when used in this Chapter 30, Chapter 32 of this title (relating to Activity Reporting by a Lobbyist), and in Chapter 34 of this title (relating to Conduct of Lobbyists) shall have the following meanings, unless the context clearly indicates otherwise.

Administrative action—Rulemaking, licensing, or any other matter that may be the subject of action by a state agency, including the proposal, consideration, or approval of the matter.

Administrative Procedure Act—Texas Government Code, Chapter 2001 (relating to Administrative Procedure).

Client—A person who compensates or reimburses another person to lobby on subject matter dictated by the person who compensates or reimburses.

Communicates directly with, or any variation of the phrase—Contact in person or by telephone, fax, telegraph, or letter.

Compensation—Money, service, facility, or other thing of value or financial benefit that is received or is to be received in return for or in connection with services rendered or to be rendered.

Employer—A person who compensates or reimburses a registrant to lobby,

whether the subject matter on which the registrant lobbies is dictated either by the employer as a client of the registrant, or by a client of the registrant's employer, or both. For purposes of this title, an "employer" of a registrant will also be construed to include any business entity in which the registrant is an officer, owner, partner, or principal, and from which the registrant receives compensation to lobby.

Expenditure—A payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. An expenditure for purposes of this Chapter 30, Chapter 32 of this title (relating to Activity Reporting by a Lobbyist), or Chapter 34 of this title (relating to Conduct of Lobbyists) does not include any tax or tip paid in connection with that expenditure.

Legislation—A bill, resolution, amendment, nomination, or other matter pending in either house of the legislature; any matter that is or may be the subject of action by either house or by a legislative committee, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or any matter pending in a constitutional convention or that may be the subject of action by a constitutional convention.

Lobbying, or any form of the verb "to lobby"—To communicate directly with a member to influence legislation or administrative action.

Lobbyist—A registrant.

Member—A member of the executive branch or a member of the legislative branch.

Member of the executive branch—An officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of state government.

Member of the legislative branch—A member, member-elect, candidate for, or officer of the legislature or of a legislative committee, or an employee of the legislature.

Person—An individual, corporation, association, firm, partnership, committee, club, organization, or group of persons who are voluntarily acting in concert.

Public servant—A member of the legislative, executive, or judicial branch of state government, or an officer or employee of a political subdivision of the state.

Registrant—A person required to register under this chapter, whether that person is or is not registered; and a person who has registered under this chapter, whether or not that person was required to register.

§30.3. Registration Required. A person must register and otherwise comply with the requirements of this chapter if the person

lobbies and either:

(1) is compensated or reimbursed by another person, including a full-time employer, to lobby, as set forth in Subchapter B of this title (relating to Compensated Lobbying); or

(2) makes certain specified expenditures to lobby, as set forth in Subchapter C of this title (relating to Expenditures Made to Lobby).

§30.5. Public Servants Excluded. A public servant who lobbies only on behalf of the government entity the public servant represents is not required to register under this chapter, even if the public servant is compensated or reimbursed to lobby or makes expenditures to lobby in that official capacity.

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 September 30, 1993.

TRD-9330022

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Chapter 30. Personal Financial Disclosure

Subchapter A. Disclosure Statements

Expenditures Previously Reported

• 1 TAC §30.3

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

The Texas Ethics Commission proposes the repeal of §30.3, concerning expenditures previously reported under other statutory provisions. The section is being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

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

Mr. Mathieson also has determined that for each year of the first five years the repeal is

in effect the public benefit anticipated as a result of enforcing the repeal is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeal is proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§30.3. Expenditures Reported under Title 15 of the Texas Election Code.

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

Issued in Austin, Texas, on September 30, 1993.

TRD-9329982

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter B. Compensated Lobbying

- 1 TAC §§30.11, 30.13, 30.15, 30.17, 30.19,

The Texas Ethics Commission (the commission) proposes new §§30.11, 30.13, 30.15, 30.17, and 30.19, concerning the registration and reporting requirements of lobbyists. The sections of Chapter 30 set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 305, Texas Government Code, which provides the commission with the authority to promulgate rules concerning the registration and reporting requirements of lobbyists who have crossed the compensation threshold.

§30.11. Compensation Threshold.

(a) A person must register under this subchapter if the person receives compensation or reimbursement to lobby from one or more persons and the total amount of that compensation and reimbursement received from all sources during a calendar quarter exceeds \$1,000.

(b) Compensation or reimbursement received for lobbying includes compensation or reimbursement received for a registrant's preparation to lobby, if the compensation or reimbursement received for that preparation would not have been received but for the actual lobby activity. Examples of such preparation include strategy sessions, review and analysis of legislation or administrative matters, research, and communication with the client concerning these matters. However, compensation or reimbursement to prepare for lobbying is not included if the person being compen-

sated does not lobby.

(c) Amounts received as reimbursement for a person's own transportation, food and beverage, or lodging expenses, or received as reimbursement for an expense listed under §30.59(f) of this title (relating to Reporting Compensation and Reimbursement), are not included when calculating amounts received as compensation or reimbursement under subsection (a) of this section.

§30.13. Apportionment of Compensation for Lobbying.

(a) This section applies to a person who is compensated or reimbursed for lobbying and for other services that are not lobbying, when the compensation received for lobbying is not specifically identified.

(b) For purposes of §30.11 of this title (relating to Compensation Threshold), a person described in subsection (a) of this section shall make a reasonable allocation of all compensation or reimbursement between compensation or reimbursement received for lobbying and compensation or reimbursement received for non-lobbying services.

§30.15. Incidental Lobbying. An individual compensated or reimbursed to lobby is not required to register under §30.11 of this title (relating to Compensation Threshold), notwithstanding the amount of compensation or reimbursement received to lobby, if lobbying is only an incidental activity of that individual. For purposes of this section, lobbying is an incidental activity if it constitutes no more than 5.0% of the individual's compensated time during a calendar quarter.

§30.17. Registration by a Compensated Lobbying Entity.

(a) For purposes of this section, a "lobbying entity" is a corporation, association, firm, partnership, committee, club, organization, or group of persons voluntarily acting in concert that is compensated or reimbursed to lobby and that employs or retains one or more persons to lobby.

(b) It is the intent of the commission that the public have full disclosure of the items required to be reported under this chapter and Chapter 32 of this title (relating to Activity Reporting by a Registrant).

(c) There are two options for reporting.

(1) The lobbying entity elects to register, and reports the total compensation or reimbursement paid by a client for lobbying. With respect to compensation, each individual registrant employed, retained, compensated, or reimbursed by the lobbying entity is then required to report only the

compensation or reimbursement paid to the individual registrant.

(2) If the lobbying entity declines to register, each individual registrant who is employed, retained, compensated, or reimbursed by the lobbying entity, and with the full cooperation of the lobbying entity, reports either:

(A) the total compensation or reimbursement paid by a client to the lobbying entity for lobbying by all registrants; or

(B) the compensation or reimbursement paid by a client to the lobbying entity for lobbying by the individual registrant.

(d) If the total amount of compensation and reimbursement to lobby received by the lobbying entity is not reported under subsection (c)(2) of this section, the lobbying entity shall register under §30.3 of this title (relating to Registration Required).

(e) The registrant shall indicate on the registration form the reporting election, if any, selected under subsection (c) of this section

§30.19. Exclusions from the Compensation Threshold.

(a) Compensation or reimbursement, including amounts described in §30.11(c) of this title (relating to Compensation Threshold), is not included in determining the compensation threshold under §30.11 of this title (relating to Compensation Threshold) and is not required to be reported for the following activities:

(1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;

(2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;

(3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;

(4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;

(5) communicating in the capacity of one's service on an advisory com-

mittee or task force appointed by a member;

(6) responding to a specific request for information from a member of the legislative or executive branch, when the request was not solicited by or on behalf of the person providing the information;

(7) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(8) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, whether or not that proceeding is subject to the Open Meetings Law;

(9) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act or in public records kept in connection with a legislative hearing;

(10) communicating involved when a person is providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member); or

(11) communicating to a member of the executive branch concerning the purchasing decisions of a state agency, or the negotiations regarding those decisions.

(b) Expenditures to communicate under subsection (a) of this section may require registration under §30.31 of this title (relating to Expenditure Threshold).

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 September 30, 1993.

TRD-9330023

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

◆ ◆ ◆ Subchapter C. Expenditures to Lobby

- 1 TAC §§30.31, 30.33, 30.35, 30.37, 30.39, 30.41

The Texas Ethics Commission (the commis-

sion) proposes new §§30.31, 30.33, 30.35, 30.37, 30.39, and 30.41, concerning the registration and reporting requirements of lobbyists. The sections of Chapter 30 set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 305, Texas Government Code, which provides the commission with the authority to promulgate rules concerning the registration and reporting requirements of lobbyists who have crossed the expenditure threshold.

§30.31. Expenditure Threshold. A person must register under this subchapter if in a calendar quarter the person makes lobby expenditures under §30.33 of this title (relating to Lobby Expenditure) that exceed \$500.

§30.33. Lobby Expenditure.

(a) An expenditure is a lobby expenditure if the expenditure is made to lobby, and is for one or more of the following purposes:

- (1) food, beverages, or both;
- (2) transportation, lodging, or both;
- (3) entertainment;
- (4) a gift, other than an award or memento;
- (5) an award or memento; or
- (6) an expenditure made for the attendance of a member at a political fundraiser or charity event.

(b) An expenditure for a person's own transportation, food and beverages, or lodging shall not be included in calculating the registration threshold under §30.31 of this title (relating to Expenditure Threshold).

§30.35. Indirect Expenditures.

(a) A lobby expenditure made on behalf of and with the consent or ratification of a person shall be deemed to be made by that person:

- (1) for the purpose of determining whether that person must register under §30.31 of this title (relating to Expenditure Threshold); and
- (2) for the purpose of reporting the expenditure, if the expenditure must be reported under Chapter 32 of this title (relating to Activity Reporting by a Lobbyist).

(b) A lobby expenditure described by subsection (a) of this section deemed to be made by more than one person is not required to be reported by more than one person.

§30.37. Lobbying Entity that Makes Lobby Expenditures.

(a) For purposes of this section, a "lobbying entity" is a corporation, association, firm, partnership, committee, club, organization, or group of persons voluntarily acting in concert that makes lobby expenditures.

(b) It is the intent of the commission that the public have full disclosure of the items required to be reported under this chapter and Chapter 32 of this title (relating to Activity Reporting by a Registrant).

(c) If a lobbying entity makes lobby expenditures that exceed the expenditure threshold, the expenditures must be reported by at least one of the persons eligible to report the lobby expenditure under this section.

(d) There are two options for reporting:

(1) the lobbying entity elects to register, and reports the lobby expenditures made by the entity. Each individual registrant employed by the lobbying entity, if any, is required to report only the lobby expenditures made by the individual;

(2) if the lobbying entity declines to register, each individual registrant, as an agent of the lobbying entity and in cooperation with the lobbying entity, reports either:

(A) the total lobby expenditures made by the lobbying entity; or

(B) the lobby expenditures made by the individual registrant.

(e) For an individual to report a lobby expenditure on behalf of a lobbying entity under subsection (d)(2)(A) of this section, that individual must be present for the lobby expenditure.

§30.39. Certain Lobbying Entities Not Required to Register for Lobby Expenditures.

(a) Notwithstanding any other provision of this title, §30.3 of this title (relating to Registration Required) does not apply to:

- (1) a non-profit corporation, an unincorporated association, or a group of persons acting in concert that makes lobbying expenditures, or has lobbying expenditures made on its behalf; and
- (2) those lobbying expenditures are made only in connection with the sponsorship of an event described under paragraph (3) of this section; and

(3) the person described under paragraph (1) of this subsection exists for the limited purpose of sponsoring an event to promote the interests of a designated geographic area or political subdivision (for example, an "Orange County Day").

(b) Notwithstanding any other provision of this title, §30.3 of this title (relating to Registration Required) does not apply to a person whose only activity is to make a lobby expenditure on behalf of a person not required to register under subsection (a) of this section.

§30.41. Reimbursement Not a Lobby Expenditure. Reimbursement of a lobby expenditure is not a lobby expenditure by the person making the reimbursement if the person who receives the reimbursement reports the lobby expenditure as required by §32.21 of this title (relating to Contents of Lobbyist Activity Report).

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

Issued in Austin, Texas, on September 30, 1993.

TRD-9330024 Jim Mathleson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter D. Registration Procedures and Requirements

- 1 TAC §§30.51, 30.53, 30.55, 30.57, 30.59, 30.61, 30.63, 30.65, 30.67

The Texas Ethics Commission (the commission) proposes new §§30.51, 30.53, 30.55, 30.57, 30.59, 30.61, 30.63, 30.65, and 30.67, concerning the registration and reporting requirements of lobbyists. The sections of Chapter 30 set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period these sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Mr. Martin also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposed rules may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is

available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8508.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Title 15, Texas Election Code which provides the commission with the authority to promulgate rules regulating the reporting of political contributions and expenditures by specific-purpose committees.

§30.51. Registration Form.

(a) Each person required to register under this chapter shall file a completed and signed registration form with the commission, accompanied by the registration fee established by § 30.53 of this title (relating to Registration Fee).

(b) The registration form required by this section shall be on a form certified under §18.1 of this title (relating to Adoption and Revision of Forms) and must be verified by the registrant.

(c) A registration form filed without paying the fee under this section will not be accepted or considered filed.

§30.53. Registration Fee.

(a) The registration fee is \$100 for a registrant who is exempt from federal income tax under the Internal Revenue Code of 1986, §501(c)(3) or §501(c)(4), or who is retained, employed, or reimbursed exclusively by one or more organizations that are exempt from federal income tax under the Internal Revenue Code of 1986, §501(c)(3) or §501(c)(4).

(b) The registration fee for all other registrants is \$300.

§30.55. Contents of Registration Form.

(a) A person registering under §30.51 of this title (relating to Registration Form) shall provide the following information on the registration form:

- (1) the registrant's full name;
- (2) the registrant's occupation;
- (3) the registrant's business address;
- (4) the registrant's mailing address, if different than the business address; and
- (5) the registrant's business telephone.

(b) The registrant shall report the following information with respect to each employer of the registrant:

- (1) the employer's full name;
- (2) the employer's address;
- (3) the subject matter on which the registrant lobbies for the employer, unless the registrant certifies that all the subject matters on which the registrant lobbies are listed under subsection (c) of this section; and
- (4) the compensation and reimbursement to lobby paid to the registrant by the employer, unless the registrant certifies that all such compensation from the employer is derived from compensation and reimbursement paid by clients listed under subsection (c) of this section and all such compensation and reimbursement is reported under that subsection.

(c) The registrant shall report the following information with respect to each client of the registrant:

- (1) the client's full name;
- (2) the client's address;
- (3) the subject matter on which the registrant lobbies for the client; and
- (4) the compensation and reimbursement to lobby paid by the client.

(d) If an employer or client of the registrant is a corporation whose shares are not publicly traded, including a non-profit corporation, in addition to the information required under subsection (b) or (c) of this section for the corporation the registrant must report:

- (1) number of shareholders in the corporation;
- (2) name and address of each officer of the corporation;
- (3) name and address of each member of the corporation's board of directors; and
- (4) if the corporation has shares, the name of each person who owns at least 10% of the shares of the corporation.

(e) If an employer or client of the registrant is an unincorporated association, including a business, trade, or consumer interest association, in addition to the information required under subsection (b) or (c) of this section for the association the registrant must report:

- (1) number of members in the association;
- (2) the name of each person who determines the policy of the association relating to legislative or administrative action;
- (3) a full description of the methods by which the association develops and makes decisions about positions on pol-

icy relating to legislative or administrative action; and

(4) a list of those persons, if any, who have made a grant or contribution to the association of more than \$250 per year, in addition to or instead of dues or fees.

(f) the information concerning any person employed or retained by the registrant or the registrant's employer to assist the registrant in lobbying, as provided in §30.57 of this title (relating to Persons Who Assist a Registrant).

(g) A registrant retained or employed by a lobbying entity shall report, as the agent of that lobbying entity, the information required under this section for each client who pays compensation or reimbursement to the lobbying entity as consideration for the registrant's lobbying on behalf of that client, whether the client may be characterized for any other purposes as a client of the registrant, a client of the lobbying entity, or otherwise.

§30.57. Persons Who Assist a Registrant.

(a) The registrant shall report the information required by subsection (b) of this section for any person employed or retained by the registrant or the registrant's employer who assists the registrant in lobbying. For purposes of this section, an assistant includes any person who provides administrative or research assistance to the registrant, but does not include a person who provides only clerical or secretarial help.

(b) The registrant shall report the following information for each assistant described in subsection (a) of this section:

- (1) the assistant's full name;
- (2) the assistant's occupation;
- (3) the assistant's business address;
- (4) the date the assistant was employed or retained by the registrant or the registrant's employer; and
- (5) the subject matter on which assistance is provided by the assistant to the registrant.

(c) A person's status as a registrant is independent of that person's status as an assistant to a registrant, and the requirements of this section are independent of any other requirements of this chapter. A person named as an assistant under this section may be required to register under §30.3 of this title (relating to Registration Required), and one registrant may assist another. Identification as an assistant to a registrant under this section does not relieve a person of any other requirements established by this chapter.

§30.59. Reporting Compensation and Reimbursement.

(a) When this title requires a registrant to report compensation or reimbursement to lobby, the amount shall be reported by the following categories unless the registrant chooses to report the exact amount:

- (1) less than \$10,000;
- (2) at least \$10,000, but less than \$25,000;
- (3) at least \$25,000, but less than \$50,000;
- (4) at least \$50,000, but less than \$100,000;
- (5) at least \$100,000, but less than \$150,000;
- (6) at least \$150,000, but less than \$200,000; or
- (7) \$200,000 or more.

(b) When a person is required by this title to report compensation received, the amount reported may be:

- (1) compensation actually received during the period for which the compensation is reported; or
- (2) compensation earned during the period for which the compensation is reported; or
- (3) compensation that will be received or earned during the period for which the compensation is reported, under the terms of an agreement between the registrant and the person who compensates the registrant.

(c) An amount reported as compensation received under subsection (b)(3) of this section shall be identified on the report as compensation to be received or earned under the terms of an agreement between the registrant and the person who compensates the registrant.

(d) The registrant must amend any report where compensation reported under subsection (b)(3) of this section would be inaccurate if an amendment is not filed.

(e) Compensation reported shall include all compensation for lobbying, including both compensation for direct communication with a member and compensation for services necessary to prepare for that direct communication, if the compensation would not have been necessary but for the direct communication.

(f) Reimbursement received for the following office expenses is not required to be reported under this section:

- (1) long distance phone charges;
- (2) delivery charges;

- (3) photo copy expense;
- (4) fax expense;
- (5) office supplies;
- (6) postage;
- (7) dues and subscriptions;
- (8) transportation not involving direct contact; and
- (9) secretarial or clerical time described under §30.19(a)(10) of this title (relating to Exclusions from the Compensation Threshold).

(g) Reimbursement received by a registrant for a lobby expenditure that the registrant reports under §32.5 of this title (relating to Monthly Activity Report), or that the registrant will report under §32.3 of this title (relating to Annual Activity Report), is not required to be reported under §30.63 of this title (relating to Amended Registration Form).

§30.61. Reporting Subject Matter.

(a) When this title requires a registrant to report the subject matter of the registrant's lobbying activities, the registrant shall describe the legislation or administrative action on which the registrant lobbies or intends to lobby by identifying the appropriate subject matter categories listed on the form or in instructions to the form.

(b) If known or reasonably available to the registrant at the time the registration is filed, the registrant shall report the following information:

- (1) the bill number of any legislation concerning subject matter described in subsection (a) of this section that was specifically discussed or identified in a conversation with, or letter to, a member;
- (2) the docket number of any administrative action concerning a matter described in subsection (a) of this section, and the agency at which the administrative action is pending;
- (3) any other legislative or administrative designation of the legislation or administrative action that identifies the specific matter on which the registrant will lobby.

§30.63. Amended Registration Form.

(a) A registrant shall file an amended registration form to report any change to information reported on the registration form under §30.55 of this title (relating to Contents of Registration Form). No fee is charged for an amended registration form.

(b) Notwithstanding the requirement established by subsection (a) of this

section, a change with respect to a bill number or other legislative designation of legislation is not required to be reported unless the bill number or other legislative designation is related to a subject matter category not previously reported by the registrant under §30.61 of this title (relating to Reporting Subject Matter). A change with respect to a docket number is not required to be reported unless the docket number is related to a subject matter category not previously reported by the registrant under §30.61 of this title (relating to Reporting Subject Matter).

(c) An amended registration form required by this section shall be filed no later than the tenth day of the month after the registrant knows or should reasonably have known of the change.

(d) Information reported under this section shall be limited to information that has changed from previously reported information, or that has not been previously reported. Except as required to identify changed information, a registrant shall not report information on an amended registration form that has been reported and has not changed.

§30.65. Registration Expiration and Renewal.

(a) A registration filed during a calendar year for that calendar year expires automatically at midnight on December 31, unless renewed under this section.

(b) A registration that otherwise expires under this section is renewed for the following calendar year if the registrant files a new registration form or a registration renewal form, together with the registration fee established by §30.53 of this title (relating to Registration Fee) at any time on or after December 1 and before December 31.

§30.67. Termination Notice.

(a) A registrant who permanently ceases to engage in any activity that would require registration under this chapter shall file a termination notice with the commission on a form certified under §18.1 of this title (relating to Adoption and Revision of Forms).

(b) The termination notice required by this section shall:

- (1) acknowledge that the registrant has ceased lobbying;
- (2) report any activity to be reported during the period in which the registration was in effect that has not already been reported; and
- (3) be verified by the registrant.

(c) A termination notice under this section is effective when filed with 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 September 30, 1993.

TRD-9329989

Jim Mathieson
General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter C. Rules Concerning Reports

- 1 TAC §§30.119, 30.121, 30.123, 30.127, 30.131, 30.133, 30.135, 30.137

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

The Texas Ethics Commission proposes the repeal of §§30.119, 30.121, 30.123, 30.127, 30.131, 30.133, 30.135, and 30.137, concerning late personal financial disclosure reports filed with the commission. The sections are being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

Jim Mathieson, assistant general counsel, 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. Mathieson 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 are not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the

Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§30.119. *Late Report.*

§30.121. *Preliminary Notice that Report is Late.*

§30.123. *Determination that Report is Late.*

§30.127. *Affidavit of Timely Report.*

§30.131. *Calculation and Imposition of Fine.*

§30.133. *Appeal of Fine to commission.*

§30.135. *Defenses to Late Filing.*

§30.137. *Report Must be Filed.*

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 September 30, 1993.

TRD-9329989

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 32. Activity Reports by a Lobbyist

Subchapter A. Reports to be Filed

- 1 TAC §§32.1, 32.3, 32.5

The Texas Ethics Commission (the commission) proposes new §§32.1, 32.3, and 32.5, concerning the filing of activity reports by a lobbyist with the commission. The sections of Chapter 32 set forth the procedures and requirements for filing activity reports by those certain persons registered as lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better un-

derstanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a, and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 305, Texas Government Code which provides the commission with the authority to promulgate rules concerning the activity reporting requirements of lobbyists.

§32.1. *Lobbyist Activity Report.*

(a) Each registrant shall report information required under §32.21 of this title (relating to Contents of Lobbyist Activity Report) for a time period during which that person is registered under Chapter 30 of this title (relating to Lobbyist Registration).

(b) The activity report required by this section shall be filed with the commission on a form certified under §18.1 of this title (relating to Adoption and Revision of Forms) and must be verified by the registrant.

(c) A registrant shall file the report required by this section no later than the applicable deadline established by §32.3 of this title (relating to Annual Activity Report) or by §32.5 of this title (relating to Monthly Activity Reports).

§32.3. *Annual Activity Report.*

(a) A registrant who states an intent to make lobby expenditures of no more than \$1,000 during the calendar year for which

the registration is effective may file an annual activity report under this section.

(b) The statement of intent required by subsection (a) of this section to file an annual activity report shall be made on a registration form filed under §30.51 of this title (relating to Registration Form), a registration renewal form filed under §30.45 of this title (relating to Registration Expiration and Renewal), or an amended registration form filed under §30.63 of this title (relating to Amended Registration Form).

(c) The annual activity report shall include all information required by §32.21 of this title (relating to Contents of Lobbyist Activity Report) for the preceding calendar year.

(d) A report filed under this section is due no later than January 10 of the year following a calendar year in which the registrant was registered.

(e) A registrant who has filed the statement of intent under subsection (b) of this section but who makes lobby expenditures that exceed \$1,000 during the calendar year must file monthly activity reports under §32.5 of this title (relating to Monthly Activity Reports).

§32.5. Monthly Activity Report.

(a) Each registrant shall file a monthly activity report under this section unless the registrant has qualified to file an annual activity report under §32.3 of this title (relating to Annual Activity Report).

(b) The first monthly activity report in a calendar year shall be filed no later than the 10th day of the month that follows the first month or part of a month in which the registrant is registered. This first report shall be for the period that begins on January 1 of that calendar year and ends on the last day of the month before the date the first report is due. For example, if a registrant has filed a registration or renewal of a registration in December, 1993, the first monthly activity report is due by February 10, 1994, for the period of January 1 through January 31, 1994. If a registrant first registers on May 4, 1994, that registrant's first monthly report is due by June 10, 1994, for the period of January 1, 1994-May 31, 1994.

(c) After the first monthly activity report in a calendar year is filed, the registrant shall file a monthly activity report between the first and tenth day of each month, covering activity during the preceding calendar month.

(d) Each monthly activity report shall include all information required by §32.21 of this title (relating to Contents of Lobbyist Activity Report) for the applicable period. If the registrant has no activity to

report, the monthly activity report shall note that there was no activity to report.

(e) A registrant who qualifies to file an annual activity report under §32.3 of this title (relating to Annual Activity Report) instead of a monthly activity report under this section may elect to do so at any time.

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 September 30, 1993.

TRD-9330025

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Subchapter B. General Information to be Reported

- 1 TAC §§32.21, 32.23, 32.25, 32.27, 32.29, 32.31

The Texas Ethics Commission (the commission) proposes new §§32.21, 32.23, 32.25, 32.27, 32.29, and 32.31, concerning the filing of activity reports by a lobbyist with the commission. The sections of Chapter 32 set forth the procedures and requirements for filing activity reports by those certain persons registered as lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commis-

sion considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, §24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 305, Texas Government Code, which provides the commission with the authority to promulgate rules concerning the activity reporting requirements of lobbyists.

§32.21. Contents of Lobbyist Activity Report.

(a) The activity report required by §32.1 of this title (relating to Lobbyist Activity Report) shall disclose all lobby expenditures described in subsection (b) or subsection (c) of this section that were:

(1) made by the registrant under §30.33 of this title (relating to Lobby Expenditure); or

(2) made on behalf of and with the consent or ratification of the registrant, unless that lobby expenditure is reported by another registrant.

(b) Unless the expenditure is to be reported under subsection (d) of this section, a lobby expenditure shall be classified and reported under only one of the following categories:

- (1) food and beverages;
- (2) transportation and lodging;
- (3) gifts, other than an award or a memento;
- (4) awards and mementos;
- (5) entertainment; or
- (6) expenditures made for the attendance of members at a political fundraiser or charity event.

(c) Unless the expenditure is to be reported under subsection (d) of this section, a lobby expenditure reported under subsection (b) of this section shall also be classified and reported as being directly attributable to only one of the following beneficiaries of the expenditure:

- (1) members of the Texas Senate;
- (2) members of the Texas House of Representatives;

(3) employees of a legislative agency;

(4) elected or appointed officers of the executive branch of state government;

(5) employees of the executive branch of state government;

(6) a spouse or a dependent child of a member of the legislative or executive branch; or

(7) the registrant.

(d) If a lobby expenditure was for an event to which all members of the legislature were invited, the expenditure shall be identified only as such an expenditure and shall not be reported or classified under subsection (b) of this section, subsection (c) of this section, under §32.53 of this title (relating to Detailed Reports for Food and Beverages), or under §32.55 of this title (relating to Detailed Reports for Entertainment). For example, if a registrant hosts a reception to which all members of the legislature were invited, all lobby expenditures associated with the event are reported only as "an event to which all members of the legislature were invited" and not in any other category under this chapter that requires classification of the expenditure by type or to whom the expenditure is attributed.

(e) If the registrant cannot determine the amount of a lobby expenditure that is directly attributable to one or more of the beneficiaries of an expenditure under subsection (c) of this section, the registrant may reasonably allocate that expenditure for purposes of reporting under that subsection.

(f) A registrant shall report expenditures for broadcast or print advertisement, direct mailings, and other mass media communications if:

(1) the mass media communications are made to a person other than a member, employee, or stockholder of an entity which reimburses, retains or employs the registrant; and

(2) the mass media communications support or encourage another to support or oppose pending legislation or administrative action.

(g) The report must list the specific subject matter of all lobbying activities by the following, whether or not a lobby expenditure is made:

(1) the registrant;

(2) any person who assists the registrant under §30.57 of this title (relating to Persons Who Assist a Registrant); and

(3) any other person who lobbies on the registrant's behalf and with the registrant's consent.

§32.23. Attribution of Expenditures. A lobby expenditure reported under §32.21(c) of this title (relating to Contents of Lobbyist Activity Report) shall be attributed as follows:

(1) for a food or beverage expenditure, to the person who consumed the food or beverage;

(2) for transportation and lodging, to the person for whom the expenditure was paid;

(3) for an entertainment expenditure, or for an expenditure for the attendance of a member at a political fundraiser or charity event, to the person for whom the admission or ticket or contribution was paid; or

(4) for a gift, award, or memento, to the person receiving the gift, award, or memento.

§32.25. Apportionment of Expenditures.

(a) If a registrant makes a lobby expenditure to lobby more than one member, and cannot reasonably determine the amount of that lobby expenditure to directly attribute to a member, the registrant shall apportion the expenditure according to the total number of persons to whom the expenditure could be attributed.

(b) The registrant shall provide a detailed report as required by Subchapter C of this title (relating to Detailed Information to be Reported) if a lobby expenditure apportioned under this section and attributed to a member must be reported under that section.

§32.27. When Expenditures Are Reported. A lobby expenditure is not considered to have been made until the amount of the expenditure is readily determinable by the person making the expenditure. If under normal business practice an expenditure is not disclosed to a registrant until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received.

§32.29. Reporting Certain Lobby Expenditures Attributable to Registrant. An expenditure for a person's own transportation, food and beverages, or lodging is not required to be reported under §32.21 of this title (relating to Contents of Lobbyist Activity Report) when the expenditure was merely to prepare for lobbying and not in the presence of a member, the spouse of a member, or a dependent child of a member. For example, the cost of a registrant's airplane ticket, meals, and hotel room in Austin is not reportable if the registrant's only contact with the member lobbied is in

that member's office. However, if the registrant is present at a meal, or has purchased an airplane ticket with the intent of lobbying a member while on the airplane, or the registrant's presence is intended to generate or maintain the goodwill of the member, the associated lobby expenditure must be reported.

§32.31. Lobby Expenditure Not a Political Contribution. A lobby expenditure required to be reported under §32.21 of this title (relating to Contents of Lobbyist Activity Report) is not a political contribution. A lobby expenditure is regulated by this title and not under Election Code, Title 15 (relating to Regulating Political Funds and Campaigns).

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 September 30, 1993.

TRD-9330026

Jim Mathleson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

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• 1 TAC §§32.51, 32.53, 32.55,
32.57, 32.59, 32.61

The Texas Ethics Commission (the commission) proposes new §§32.51, 32.53, 32.55, 32.57, 32.59, and 32.61, concerning the filing of activity reports by a lobbyist with the commission. The sections of Chapter 32 set forth the procedures and requirements for filing activity reports by those certain persons registered as lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La

Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, 24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to Statute: The sections are proposed under Chapter 305, Texas Government Code, which provides the commission with the authority to promulgate rules concerning the detailed information reporting requirements of lobbyists.

§32.51. Detailed Reports for Transportation or Lodging.

(a) Detailed information must be reported by a registrant if the registrant makes lobby expenditures for transportation or lodging that are attributable to a member and exceed \$50 during a day.

(b) The information reported under this section shall include:

(1) the name of the member to whom the expenditure is attributed under §32.23 of this title (relating to Attribution of Expenditures);

(2) the purpose of the transportation or lodging, including the name of the conference, seminar, or other event, if applicable;

(3) the dates on which the member used the transportation or lodging;

(4) the name of the carrier;

(5) identification of all departure and arrival cities; and

(6) the name and address of the hotel, motel, or other place where lodging was provided.

§32.53. Detailed Reports for Food and Beverages.

(a) Unless the expenditure is to be reported under §32.21(d) of this title (relating to Contents of Lobbyist Activity Report), detailed information must be reported by a registrant if the registrant makes lobby

expenditures for food, beverages, or both, that are attributable to a member and exceed \$50 during a day.

(b) The information reported under this section shall include:

(1) the name of the member to whom the expenditure is attributed under §32.23 of this title (relating to Attribution of Expenditures);

(2) the name and address of the restaurant or other vendor providing the food and beverages;

(3) the location where the food and beverages were served;

(4) the date the food and beverages were consumed by the member; and

(5) the amount of the lobby expenditure, as provided under §32.61 of this title (relating to Expenditure Categories for Detailed Reporting).

§32.55. Detailed Reports for Entertainment.

(a) Unless the expenditure is to be reported under §32.21(d) of this title (relating to Contents of Lobbyist Activity Report), detailed information must be reported by a registrant if the registrant makes lobby expenditures for entertainment that are attributable to either a member, the spouse of a member, or a dependent child of a member, and exceed \$50 during a day.

(b) The information reported under this section shall include:

(1) the name of the member, spouse of a member, or dependent child of a member to whom the expenditure is attributed under §32.23 of this title (relating to Attribution of Expenditures);

(2) the name and address of the business where the entertainment was provided;

(3) the date the entertainment was provided; and

(4) the amount of the lobby expenditure, as provided under §32.61 of this title (relating to Expenditure Categories for Detailed Reporting).

§32.57. Detailed Reports for a Gift, Award, or Memento.

(a) Detailed information must be reported by a registrant if the registrant makes lobby expenditures for a gift, award, or memento attributable to a member that exceeds \$50 for that gift, award, or memento.

(b) The information reported under this section shall include:

(1) the name of the member;

(2) a general description of the

gift, award or memento;

(3) the amount of the lobby expenditure, as provided under §32.61 of this title (relating to Expenditure Categories for Detailed Reporting).

(c) A lobby expenditure under subsection (a) of this section made in conjunction with an expenditure to be reported under §32.59 of this title (relating to Detailed Reports for a Political Fundraiser or Charity Event) shall be reported under this section alone.

§32.59. Detailed Reports for a Political Fundraiser or Charity Event.

(a) Detailed information must be reported by a registrant if the registrant makes a lobby expenditure in any amount attributable to a member so that member may attend a political fundraiser or charity event.

(b) The information reported under this section shall include:

(1) the name of the member to whom the expenditure is attributed under §32.23 of this title (relating to Attribution of Expenditures);

(2) the name of the charity, if the event was a charity event;

(3) the name of each candidate or officeholder who benefits from the political fundraiser, if the event was a political fundraiser; and

(4) the date of the event.

(c) A lobby expenditure under §32.57 of this title (relating to Detailed Reports for a Gift, Award, or Memento) made in conjunction with an expenditure to be reported under this section shall be reported only under §32.57 of this title (relating to Detailed Reports for a Gift, Award, or Memento).

§32.61. Expenditure Categories for Detailed Reporting. The amount of a lobby expenditure to be reported under this section must be reported as either:

(1) the exact amount of the expenditure; or

(2) in a \$50 category as shown on the reporting form, based on the exact amount of the expenditure. For example, an expenditure of \$378.95 for transportation may be reported as "at least \$350, but less than \$400."

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 September 30, 1993.

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For further information, please call: (512) 463-5800

Chapter 34. Conduct of Lobbyists

Subchapter A. Restrictions on Lobby Expenditures

• 1 TAC §§34.1, 34.3, 34.5, 34.7, 34.9, 34.11, 34.13

The Texas Ethics Commission (the commission) proposes new §§34.1, 34.3, 34.5, 34.7, 34.9, 34.11, and 34.13, concerning the conduct of those certain persons registered as lobbyists with the commission. The sections of Chapter 34 set forth the restrictions on lobbying expenditures, and prohibits certain conduct by lobbyists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, 24a

and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to Statute: The sections are proposed under Chapter 305, Texas Government Code, which provides the commission with the authority to promulgate rules restricting certain lobby expenditures.

§34.1. Maximum Annual Lobby Expenditures.

(a) During a calendar year, a registrant shall not make a lobby expenditure that by itself or in an aggregate amount exceeds \$500 for:

- (1) entertainment attributable to a member;
- (2) a gift or gifts attributable to a member; or
- (3) one or more awards or mementos attributable to a member.

(b) A registrant may make lobby expenditures in any amount for food and beverages attributable to a member, a member's spouse, or a member's dependent child, or for the member to attend one or more political fundraiser or charity events.

(c) Subject to the restrictions imposed by §34.5 of this title (relating to Expenditures for Transportation and Lodging), a registrant may make lobby expenditures in any amount for transportation or lodging attributable to a member.

§34.3. Presence Required.

(a) A registrant must be present at any event where the registrant makes a lobby expenditure for food, beverages, transportation, lodging, or entertainment that is attributable to a member, or when making an expenditure for a member to attend a political fundraiser or charity event.

(b) A registrant who is an individual is present for purposes of subsection (a) of this section if the individual registrant is physically present for at least part of the event.

(c) A registrant who is not an individual is present for purposes of subsection (a) of this section if one of the following individuals is physically present for at least part of the event:

- (1) an individual registrant who represents, as his or her client, the person who makes the lobby expenditure;
- (2) an officer, director, employee, or stockholder of the registrant who makes the lobby expenditure, if that officer, director, employee, or stockholder is also a registrant; or
- (3) a person, even if this person

is not registered, whose position, authority, or conduct on behalf of the registrant who makes the lobby expenditure could support an award of exemplary damages against that registrant.

§34.5. Expenditures for Transportation and Lodging.

(a) A registrant may not make a lobby expenditure attributable to a member for transportation or lodging unless:

(1) the purpose of the travel is to explore matters directly related to the members' duties; or

(2) the expenditure is made in connection with a conference or similar event at which the member renders services which are more than merely perfunctory services.

(b) Subsection (a) of this section applies to an expenditure for transportation or lodging attributable to the spouse or a dependent child of a member if the expenditure is on behalf of and with the consent or ratification of that member.

(c) Notwithstanding subsection (a) of this section, an expenditure for transportation of only an incidental value is not prohibited by this section. For example, this section does not prohibit a registrant from offering, or a member from accepting, transportation in the form of a ride of short duration in a personal car or by taxi.

§34.7. Reimbursed Expenditures for Transportation and Lodging.

(a) A registrant may make an expenditure for transportation or lodging that is otherwise prohibited under §34.5 of this title (relating to Expenditures for Transportation and Lodging) if member has agreed to fully reimburse the registrant and the expenditure is promptly reimbursed by the member.

(b) A expenditure for transportation or lodging made under this section is not deemed to be a loan prohibited by §34.13 of this title (relating to Loans to a Member by a Registrant).

§34.9. Gift of Cash or Negotiable Instrument.

(a) A registrant may not give a member a gift of cash or a negotiable instrument.

(b) This section does not apply to a gift that is a political contribution regulated by this title and under Election Code, Title 15 (relating to Regulating Political Funds and Campaigns).

§34.11. Gifts to a Member by a Related

Registrant. Neither §34.1 of this title (relating to Maximum Annual Lobby Expenditures) nor §34.7 of this title (relating to Gift of Cash or Negotiable Instruments) prohibits or restricts a gift to a member by a registrant who is related to that member within the second degree of affinity or consanguinity, as determined in accordance with the Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity).

§34.13. Loans to a Member by a Registrant.

(a) Except as permitted under subsection (b) or (c) of this section, a registrant shall not make a loan to a member, or guarantee or endorse a loan by another person to a member.

(b) This section does not apply to prohibit a loan by a registrant under the following circumstances:

(1) the registrant making the loan is a corporation or other business entity that has been legally and continuously engaged in the business of lending money for more than one year before the loan is made; and

(2) the loan to the member is made in the due course of business by that registrant.

(c) This section does not prohibit a loan, or the guarantee or endorsement of a loan, to a member by a registrant who is related to the member within the second degree of affinity or consanguinity, as determined in accordance with the Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity).

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 September 30, 1993.

TRD-9330028 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

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Subchapter B. Prohibited Conduct

• 1 TAC §§34.31, 34.33, 34.35

The Texas Ethics Commission (the commission) proposes new §§34.31, 34.33, and 34.35, concerning the conduct of those certain persons registered as lobbyists with the commission. The sections of Chapter 34 set forth the restrictions on lobbying expenditures, and prohibits certain conduct by lobby-

ists. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, 24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to Statute: The sections are proposed under Chapter 305, Texas Government Code, which provides the commission with the authority to promulgate rules concerning the regulation of lobbyists conduct.

§34.31. False Communications. A person, for the purpose of influencing legislation or administrative action, may not:

(1) knowingly or willfully make a false statement or misrepresentation of the facts to a member; or

(2) cause a copy of a document the person knows to contain a false statement to be received by a member without notifying the member in writing of the truth.

§34.33. Conflict of Interest.

(a) Except as authorized under subsection (c) of this section, a registrant shall decline an offer of employment if the exercise of the registrant's independent, professional judgment on behalf of any client or employer who employs or retains the registrant will be, or is likely to be, adversely affected by the acceptance of that employment.

(b) Except as authorized under subsection (c) of this section, a registrant may not continue employment by more than one client or employer if the exercise of the registrant's independent, professional judgment on behalf of one client or employer will be, or is likely to be, adversely affected by the registrant's employment by another client or employer.

(c) A registrant may represent multiple clients or employers in situations covered by subsection (a) or (b) of this section only with the consent of each potentially affected client or employer, after full disclosure of the possible effects of that representation on the registrant's professional judgment.

(d) If a registrant is required to decline employment on a specific matter or to withdraw from employment on a specific matter under this section, a partner or other person associated with that registrant may not accept or continue that employment on that matter.

(e) A registrant shall resolve a conflict of interest prohibited by this section by withdrawing from employment or obtaining the required consent under subsection (c) of this section no later than the third business day after the day the registrant first becomes aware of the conflict.

§34.35. Contingent Fees to Lobby.

(a) No person, whether registered or not, shall render any service or accept employment to lobby if the consideration for that service or employment is totally or partially contingent on the passage or defeat of any legislation; the governor's approval or veto; or the outcome of administrative action.

(b) No person, whether registered or not, shall retain or employ another person to lobby if the consideration for that person's employment is totally or partially contingent on the passage or defeat of any legislation; the governor's approval or veto; or the outcome of administrative action.

(c) A sales commission paid to an employee of a vendor of a product is not prohibited by this 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 September 30, 1993.

TRD-9330029

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

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For further information, please call: (512) 463-5800

Chapter 40. Registration and Regulation of Lobbyists

- 1 TAC §§40.1, 40.3, 40.5, 40.7, 40.9, 40.11, 40.13, 40.15, 40.19, 40.21, 40.23, 40.25, 40.27, 40.31, 40.33, 40.119, 40.121, 40.123, 40.127, 40.131, 40.133, 40.135, 40.137

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

The Texas Ethics Commission proposes the repeal of §§40.1, 40.3, 40.5, 40.7, 40.9, 40.11, 40.13, 40.15, 40.19, 40.21, 40.23, 40.25, 40.27, 40.31, 40.33, 40.119, 40.121, 40.123, 40.127, 40.131, 40.133, 40.135, and 40.137, concerning registration and regulation of lobbyists. The sections are being repealed because of a recodification of all commission rules resulting in the assignment of new chapter and section numbers to those sections being retained or replaced.

Jim Mathieson, assistant general counsel, 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 sections.

Mr. Mathieson 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 is not applicable.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the

Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§40.1. *Application of the Expenditure Threshold.*

§40.3. *Application of the Compensation Threshold.*

§40.5. *Exclusions from Administrative Action Lobbying.*

§40.7. *Activities that Do Not Require Registration.*

§40.9. *Persons Who Assist the Registrant.*

§40.11. *Identifying the Amount of the Compensation.*

§40.13. *Disclosing the Lobbyist Employer.*

§40.15. *Lobby Registration Fee.*

§40.19. *Identifying Subject Matters.*

§40.21. *Adding or Deleting Clients.*

§40.23. *Identifying Persons Who Make Grants or Contributions.*

§40.25. *Detailed Reporting.*

§40.27. *Exclusion from the Definition of "Transportation."*

§40.31. *Legislative Advertising.*

§40.33. *Conflicts of Interest: Waiver; Withdrawal from Representation.*

§40.119. *Late Report.*

§40.121. *Preliminary Notice that Report is Late.*

§40.123. *Determination that Report is Late.*

§40.127. *Affidavit of Timely Report.*

§40.131. *Calculation and Imposition of Fine.*

§40.133. *Appeal of Fine to Commission.*

§40.135. *Defenses to Late Filing.*

§40.137. *Report Must be Filed.*

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 September 30, 1993.

TRD-9329984

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 40. Financial Disclosure for Public Officers

- 1 TAC §40.1, §40.3

The Texas Ethics Commission (the commission) proposes new §40.1, and §40.3, concerning the form used by certain public officials in filing their financial disclosure statements with the commission. These and other new rules are proposed to entirely replace the commission's current rules.

Andrew Martin, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin 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 a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rules are proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, 24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Chapter 572, Texas Government Code, which provides the commission with the authority to promulgate rules concerning the filing of disclosure statements by certain public officials.

§40.1. Financial Statement.

(a) The Texas Ethics Commission adopts by reference the financial statement form prescribed by the commission on January 13, 1992. This form is available from the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

(b) The form adopted under subsection (a) of this section may be revised by the executive director under §18.1 of this title (relating to Adoption and Revision of Forms), and if so revised shall be deemed to have been adopted by the commission under this section.

§40.3. Expenditures Reported under Election Code, Title 15. Any person who has reported the receipt of conference transportation, meals, or lodging expenses permitted under the Penal Code, §36.07 (relating to Acceptance of Honorarium), on that person's candidate's sworn report of contributions and expenditures form filed pursuant to the Election Code, Title 15 (relating to Regulating Political Funds and Campaigns), is not required to again list that information on that person's financial statement filed pursuant to the Government Code, Chapter 572 (relating to Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest).

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 September 30, 1993.

TRD-9330030 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

Chapter 50. Legislative Salaries and Per Diem

• 1 TAC §50.1

The Texas Ethics Commission (the commission) proposes new §50.1, concerning legis-

lative salaries and legislative per diem. These and other new rules are proposed to entirely replace the commission's current rules.

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

Mr. Martin also has determined that for each year of the first five years the section are in effect the public benefit anticipated as a result of enforcing the section will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with these sections as proposed. Mr. Martin also has determined that these rules will have no local employment impact.

Comments on the proposal may be mailed or delivered to Andrew Martin, General Counsel, Texas Ethics Commission, 1101 Camino La Costa, P.O. Box 12070, Austin, Texas 78711-2070, or may be transmitted by facsimile (fax) to (512) 463-5777. Those who want to offer written or spoken comments on the proposed rules to the commission may also do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period available when the commission considers final adoption of the proposed rules. On the date these proposed rules are published, the next meeting of the commission is scheduled for November 18, 1993. That meeting date may be changed. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new rule is proposed under the Texas Government Code, Chapter 571, §571.062, and the Texas Constitution, Article III, 24a and Article IV, §17, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

Cross reference to statute: The sections are proposed under Article III, §24a, and Article IV, §17, of the Texas Constitution, which provides the commission with the authority to promulgate rules concerning the setting of legislative per diem.

§50.1. Legislative Per Diem.

(a) The legislative per diem is \$90. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and any special session in 1993, and this rule shall be applied retroactively to ensure payment of the \$90 per diem for 1993.

(b) The per diem set by the commission under subsection (a) of this section may be revised for a calendar year after

1993.

(c) Any action under subsection (b) of this section to revise the per diem requires the affirmative vote of five commissioners, but does not require an amendment to this rule.

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

Issued in Austin, Texas, on September 30, 1993.

TRD-9330031 Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 463-5800

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

• 4 TAC §§28.1-28.3, 28.6-28.11, 28.13, 28.14

The Board of Directors of the Texas Agricultural Finance Authority of the Texas Department of Agriculture (the department) proposes amendments to §§28. 1-28.3, 28.6-28.11, 28.13 and 28.14, concerning procedures for participation in the Texas Agricultural Finance Authority (TAFA) Loan Guaranty Program. The amendments are proposed in order to clarify and update sections that provide a general statement of authority, purpose of the program, definitions, general project eligibility requirements, application requirements and procedures for filing of applications, general terms and conditions of the authority's financial commitment and criteria for approval of a guaranty, and to make these consistent with statutory changes made by the 73rd Legislature, 1993.

Mr. Robert Kennedy, deputy assistant commissioner for agricultural finance, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. It is anticipated that the revenue generated by the program from application fees and interest income will be adequate to cover cost of administration of the program.

Mr. Kennedy also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the potential to generate up to \$5 million in new agricultural loans. There will be no effect on small business. There will be no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §58.023, which provides the TAFE Board with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFE Loan Guaranty Program; and §58.022, which provides the board with the authority to adopt rules and procedures for administration of the TAFE Loan Guaranty Program. The amendments implement the Texas Agriculture Code, Chapter 58.

§28.1. Authority. Through action of the Texas Legislature and the approval of the Texas voters [in the passage of Constitutional Amendment 3 on November 7, 1989], the Texas Agricultural Finance Authority is authorized to issue general obligation bonds, or other indebtedness backed by the State of Texas, and revenue bonds to provide financial assistance to eligible agricultural businesses through [a] direct loans. [loan] loans [a loan] to lenders, purchasing participations in loans, [or a] loan insurance. or a loan guaranty program.

§28.2. Purpose. The purpose of the Texas Agricultural Finance Authority Loan Guaranty Program is to provide financial assistance to eligible agricultural businesses that otherwise would not be provided and that the board of the Texas Agricultural Finance Authority (the Authority) considers to present a reasonable risk and have a sufficient likelihood of repayment. The Authority is mandated to support the expansion, development, and diversification of production, processing, marketing, and exporting of Texas agricultural products. These rules establish standards of eligibility and the application procedures for the [a] loan guaranty program.

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

Agricultural business—A business that is or proposes to be engaged in innovative, diversified, or value-added production, processing, marketing, or exporting of an agricultural product.

Application—An application, including supporting documentation and schedules as required by the Authority [board], for participation in this program.

[Credit review committee]—The committee, consisting of two board members, as determined by the board chairman, and the commissioner of agriculture or the deputy commissioner of agriculture or the official

of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs.]

Project—An enterprise which would further the expansion or [.] development[,] of innovative, diversified, or value added [or diversification of production, processing marketing, or exporting of Texas agricultural products.

§28.6. Texas Agricultural Fund.

(a) The fund. The fund, established in the state treasury, may consist of general obligation bond or commercial paper note proceeds, appropriations, or transfers made to the fund, guaranty fees, monies received from the operation of the program, interest paid on money in the fund from the operation of the program, interest paid on money in the fund and any other monies received from other sources for the fund. The board may provide for the establishment and maintenance of separate accounts within the fund, including loan guaranty program accounts as prescribed by the board.

(b) Loan guaranty. The Texas Agricultural Finance Authority (the Authority) may determine, in the application process, that a loan guaranty to a lender would best facilitate the project. Such loan guaranty shall not exceed 90% of the total loan, with such percentage being determined on a case-by-case basis. The term of the loan may be varied in length as determined by an agreement between the Authority and the lender. The loan guaranty shall not exceed \$2 million, except that by a two-thirds vote of the board a loan guaranty may exceed \$2 million but not exceed \$5 million.

§28.7. Project Eligibility Requirements.

(a) Projects. An applicant is eligible for assistance from the Texas Agricultural Finance Authority (the Authority) if the proposed project meets the following criteria:

(1) the project provides significant benefits for the expansion or development of diversified, innovative, or value-added production, processing, marketing, or exporting of Texas agricultural products; provided that the board shall give priority to agricultural businesses that include producers of Texas agricultural products; provided, also, that the board will give preference to applicants, the majority ownership of which is held by citizens of the United States; and if the applicant is a corporation, the board will give preference to a corporation organized under the laws of the State of Texas with majority ownership by Texas residents; provided further, that the board will give preference to applicants who are Texas residents doing business in the state[,] and

[then] to applicants who can demonstrate that the financed activities will take place predominantly in the state; provided that the board will also give preference to those agricultural businesses that demonstrate a significant new technology or market opportunity for Texas producers; provided, finally, that the board may decline to assist those businesses whose primary purpose is to establish or expand conventional agricultural production:

(2) the project will create or retain employment, directly or indirectly, in the diversified, innovative, or value-added agricultural production, processing, marketing or exporting of agricultural products [and distribution systems in Texas];

(3) there is a reasonable level of equity in the project [applicant], which is determined on a case-by-case basis by the Authority and the lender; provided that the applicant must provide at least 10% of the total cost of the project for an existing business and at least 20% of the total cost of the project for a start-up;

(4)-(8) (No change.)

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

§28.8. Filing Requirements and Consideration of Applications.

(a) (No change.)

(b) Submission of application. All applicants are required to obtain a preliminary commitment from a lender before applications will be accepted by the Texas Agricultural Finance Authority (the Authority)[for credit review]. Staff will be available prior to submission of the application to assist applicants in identifying lenders and determining project eligibility.

(c) Staff review. Staff will review [reviews] the application for completeness and will notify [notifies] the lender [applicant] of any additional information required. When all required information has been received, staff will conduct a credit review, evaluate the technical and market feasibility of the project, and examine the benefits of the project for Texas agriculture and economic growth in the state.

(d) Board review. [Credit review committee.] Staff will submit a report on each qualified application to the board. [credit review committee]. The credit review committee will recommend approval or disapproval of each application to the board; recommendations for approval require an affirmative vote of all members of the credit review committee present and voting.] The board [credit review committee] may, in its discretion, recommend the imposition of conditions and requirements in connection with approval of a qualified [an] application. Approval of a qualified

application will be by a majority of a quorum of the board.

(e) Notification of approval. Upon conditional approval of the qualified application by the board, the Authority will notify the lender and the applicant in writing identifying the terms and conditions of the loan guaranty. The board may set certain time limits regarding the acceptance of loan commitments by the applicant and lender and time limits regarding the closing of loans by the applicant and lender; however, in no event shall the time period exceed 90 days unless approved by the board. The lender will prepare the written agreements and documents necessary to close the loan guaranty in accordance with the terms and conditions set forth in the notice of conditional approval. The Authority will send the lender and the applicant final notice of guaranty approval after review of the closing documents. The lender will disburse the loan according to the terms of the note and/or loan agreement.

(f) Denial of qualified application. If the qualified application is denied by the board, the Authority will notify the applicant and the lender in writing identifying the reasons for denial. In the event of a denial, the applicant may petition the board for review of the denial by filing a written request with the official of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs within 30 days after the date of the denial. An appeal must address the reasons for denial and, if applicable, set forth any cure of the reasons for denial. The board may grant or deny the appeal at any time and take such further action as the board deems appropriate. The board's review on appeal is limited to a review of the reasons for denial as stated in the notification letter of denial to the applicant.

(g)-(h) (No change.)

(i) The Authority shall make a good faith effort to provide loan guaranties, in an amount of at least 20% of the total loan guaranties, to businesses owned by minorities and to provide loan guaranties, in an amount of at least 10% of the total loan guaranties, to businesses owned by women.

§28.9. Contents of Qualified Application.

(a) Required information. The application must set forth the information necessary for the determination of eligibility and will include the following as appropriate to the nature of the loan being requested:

(1) (No change.)

(2) names, addresses, resumes, and references of owners, principal inves-

tors, board members, and management, including percentage of ownership of the business;

(3)-(7) (No change.)

(8) pro forma cash flows, [flow and] income statements, and balance sheets for at least three years, including the underlying assumptions used, to be provided by the applicant and/or the lender;

(9)-(12) (No change.)

(13) for construction projects, the approximate date construction will commence, completion date, and date by which the project will be fully operational; including copies of cost estimates for construction;

(14) (No change.)

(15) disclosure of any and all business affiliations of the applicant, or its owners, principal investors, board members, and management with members of the board of the [Texas Agricultural Finance] Authority [(the Authority)], staff, and/or the lender which could present a conflict of interest; and

(16) personal history questionnaire for all guarantors and/or owners with more than 20% ownership.

(b) (No change.)

§28.10. General Terms and Conditions of the Texas Agricultural Finance Authority's Financial Commitment.

(a) Permissible use of financial commitment. The [Texas Agricultural Finance] Authority's financial commitment is to be used to finance the project identified on the qualified application.

(b) (No change.)

(c) Maximum amount of loan guaranty. The Authority shall not provide a loan guaranty to an applicant, including its affiliates, that at any one time exceeds \$2 million except that by a two-thirds vote of the board a loan guaranty may exceed \$2 million but may not exceed \$5 million. The assistance in the form of a loan guaranty shall not exceed 90% of the total loan.

(d) Extent of participation. The Authority may participate in a loan [guaranty] to the extent necessary and appropriate to facilitate the required financing of a project. The Authority's participation in a loan [guaranty] may be in the form of either the acquisition of an undivided interest in the loan from the lender or the agreement to pay a portion of the loan to the lender in the event of default by the borrower. The applicant may seek coparticipation in financial assistance from other private and governmental sources. In any event, the Authority's maximum participation in the credit

may not exceed 90% of the project costs or \$2 million except that by a two-thirds vote of the board a loan guaranty may exceed \$2 million but may not exceed \$5 million and the lender must remain at risk for at least 10% of the principal amount.

(e)-(g) (No change.)

(h) Fees. The board shall adopt a fee schedule which will [can] be used to calculate the loan guaranty fee payable by the applicant to the Authority within 10 [30] days of the initial funding of the loan [closing]. A nonrefundable application fee will be required in the amount of \$100 with the qualified application. If the qualified application is approved, the application fee will be considered as part of the loan guaranty fee. Any and all legal fees incurred by the board in issuing a guaranty [guarantee] or participating in any loan will be an obligation of the applicant.

(i)-(j) (No change.)

§28.11. Criteria for Approval of a Loan Guaranty [Guarantee].

(a) (No change.)

(b) Reasonable risks. There must be reasonable assurance, in the judgment of the Authority, that the loan can and will be paid back according to its terms. In making this judgment the Authority may consider the following:

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

(4) collateral and other sources of guaranties [guaranty] or insurance securing the loan;

(5)-(7) (No change.)

(c) Eligibility of lender. The lender originating a loan must have a continuing ability to evaluate, perform, and service the loan; [to] make the necessary reports as identified in the rules of the program; and [to] collect the loan, if requested by the Authority, upon default. The lender must agree to exercise due diligence in the servicing, maintenance, review, and evaluation of performance without regard to the existence of participation by the Authority or any other limitation of risk. The Authority reserves the right to refuse to enter into loan guaranty agreements with lenders which, in the judgment of the Authority, do not have the capacity or interest to appropriately make and service the loan.

§28.13. Eligible Private Lenders.

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

(c) Lender interest. As a condition to participation, the lender must retain an interest of at least 10% in the principal amount of the loan and agree to administer the loan in accordance with this chapter and

in such manner as if there were no limitations of risk [as to risks].

(d) Commitment letter. A lender interested in making a loan guaranteed under the program must submit a qualified [an] application along with a commitment letter to the Authority outlining the terms and conditions of the proposed loan. The letter will show the name of the business, purpose of the loan, amount and use of the funds, proposed closing date, and collateral for the loan guaranty amount that the lender is seeking from the Authority.

§28.14. Loan Guaranty Administration.

(a) Except as otherwise provided by state law, by these rules or by resolution of the board, the staff, with the approval of the commissioner of agriculture, [or] the deputy commissioner of agriculture or the official of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs, shall have the authority to act on behalf of the Authority, without specific board approval, in regard to the collection, settlement and enforcement of each and every loan guaranteed by the Authority under the program. Such authority shall include, without limitation, the actions required to be taken by the Authority under any loan agreement, any participation agreement, any loan guaranty agreement, and any other agreement entered into by the Authority concerning a loan guaranteed by the Authority under the program.

(b) (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 October 11, 1993.

TRD-9330136 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: November 15, 1993

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

Chapter 43. Tuberculosis

Subchapter A. Cattle

• 4 TAC §43.2

The Texas Animal Health Commission proposes an amendment to §43.2, concerning interstate movement requirements.

The proposed amendment is necessary to require a tuberculosis (TB) test on all steers and spayed heifers within 60 days prior to entry into the state. Steers and spayed heifers may enter the state without further restric-

tions following a negative test conducted in cooperation with a USDA-accredited veterinarian within 60 days prior to entry, provided the cattle are accompanied by a negative test document co-signed by both testing veterinarians, or may be tested at the port of entry under supervision of the USDA port veterinarian. All other steers and spayed heifers arriving at the port can only enter for movement to a TB-quarantined feedlot in sealed trucks after being "S"-branded prior to entering the state. The amendment would further require a negative TB test for all sexually intact cattle entering the state at the port of entry under the supervision of the port veterinarian. If these cattle move from the port to a TB-quarantined feedlot in Texas they must be "S"-branded prior to entry and be moved in sealed trucks. If they move to any other destination in Texas they will be held for retest not less than 120 days after arrival rather than 60 days. Cattle from foreign countries, foreign states, or areas within foreign countries as defined by the commission that have a comparable TB status could enter Texas by meeting requirements for states with a similar status. These changes would not affect cattle entering Texas from Mexico for the purpose of feeding and return to Mexico for slaughter under the federal in-bond program.

Robert L. Daniel, director of program records, has determined that for each year of the first five-year period the section is in effect the public benefit anticipated is to advise the public that all sexually intact cattle entering the United States from a foreign country without a comparable status to that of the United States will be tested for TB under the supervision of the port veterinarian and be held for testing at the premise of destination unless they are consigned to slaughter or "S"-branded before entering the state and moved to a TB-quarantined feedlot in sealed trucks. The public would further benefit by knowing that steers and spayed heifers would be tested negative with a test in cooperation with a USDA-accredited veterinarian without 60 days prior to entry or be tested at the port of entry under the supervision of the USDA port veterinarian and enter unrestricted or be tested with a Mexican test within 60 days prior to entry and be "S"-branded and consigned to a TB-quarantined feedlot in sealed trucks. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with the authority to adopt rules and set forth the duties of this commission to control disease. The amendment implements the Agriculture Code, §161.081 and §162.003.

§43.2. Interstate Movement Requirements.

(a) All dairy and registered beef breeding cattle that are parturient or postparturient of 18 months of age or older

shall be tested negative for tuberculosis within six months prior to entry with results of this test recorded on the certificate of veterinary inspection.

(b) All dairy and registered beef breeding cattle originating from an accredited tuberculosis free area or herd are exempt from the testing requirement in subsection (a) of this section, provided the herd number is stated on the certificate of veterinary inspection. All dairy and registered beef breeding cattle moving directly from a farm-of-origin to a USDA-approved market in Texas are exempt from testing requirements provided the animals are held in quarantined pens at the market to be sold to slaughter or quarantined feedlot.

(c) Cattle from any foreign country or part thereof with no recognized comparable tuberculosis status may enter as follows:

(1) All sexually intact cattle to be held for purposes other than for immediate slaughter or feeding for slaughter in a tuberculosis-quarantined feedlot shall be tested at the port of entry in Texas under the supervision of the port veterinarian, and be held under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The testing will be performed at the owner's expense.

(2) All sexually intact cattle destined for feeding for slaughter in a tuberculosis-quarantined feedlot must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to entry into the state and may move into the tuberculosis-quarantined feedlot only in sealed trucks with a permit issued by TAHC or USDA personnel.

(3) Steers and spayed heifers must have been tested negative within 60 days prior to entry. Those steers and spayed heifers tested negative within 60 days prior to entry cooperation with a USDA-accredited veterinarian that arrive at the port of entry accompanied by a test document co-signed by both testing veterinarians, and steers and spayed heifers tested negative at the port of entry under the supervision of the USDA port veterinarian, may enter without further restriction. All other steers and spayed heifers may enter only for feeding for slaughter in a tuberculosis-quarantined feedlot provided they are "S"-branded prior to entry into the state. These cattle may move into the tuberculosis-quarantined feedlot only in sealed trucks with a permit issued by TAHC or USDA personnel.

(4) A tuberculosis-quarantined

feedlot is a feedlot under a plan of restricted movement, approved by the Commission, in which all cattle are classified as exposed to tuberculosis. All tuberculosis exposed cattle moving to the feedlot must be "S"-branded prior to movement and must move under permit. All other cattle must be "S"-branded prior to or upon arrival at the feedlot. All cattle leaving the feedlot must go directly to slaughter. Community notification will be accomplished as set out in §35.2 of this title, (relating to General Requirements).

(5) These provisions are not applicable to cattle entering from Mexico for the purpose of feeding and return to Mexico for slaughter under the Federal in-bond program.

(c) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status to be held for purposes other than for immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 60 days and no later than six months after arrival. The test will be performed at the owner's expense.]

(d) Cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status would enter by meeting the requirements for a state with similar status as stated in subsections (a) and (b) of this section.

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

Issued in Austin, Texas, on October 1, 1993.

TRD-8329849

Terry Beale, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 479-6897

Chapter 55. Swine

• 4 TAC §55.6

The Texas Animal Health Commission proposes an amendment to §55.6, concerning entry requirements.

The proposed amendment is necessary to remove the retest requirement for breeding swine not known to be infected with or exposed to pseudorabies that enter Texas from a Stage IV or free state or a qualified herd in a Stage V state and were tested negative within 30 days prior to entry. Feeder swine entering for feeding for show would not have to be tested for pseudorabies after entry if

they moved directly from a Stage V state or from a qualified herd in a Stage IV state.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to waive the retest requirements for swine that enter from a Stage IV state or a qualified herd in a State V state. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with the authority to adopt rules and set forth the duties of this commission to control disease. The amendment implements the Agriculture Code, §161.081 and §165.022.

§55.6. Entry Requirements.

(a) Swine imported into Texas for feeding, breeding, or exhibition purposes shall be accompanied by a certificate of veterinary inspection certifying that:

(1) swine have not been fed garbage, either raw or cooked.

(2) swine have not be exposed to hog cholera or pseudorabies;

(3) swine have not been vaccinated for pseudorabies; and

(4) swine have been permanently identified (eartag, earnotched, or number tattoo).

(b) Breeding swine not know to be infected with or exposed to pseudorabies may enter under the following conditions:

(1) they were tested negative for pseudorabies within 30 days prior to entry; or they originated from a qualified PRV-negative herd; or they were moved directly from a farm of origin in a Stage IV or free state as described in the National PRV Program; and

(2) they are held in isolation and under quarantine on the premise where first unloaded and tested or retested for PRV in not less than 30 nor more than 60 days after arrival; or they are moved directly from the premise of origin in a State V state or from a qualified herd in a Stage IV state were tested negative within 30 days prior to entry.

(b) The Certificate of Veterinary

Inspection will also certify that swine have met the following pseudorabies entry requirements:

[(1) All breeding swine entering the state and those feeder swine entering for the stated purpose of feeding them for show, fair or exhibition purposes shall be held in isolation and under quarantine on the premise where first unloaded and tested or retested for PRV in not less than 30 nor more than 60 days after arrival. Such swine not known to be infected with or exposed to pseudorabies may enter provided they:

[(A) are tested negative within 30 days prior to entry;

[(B) are from a qualified PRV negative herd; or

[(C) are moved directly from a farm-of-origin in a Stage IV or free state as described in the National PRV Program.]

(c) Feeder swine entering for feeding for show, fair, or exhibition and not known to be infected with or exposed to pseudorabies may enter under the following conditions:

(1) they are tested negative for pseudorabies within 30 days prior to entry; or they originated from a qualified PRV-negative herd; or they were moved directly from a farm of origin in a Stage IV or free state as described in the National PRV Program; or they were moved directly from a PRV-monitored feeder pig herd in a State III, IV, or V state; and

(2) they are held in isolation and under quarantine on the premise where first unloaded and tested or retested for PRV in not less than 30 nor more than 60 days after arrival; or they are to be fed for show purposes and enter directly from a Stage V state or directly from a qualified herd in a State IV state.

(d)[(2)] Feeder swine not known to be infected with or exposed to pseudorabies may enter provided they;

(1)[(A)] are tested negative within 30 days prior to entry;

(2)[(B)] originate from a qualified PRV negative herd;

(3)[(C)] are shipped directly from a farm-of-origin in a Stage IV or free state as described in the National PRV Program; or

(4)[(D)] originate from a PRV monitored feeder pig herd in a stage III, IV, or free state and held under quarantine until shipped to slaughter or held a minimum of 30 days and tested negative. Feeder swine imported from monitored feeder pig herds

shall not be placed on a premise where breeding swine are present. Persons owning swine or premises adjacent to feeder swine imported from a monitored feeder pig herd shall be notified of the presence of these quarantined swine.

(e)[(c)] Additionally, breeding swine shall have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis-free herd or state and shall be vaccinated within the previous 30 days with Leptospirosis vaccine containing the following strains: Bratislava, Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pamona.

(f)[(d)] Exhibition swine originating in Texas entered in terminal shows are exempt from brucellosis, leptospirosis, and pseudorabies requirements.

(g)[(e)] Swine imported into Texas for slaughter purposes shall either be consigned directly to slaughter or to a federally approved livestock market where a VS 1-27 will be issued to accompany them to slaughter following sale.

(h)[(f)] Entry permits are not required for swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Part 76.

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 October 1, 1993.

TRD-9329850

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: November 15, 1993

For further information, please call: (512) 479-6697

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